1988 July 2

(MALACHTOS, SAVVIDES, STYLIANIDES, PIKIS, KOURRIS, JJ.)

YIANNAKIS ELLINAS,

Appellant-Applicant,

v.

REPUBLIC,

Respondent.

(Civil Appeals No. 7648 & 7649).

Prerogative Orders — Certiorari, Mandamus, Prohibition — Leave to apply for — The concept of «prima facie» or «arguable» case.

Criminal Procedure — Committal order—A prerequisite for the filing of the information by the Attorney-General — Once the information is filed, the committal order is exhausted and can be no longer reviewed by certiorari.

Criminal Procedure — Reserving question of law for the opinion of the Supreme Court — The Criminal Procedure Law, Cap. 155, section 148 — How the discretion should be exercised.

Criminal Procedure — Assize Court — Whether it has power to quash a committal order or information—Question determined in the negative.

Constitutional Law — Reasoning of judicial decision — Constitution, Art. 30 — What constitutes adequate reasoning — No laxity permissible in this field.

Civil Procedure — Trial — Judgment — Point not raised or argued by the parties — Advisable that trial be re-opened.

Prerogative Orders — Prohibition — When it lies — When the remedy is discretionary and when not.

Prerogative Orders — Certiorari — Committal for trial before Assizes — Once the information is filed, it is no longer reviewable by certiorari.

Prerogative Orders — Certiorari — Attorney-General — The quasi judicial acts of the Attorney-General are not reviewable by certiorari.

Attorney-General — His position in the administration of justice — His quasi judicial acts are not reviewable by prerogative orders.

The appellant was committed to trial before the Limassol Assize Court on 28 charges. Following the committal, the Attorney-General filed the information, charging thereby the appellant with 31 charges.

Before his arraignment the appellant applied to the Assize Court for quashing his committal and the information. The application was dismissed on the ground of lack of jurisdiction. A further application by the appellant for reserving relevant questions of law for the opinion of the Supreme Court was, also, dismissed.

As a result the applicant filed applications for certiorari to quash the said two rulings of the Assize Court and the committal order and all proceedings consequent thereon.

The President of this Court refused leave. His decision is reported in (1988) 1 C.L.R. 57. In refusing leave, he, also, invoked the delay in applying for quashing the committal order as an additional ground for refusing leave. The matter of delay was neither raised nor argued by the parties before him.

One of the appellant's complaints is that the judgment appealed from is not duly reasoned. In fact, the President stated that the depositions of the witnesses disclosed the offences for which the appellant had been committed to trial.

Held, *dismissing the appeal:* A) Per Pikis, Malachtos, Savvides, and Kourris JJ. concurring: (1) The furnishing of reasons explaining the decision reached is a fundamental attribute of the judicial process, and a condition under article 30.2 of the Constitution for the valid determination of a judicial cause or matter. No laxity can be countenanced in this area of the administration of justice.

In this instance under consideration the reasons for the decision of the Court were clearly indicated, namely that the statements of prosecution witnesses supported the charges for which the accused was committed to trial. In accordance with s. 94, Cap. 155, the statements should be judged objectively. No element of subjective

judicial evaluation of the evidential value came into play. Even contradictions should be ignored for purposes of committal.

(2) An order of committal is not in itself authority for the prosecution of the person committed thereby before the Assize Court. Its effect is confined to conferring authority on the Attorney-General to found an information thereon, as provided in s.107 of the Criminal Procedure Law—Cap. 155.

A committal order exhausts its force upon the filing of the information. Its validity cannot be reviewed thereafter by way of certiorari.

In reality, the application for the review of the order of committal is but an indirect attempt to review by way of certiorari the pertinent decision of the Attorney-General.

Neither in England nor in Cyprus, are decisions of the Attorney-General subject to judicial review by way of certiorari. The Attorney-General is under the Constitution trusted with power to prosecute at his discretion (article 113.2 of the Constitution). Subject to the limits of the power vested in him by the Constitution, he is the arbiter of the public interest under article 113.2.

(3) The Assize Court had no jurisdiction to review the validity of the committal order. A judicial order can only be reviewed in either of two ways:-

(a) By way of appeal when a right of appeal is bestowed by it, or

(b) by way of certiorari.

Both jurisdictions vest exclusively in the Supreme Court.

B) Per Stylianides, J: (1) The committal either after preliminary inquiry or without preliminary inquiry is a prerequisite for the filing of an information charging the accused with any offence not triable summarily.

The filing of an information by the Attorney-General in the Assize Court is a sine qua non for the Assize Court to try a person. (Section 107 of Cap. 155). The Committal order does not vest by itself the Assize Court with power to try a case.

Upon the filing of the information the committal order merges in it and it drops out of the picture and is no more reviewable. The information is as from that time the operative act.

The power of the Attorney-General is of a quasi judicial nature and is not reviewable either under Article 146 of the Constitution or by prerogative writ.

(2) The Assize Court had no power to review or quash either the committal order or the information as applied by the defence counsel.

(3) The Assize Court in rejecting the application to reserve points of law for the opinion of the Supreme Court exercised its power on the correct principles of law as expounded by this Court in a long series of judgments.

(4) The finding that the Committal was justified was not necessary, as, in any event, there was no power to quash it by certiorari.

C) Per Savvides, J. (1) I have not been convinced that the decision of the trial Court in that there was sufficient evidence for committal of the appellant for trial and that it had no jurisdiction to review the validity of the committal order was wrong. I have not further been convinced that there had been an error of law on the face of the record or that the discretion of the Court was wrongly exercised.

(2) The object of the committal order is to enable the Attorney-General to file an information before the Assize Court for the trial of a person committed for trial. Once such information is filed the object and the validity of the committal order cease and merge in the information.

Appeal dismissed.

Cases referred to:

In re Argyrides (1987) 1 C.L.R. 23;

Edwards (Inspector of Taxes) v. Bairstow and Another [1955] 3 All E.R. 48;

Instrumatic Ltd. v. Supabrase Ltd. [1969] 2 All E.R. 131;

R. v. Electricity Commissioners [1924] 1 K. B. D. 171;

Christofi and Others v. Iacovidou (1986) 1 C.L.R. 236;

Sidnell v. Willson and Others [1966] 1 All E.R. 681;

Land Securities Plc. v. Receiver for the Metropolitan Police District [1983] 2 All E.R. 254;

Costas Papadopoulos (Ex Parte) (1968) 1 C.L.R. 496;

Ex Parte Maroulleti (1970) 1 C.L.R. 75;

Zenios & Another v. Disciplinary Board (1978) 1 C.L.R. 382;

In Re Azinas (1980) 1 C.L.R. 466;

In Re Malikides and Others (1980) 1 C.L.R. 472;

In Re Kakos (1984) 1 C.L.R. 876;

In Re Kakos (1985) 1 C.L.R. 250;

Atkinson v. U.S.A. Government [1971] A.C. 197;

R. v. Epping & Harlow Justices [1973] 1 Q.B.D. 433;

In Re Ellinas (1988) 1 C.L.R. 57;

Police v. Athienitis (1983) 2 C.L.R. 194;

The Republic v. Kalli, 1961 C.L.R. 266;

The Republic v. The Assize Court at Kyrenia, Ex parte The Attorne General of the Republic (1971) 2 C.L.R. 222;

In Re Charalambous and Another (1974) 2 C.L.R. 37;

The Republic v. Sampson (1977) 2 C.L.R. 1;

Police v. Ekdotiki Eteria (1982) 2 C.L.R. 63;

Pastellopoulos v. Republic (1985) 2 C.L.R. 165;

Archangelos Domain Ltd. v. Van Nievelt Condrian & Co's (1988) C.L.R. 51;

In Re Charalambous (1985) 1 C.L.R. 746;

Hadmor Productions Ltd. v. Hamilton [1982] 2 W.L.R. 322;

In Re Charalambos Aeropoulos and Others (1988) 1 C.L.R. 302;

Githunguri v. Republic of Kenya (1986) Commonwealth La Reports (Constitutional) p. 618;

R. v. Gee [1936] 2 All E.R. 89;

R. v. Philips [1938] 3 All E.R. 674;

R. v. Wharmby [1946] Cr. App. Rep. 174;

R. v. Hall [1968] 2 All E.R. 1009;

R. v. Brooker [1977] 65 Cr. App. Rep. 181;

Constantinides v. Vima Ltd. (1983) 1 C.L.R. 348;

Papageorghiou v. HjiPieras (1981) 1 C.L.R. 560;

Hambou and Others v. Michael and Another (1981) 1 C.L.R. 618;

R. v. Epping and Harlow JJ. ex parte Massaro [1973] 1 All E.R. 1011;

Neophytou v. Police (1981) 2 C.L R. 195;

Psaras and Another v Republic (1987) 2 C.L.R. 132;

Panayi v. Police (1968) 2 C.L.R. 124;

Ioannidou v. Dikeos (1969) 1 C.L.R. 235;

Pioneer Candy Ltd. v. Tryfon & Sons (1981) 1 C.L.R. 540;

Police v. Athienitis (1983) 2 C.L.R. 194;

Xenophontos v. Republic, 2 R.S.C.C. 89.

Appeals.

Appeals by applicants against the judgments of the President of the Supreme Court of Cyprus (A. Loizou, P.) dated the 15th June, 1988 (Appl. No. 99/88)* and 100/88)** refusing to grant leave to apply for the issue of prerogative writs of certiorari, mandamus and prohibition in respect of a committal order made by a District Judge of Limassol committing the applicants for trial before the Assize Court of Limassol.

G. Cacoyannis with M. Koukkidou (Miss), for the appellants.

L. Loucaides, Deputy Attorney-General of the Republic, for the respondent.

Cur. adv. vult.

MALACHTOS, J.: The hearing in these two appeals started on 20.6.88 and was concluded on 28.6.88. On 2.7.88, in view of the extreme urgency for the continuation of hearing of the case against the appellant before the Assize Court, we pronounced judgment where the two appeals were unanimously dismissed but gave no reasons.

Since then, Pikis J., filed with the Registry of the Court a reasoned judgment, which I had the opportunity to read, and I

*See (1988) 1 C.L.R. 354.

**See (1988) 1 C.L.R. 371.

must say that I fully agree with the reasons given in that judgment.

I would, however, like to state that as regards the question of delay. raised by the trial judge in his judgment, I leave it open as it was neither argued before him nor before us.

SAWIDES, J.: The present appeals which were heard together as presenting common questions of law are directed against the decisions of the learned President of this Court dismissing appellant's applications 99/88 and 100/88 for leave to apply for the issue of the prerogative writs of certiorari, mandamus and prohibition.

By application 99/88 appellant applied ex-part for leave to apply for orders of mandamus and/or certiorari and/or prohibition directed against the ruling of the Assize Court of Limassol delivered on 1st June, 1988, rejecting the preliminary objections raised on his behalf prior to his arraignment in Criminal Case 22446/87 and against the decision of the same Court delivered on 7th June, 1988 refusing to reserve questions of law for the opinion of the Supreme Court under s. 148 of the Criminal Procedure Law, Cap. 155.

The decision of the Assize Court challenged was its refusal to reserve for the opinion of the Supreme Court four questions of Law raised by counsel for appellant in support of his preliminary objections against an information filed by the Attorney-General charging the appellant with 31 offences of stealing allegedly having been committed between the 12th February, 1982 and 28th July, 1983.

By application 100/88 appellant applied for leave to apply for an order of certiorari and/or prohibition for the purpose of A) quashing the committal of the appellant by the District Court of Limassol for trial before the Assize Court of Limassol for the offences charged in the said Charge Sheet, made by the said District Court on 5.2.1988 in Criminal Case No. 22446/87, B) Prohibiting the Assize Court of Limassol from proceeding to arraign and/or to try the applicant in criminal case No. 22446/87 on the basis of the said committal made by the District Court of Limassol on 5.2.1988 and/or on the Information filed by the Attorney-General on the basis and/or in consequence of the said committal, and C) that all proceedings in the said Criminal Case No. 22446/87 (before the District Court and/or the Assize Court) be stayed until after the hearing of the motion or further Order.

The two applications were heard together and the learned President delivered separate judgment in each one refusing leave for the reasons stated therein.

The learned President in his judgment in application 100/88 which was delivered first concluded that on the material placed before him, in particular the record of the committal proceedings there was sufficient evidence to commit the appellant for trial and that there had been no error of law apparent on the face of the record. He also concluded that the Assize Court had no jurisdiction to review the validity of the committal order. The learned President went further and ex proprio motu without having heard any argument by counsel for the appellant in this respect, found that there was delay in the filing of the application for leave, which he considered as inexcusable as «after the committal of the applicant no steps were taken for quashing the order in question except after the ruling of the Assize Court given on the 1st June, 1988, dismissing the preliminary objections of the defence regarding the validity of the order of committal of the applicant and their refusal to reserve four Questions of Law for the opinion of the Supreme Court».

In his judgment in application 99/88 the learned President found himself in agreement with the approach of the Assize Court on the issues raised before it and reiterated his reasons for refusing leave for an order of certiorari and prohibition as explained by him in application 100/88. He concluded that the Assize Court «exercised their discretion properly and in a manner consistent with the approach of this Court in a number of cases» and stressed the desirability that the trial of a criminal case and especially an Assize Court case should not be interrupted unduly.

Having heard exhaustive argument by counsel on both sides I have not been convinced that the decision of the trial Court in that there was sufficient evidence for committal of the appellant for trial and that it had no jurisdiction to review the validity of the committal order was wrong. I have not further been convinced that there had been an error of law on the face of the record or that the discretion of the Court was wrongly exercised. I agree with the reasons which have been given by the learned President in his elaborate judgment on the said matters. I also agree and adopt the lucid exposition of the law of my brother Pikis, J., in the judgment

delivered by him and with the contents of which I had the opportunity to acquaint myself in advance.

The learned President rightly opined that an Assize Court had no jurisdiction to review the validity of a committal order. The object of the committal order is to enable the Attorney-General to file an information before the Assize Court for the trial of a person committed for trial. Once such information is filed the object and the validity of the committal order cease and merge in the information. The Assize Court in any event is not the competent Court clothed with revisional jurisdiction to test the validity of a committal order.

On the question of delay I have my reservations as to whether in the circumstances of the present case there has been inexcusable delay in the filing of the applications. Having however concluded that the applications were rightly refused on the merits, I shall refrain from tackling this issue as no useful purpose will be served in the present case. I leave however the question open to be decided in a proper case in which same may have any bearing on its outcome.

In the result, I agree that these two appeals should be dismissed.

STYLIANIDES, J.: The appellant on the 5th February, 1988, was committed to trial before the Limassol Assize Court in Criminal Case No. 22446/87 on twenty-eight charges.

On the 3rd May, 1988, information was filed by the Attorney-General in the aforesaid case charging thereby the appellant with 31 charges.

Prior to arraignment to the information defending counsel raised a number of preliminary objections. He objected, inter alia, that the committal of the appellant was invalid; that the information was defective in that it charged offences not disclosed in the statements of the witnesses laid before the Committing Judge. He invited the assize Court to quash the information.

On 1st June, 1988, the Assize Court delivered its ruling whereby it rejected the objections on the ground that it had no jurisdiction to inquire into the validity of the committal order or to review the exercise by the Attorney-General of his powers for the filing of the information.

On 3rd June, 1988, the defence counsel applied to the Assize Court under section 148 of the Criminal Procedure Law, Cap. 155, to reserve for the opinion of the Supreme Court the following questions:-

1. Has this Court jurisdiction to consider an objection raised by defence counsel before arraignment that the committal of the accused for trial was invalid on the ground that the statements produced to the Committing Judge did not disclose the offences for which the accused was committed and/or the offences charged in the information?

2. Has this Court jurisdiction to consider an objection raised by defence counsel before arraignment that the information is defective in that the offences charged thereby are not disclosed in the statements produced to the Committing Judge?

3. Can this Court proceed to arraign the accused and thereafter to try him on an information which charges offences not disclosed in the statements produced to the Committing Judge?

4. If the answer of the Supreme Court is that this Court has jurisdiction to consider the objections referred to in question 1 and/or 2 above and/or that this Court has no jurisdiction to proceed to try the case in the circumstances set out in question 3 above, can this Court in considering the defence objections look at the statements produced to the Committing Judge?

The Assize Court after hearing argument from both sides on the 7th June, 1988, in exercising its discretion rejected the application and refused to reserve any of the aforesaid questions.

On the 9th June, 1988, the applicant filed Applications Nos. 99/88 and 100/88 praying for leave to apply for the issue of writs of «Certiorari and/or Mandamus and/or Prohibition» against the ruling of the Assize Court of Limassol delivered on 1st June, 1988, and the refusal of the Assize Court to reserve the questions of law for the opinion of the Supreme Court.

Application No. 100/88 was filed ex abundante cautela; thereby leave was sought to apply for writs of Certiorari and Prohibition to bring up and quash the committal order and/or proceedings flowing therefrom - filing of information and forbidding the Assize Court from proceeding with the hearing of the case.

This Court dealt with the utmost urgency with these applications, as the Assize Court, due to them, interrupted the trial.

The applications were taken up by the President of this Court, who after hearing addresses by counsel of the appellant on 13th June, 1988, delivered Decisions on 15th June, 1988, whereby he refused leave.

The appellant being aggrieved took these appeals against the said Decisions. As both appeals raise identical points they were taken together.

Extensive and thorough arguments were advanced by the learned counsel for the appellant and the Deputy Attorney-General on the issues involved in these appeals.

The power to issue prerogative writs is vested by paragraph 4 of Article 155 of the Constitution and sections 3 and 9 of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33/64) exclusively in the Supreme Court.

By the prerogative writ of Certiorari this Court exercises control over an inferior Court, not in an appellate capacity, but in a supervisory capacity. The control is exercised by quashing any determination by the inferior Court, which on the face of it, offends against the law. The control is exercised by removing an order or decision to the Supreme Court and then by quashing it.

Certiorari exists to quash an order of an inferior Court on the ground, inter alia, of an error of law apparent on the face of the proceedings. (See, inte alia, *In re Argyrides* (1987) 1 C.L.R. 23.)

Wrong exercise of discretion or exercise of discretion on wrong principles of law are points of law. (*Edwards (Inspector of Taxes) v. Bairstow and Another* [1955] 2 All E.R. 48; *Instrumatic Ltd. v. Supabrase, Ltd.* [1969] 2 All E.R. 131.)

Prohibition is a writ directed to an inferior Court which forbids that Court to continue proceedings therein in excess of jurisdiction or in contravention of the laws of the land. (*R. v. Electricity Commissioners* [1924] 1 K.B.D. 171.)

Certiorari is discretionary. Prohibition is discretionary when the defect is not patent. Where the defect of jurisdiction is apparent on the face of the record no question of discretion arises and the

applicant is entitled as of right to the order sought. (*Christofi and Others v. Iacovidou* (1986) 1 C.L.R. 236.)

With regard to practice and procedure there is no provision at all either in the Courts of Justice Law, 1960 (Law No. 14/60), or in any Rules made by the Supreme Court or its predecessor, the High Court. During the colonial administration the Courts of Justice Legislation provided that in the absence of local provision the jurisdiction should be exercised, so far as circumstances permitted, in accordance with the practice and procedure observed by the Courts in England. The Law applicable in the Republic of Cyprus is set out in section 29 of Law 14/60. There is a lacuna of rules. The English rules are not applicable in the Republic.

This Court by practice followed and applied a procedure analogous but not identical to that applied by the High Court in England before Independence Day in the exercise of this jurisdiction.

At the stage of leave the Court must be satisfied by the material before it, if accepted as accurate, that «prima facie» case is made out or an «arguable point» is raised justifying the granting of leave to the applicant to move this Court to issue a prerogative writ. The expressions «arguable case» and «prima facie case» are used in the sense of a case that there is a bona fide arguable case, without the need to go into any rebutting evidence put forward. It is a case which is sufficiently arguable and merits an answer. - (*Sidnell v. Wilson and Others* [1966] 1 All E.R. 681, at p. 685; *Land Securities Plc v. Receiver for the Metropolitan Police District*, [1983] 2 All E.R. 254, at p. 258; *Costas Papadopoulos (Ex Parte)*, (1968) 1 C.L.R. 496; *Ex Parte Loucia Kyriacou Christou Maroulleti*, (1970) 1 C.L.R. 75; *In Re Nina Panaretou* (1972) 1 C.L.R. 165; *Zenios & Another v. Disciplinary Board* (1978) 1 C.L.R. 382; *In re Azinas*, (1980) 1 C.L.R. 466; *In re Malikides and Others* (1980) 1 C.L.R. 472; *In re Kakos*, (1984) 1 C.L.R. 876; *In re Kakos*, (1985) 1 C.L.R. 250; *In re Argyrides* (1987) 1 C.L.R. 23.)

It is well settled that the Assize Court is an inferior Court established by Law 14/60 in furtherance of the provisions of Article 152 of the Constitution.

The matters that fall for decision in these appeals are:-

The nature and reviewability of a committal order. The nature and reviewability of the information and the power of the Attorney-General to frame and file an information. The jurisdiction of the Assize Court in respect to the aforesaid matters. The lack of reasoning of the decisions under appeal and lastly the question of delay in filing the application for leave to issue prerogative writs.

The appellant was committed for trial without a preliminary inquiry on the basis of section 3 of the Criminal Procedure (Temporary Provisions) Law, 1974 (Law No. 42/74), by a Judge of the District Court of Limassol.

The object of the necessity of a case going through committal proceedings before trial by the Assize Court is a safeguard for a citizen to ensure that he cannot be made to stand his trial without sufficient grounds. It serves as a safeguard of the liberty of the subject and of the ordeal of standing a trial before the Assize Court unnecessarily. (*Atkinson v. U.S.A. Government*, [1971] A.C. 197; *R. v. Epping & Harlow Justices*, [1973] 1 Q.B.D. 433).

The Assize Court is vested with jurisdiction by section 20 of Law 14/60.

The committal either after preliminary inquiry or without preliminary inquiry is a prerequisite for the filing of an information charging the accused with any offence not triable summarily. The power conferred on the committing Court under the Criminal Procedure Law, Cap. 155 and under Law 42/74 is a discretionary power which has to be exercised judicially on the material before it. With regard to committal for trial without preliminary inquiry *In Re Yiannakis P. Ellinas* (1988) 1 C.L.R. 57. I said at p. 78:-

> «The District Court shall consider the evidence disclosed in the copy of statements to be sufficient to commit the accused for trial, if such evidence is such as, if uncontradicted, would raise a probable presumption of his guilt, independently of whether there is a conflict of evidence in the statements.»

The test is the probable presumption of guilt. Committal order being a judicial act, though not appellable, as it is not within the ambit of the definition of «criminal proceedings» - Law 14/60 - it is reviewable by Certiorari.

The filing of an information by the Attorney-General in the Assize Court is a sine qua non for the Assize Court to try a person. (Section 107 of Cap. 155). The committal order does not rest by itself the Assize Court with power to try a case.

The Constitution by Article 113 and the Criminal Procedure Law by sections 107 and 108 confer exclusive power on the Attorney-General to frame and file the information.

Upon the filing of the information the committal order merges in it and it drops out of the picture and is no more reviewable. The information is as from that time the operative act.

The Attorney-General may charge an accused in the information with any offence which in his opinion is disclosed by the depositions or the statements of the witnesses, as the case may be, either in addition to or in substitution for the offence upon which the accused has been committed for trial. This power of the Attorney-General is of a quasi judicial nature and is not reviewable either under Article 146 of the Constitution or by prerogative writ. (*Charilaos Xenophontos and The Republic (Minister of Interior)*, 2 R.S.C.C. 89; *Police v. Athienitis* (1983) 2 C.L.R. 194.)

A number of authorities and case law of other jurisdictions on committal orders and indictments were cited. They are not applicable in this country and have no bearing in this case.

Section 86 of Cap. 155 is not empowering the Assize Court to inquire into either the committal proceedings and committal order or into the exercise of the power of the Attorney-General to frame the information. The matters raised by counsel before the Assize Court are beyond the scope of the provisions of this section.

The Assize Court had no power to review or quash either the committal order or the information as applied by the defence counsel.

The Assize Court in rejecting the application to reserve points of law for the opinion of the Supreme Court exercised its power on the correct principles of law as expounded by this Court in a long series of judgments. (See, inter alia, *The Republic v. Georghios Theocli Kalli*, 1961 C.L.R. 266; *The Republic v. The Assize Court at Kyrenia, Ex-Parte The Attorney-General of the Republic* (1971) 2 C.L.R. 222; *In Re Charalambos N. Charalambous and Another* (1974) 2 C.L.R. 37; *The Republic v. Nicolaos Sampson* (1977) 2

C.L.R. 1; *Police v. Ekdotiki Eteria* (1982) 2 C.L.R. 63; *Pastellopoullos v. Republic* (1985) 2 C.L.R. 165.)

The review by this Court by prerogative writ of a decision of the inferior Court is limited to its legality and not to its correctness.

We agree with the President of the Court that no manifest error of law appears on the record.

The appellant complains that the decisions under appeal are not duly reasoned.

With regard to reasoning of judgments I repeat the following passage from the Judgment in *Archangelos Domain Ltd. v. Van Nievelt Condrian & Co's,* (1988) 1 C.L R. 51 at pp 54-56 I said:-

«Prior to the establishment of the Republic and the coming into force of the Constitution, in relation to criminal proceedings, s. 113(1) of the Criminal Procedure Law, Cap. 155 required the reasons for the decisions to be recorded in writing. In civil proceedings judgments had to be reasoned as a requirement of the very notion of proper determination of disputes by judicial process.

Article 30, para. 2 of the Constitution provides that judgments determining the civil rights and obligations, or of any criminal charge against a person shall be reasoned.

The notion of 'fair trial' requires reasons to be given by a Court for its decision and this applies to civil as well as criminal proceedings.

A party must know the reasons for the failure of his case. The reasons are further necessary to enable a party to decide whether and on what grounds an appeal should be lodged. As the administration of justice is a public function, the people in general are entitled to know the reasons of the judicial decisions. Adequate judicial reasoning and its soundness upholds faith in the Law and strengthens confidence in the judiciary.

In *Papaellina v. EPCO (Cyprus) Ltd. and Lion Products Ltd.,* (1967) 1 C.L.R. 338, Stavrinides, J. observed that there is a need for the trial Judge to formulate clearly in his

judgment the specific issue or issues of fact arising between the parties and to state his finding for such issue or each one of such issues, and that Judges trying civil disputes should unfailingly do so.

The trial Court has to determine the issues which arise and to give its reasons for its determination.

The mandatory provision of para. 2 of Article 30 of the Constitution has been judicially considered by this Court in a number of cases. (See inter alia *Anastassis Panayi v. The Police* (1968) 2 C.L.R. 124; *Theodora Ioannidou v. Charilaos Dikeos* (1969) 1 C.L.R. 235; *Pioneer Candy Ltd. and Another v. Stelios Tryfon and Sons Ltd.*, (1981) 1 C.L.R. 540; *Papageorghiou v. Hjipieras* (1981) 1 C.L.R. 560; *Androula Georghiou Hambou and Others v. Maria Charalambous Michael and Another* (1981) 1 C.L.R. 618; *Michael Christou and Another v. Maria Angelidou and Another* (1984) 1 C.L.R. 492; *In the matter of Eleftheria Charalambous of Nicosia,* Civil Appeal No. 6835, Judgment delivered on 22/7/87 not yet reported and *Psaras and Another v. The Republic,* Criminal Appeals Nos. 4715 and 4718, Judgment delivered on 15/10/87 not yet reported.

What is considerd sufficient 'reasoning' depends largely on the circumstances of each particular case.

Article 6.1 of the European Convention on Human Rights, which, having been ratified by Law 39/62, has superior force to the domestic legislation made under the Constitution, secures to everyone the right to a fair hearing in the determination of his civil rights and obligations, or of any criminal charge against him.

The notion of 'fair trial' requires reasons to be given by a Court for its decision. However, if a Court gives reasons, then prima facie the requirements are satisfied, and this presumption is not upset simply because the judgment does not deal specifically with one point considered by an applicant to be material. It does not follow from Article 6 that reasons given by a Court should deal specifically with all points which may have been considered by one party to be essential to his case; a party does not have an absolute right to require reasons to be given for rejecting each of his arguments. If, however, the Court had ignored a fundamental defence, which had been

clearly put before it and which, if successful, would hav discharged him in whole or in part from the liability, then thi could be sufficient to rebut the presumption of a fair hearin The extent of the reasons to be given for a decision mu depend on the nature and the complexity of the matte concerned. (Digest of Strasbourg Case-Law relating to th European Convention on Human Rights (1984), volume 2 pp. 424-427.)»

The learned President after perusing the contents of th statements of the witnesses - the material placed before th Committing Judge - he concluded that there was sufficient reaso to commit the accused for trial before the Assize Court.

In my view, having regard to what was said earlier on in thi judgment about the committal order, this finding was unnecessar in the determination of the application for leave.

Nevertheless, in the context of this case, taking int condideration the test for committal though the reasoning of th decisions under appeal might be more elaborate, they are not s faulty as to violate the principle of the reasoning of judgments se out above.

The applications for leave were dismissed on the further groun that there was an inexcusable delay in the filing of application fc quashing the committal order.

An application for leave must be made with reasonabl diligence. Leave will not be granted unless applied for within reasonable time. Leave is granted only where diligence is show by applicant in real need of the remedy. (*In Re Charalambou* (1985) 1 C.L.R. 746.)

The issue of delay is taken up by the Court ex proprio motu.

In *Hadmor Productions Ltd. v. Hamilton* [1982] 2 W.L.R. 32 (H.L.) it was held that points not argued by counsel should not b relied upon by the Judge.

It is a fundamental rule of natural justice that a Judge should no deprive the parties of the benefit of being heard on such a point. I is the right of each party to be informed of any point that it is goin to be relied upon by the Judge and to be given an opportunity t state what his answer is.

It is desirable, when a judgment is reserved and the Judge intends to rely on a point not being argued, to reopeon the case and give the opportunity to counsel appearing for the party to express his view on it.

As the appeal will be dismissed on the grounds set out earlier on, it is unnecessary to determine the additional ground of dismissal of the application because of delay.

For all the foregoing reasons, these appeals are hereby dismissed.

PIKIS, J.: The two appeals are directed against the refusal of the learned President of the Supreme Court to grant leave to apply for certiorari for the purpose of reviewing and ultimately quashing -

(a) a committal order made by a district judge of Limassol, committing the appellant for trial before the Assize Court, and,

(b) a decision of the Assize Court of Limassol declining jurisdiction to inquire into the validity of the committal order.

The judgment of A. Loizou, P., refusing leave to review the order of committal, is also challenged for lack of due reasoning. Reference, it was said, to the statements founding the committal, coupled with the opinion of the learned Judge that they disclosed material warranting the committal, does not exhaust the duty of the Court to reason its judgment in the comprehensive manner required by article 30.2 of the Constitution.

The Court held that the content of the statements adduced by the prosecution justified the committal of the accused for trial. The test of committal remained, it must be added, unchanged by enactment of Law 42/74 (amended by Law 44/83), as authoritatively decided by the Full Bench In Re Ellinas.* The test remains that laid down in s.94 of the Criminal Procedure Law - Cap. 155, providing for the committal of the accused whenever the evidence (the statements after the enactment of Law 42/74) is «... such as if uncontradicted, would raise a probable presumption of his guilt». Irrespective and independently of the sufficiency of the evidence founding the committal, the Court was disinclined to grant leave on account of the delay that occurred in the pursuit of the discretionary remedy of certiorari. The principles governing the exercise of judicial discretion in this area were also the subject

* *(1988) 1 C.L.R. 57.*

of analysis in the decision of the Supreme Court *In Re Charalambos Aeroporos and Others.** Whereas the order of committal was made on 5.2.88 the applicant remained inactive and no steps were taken to have it quashed until after the filing of the information on 3.5.88 and sunbsequent refusal of the Assize Court to entertain an application to set aside the information on grounds of invalidity of the order of committal (given on 1.6.88).

A. Loizou, P., agreed with the view taken by the Assize Court of Limassol respecting the limits of its jurisdiction; specifically, the absence of jurisdiction to inquire into the validity of the committal order. Thereafter, the Assize Court refused to state a case, under s. 148 - Cap. 155, for the opinion of the Supreme Court and dismissed an application to that end made on behalf of the accused.

The discretion to reserve questions of law at the instance of the accused, conferred by s.148, should be sparsely exercised and then only when absolutely necessary for the due administration of justice. The caselaw favours no lesser standard.** Only issues of exceptional importance, not elucidated by decided cases but crucial for the progress of the case should, in the opinion of the Assize Court, be reserved under s.148 - Cap. 155, at the instance of the accused.

Learned counsel for the appellant challenged nearly every aspect of the two decisions of the trial Court here under appeal. He raised elaborate arguments in support of his submissions the essence of which we shall attempt to reproduce, albeit briefly, below.

Counsel correctly submitted that at the stage of application for leave to apply for certiorari, the applicant does not have to establish his case conclusively. Leave should be granted whenever a prima facie case of entitlement to the remedy is made out. The evidential burden cast on the party applying for leave and the attributes of a prima facie case, were the subject of discussion by the Full Bench *In Re Kakos****. A prima facie case is one sufficiently cogent or arguable to merit an answer. Legal

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* *(1988) 1 C.L.R. 302.*

** *(Republic v. Kalli, 1961 C.L.R. 266; Republic v. Sampson (1977) 2 C.L.R. 1; Police v. Ekdotiki Eteria (1982) 2 C.L.R. 63; Pastellopoulos v. Republic (1985) 2 C.L.R. 165).*

*** *(1985) 1 C.L.R. 250).*

propositions, on the other hand can, as indicated in the above case, be explored with equal amenity at the stage of application for leave. A prima facie case cannot be grounded on what the Court regards as an unsound legal proposition. The case also throws light on the nature of the jurisdiction to grant certiorari, a jurisdiction primarily intented to ensure that inferior courts operate within the bounds of their jurisdiction and observe fundamental rules of law; also the case is instructive in drawing attention to the salient fact that in certiorari proceedings the Court is concerned with the legality of the impugned order as opposed to its correctness.

The reasons given by the Court of first instance in support of its rulings fell far short, it was submitted, of the requisites of a duly reasoned judgment. Recording the conclusions of the Court is never sufficient, counsel argued. To fulfil the requirement of due reasoning the Court must disclose the reasons for those conclusions. In the course of the hearing we did have occasion to look at the statements and schedules attached thereto, founding the offences for which the appellant was committed.

A great part of the arguments of counsel was directed towards persuading us that the Assize Court had jurisdiction to inquire into the validity of the committal order, submitting in the process that English courts, clothed with jurisdiction comparable to that of the Assize Court, have often assumed competence to inquire into the justification of a committal order judged, inter alia, from the angle of adequacy of the evidence tendered in support of the committal. Section 86 of the Criminal Procedure Law - Cap. 155, confers jurisdiction upon the court of trial to quash for good reason the information or the charge, as the case may be or, any part of them, on a motion made either before the accused pleads or in arrest of judgment. The powers conferred by s.86 are wide enough to empower in a proper case the Assize Court to inquire into the validity of a committal order; a view reinforced, in the opinion of counsel, by the provisions of s.108 of Cap. 155, authorising the Attorney-General in framing the information to charge the accused with any offences disclosed by the depositions either in addition to or in substitution for the offences upon which the accused has been committed for trial. Mr. Cacoyannis made extensive reference* to English caselaw tending to support that on

* *(R. v. Gee [1936] 2 All E.R. 89; R. v. Philips [1938] 3 All E.R. 674; R. v. Wharmby [1946] Cr. App. Rep. 174; R. v. Hall [1968] 2 All E.R. 1009; R. v. Brooker [1977] 65 Cr. App. Rep. 181).*

occasions the Assize Court in England assumed jurisdiction to quash an indictment for lack or inadequacy of the evidence founding the committal. In any event the Court should not refuse jurisdiction to stem abuse of process, an attribute of the autonomy of the judicial power.* The founding of the information on an invalid committal order amounted, in the submission of counsel, to an abuse that should not have been countenanced by the court of trial.

It must be noticed that the legal framework for the committal of the accused for trial and the powers of the Court of trial in England are not identical to the corresponding provisions of our Criminal Procedural Law. The Administration of Justice (Miscellaneous Provisions) Act 1933, s.2 in particular, that contains provisions analogous to those of s.108, Cap. 155, expressly provides in subsection 3 that an indictment preferred, contrary to the provisions of subsection 2, shall be liable to be quashed.** The absence of a similar provision from our code of procedure should make, according to counsel, no difference nor the entrustment of the power to frame the indictment to the Attorney-General. The power of the Attorney-General to prosecute should be subject to judicial control, a proposition supported by reference to a decision of the Kenya Courts, notably *Githunguri v. Republic of Kenya.**** Lastly, counsel agreed with the view taken *In Re Charalambos Aeroporos and Others***** that the procedure applicable to certiorari proceedings should be that applicable in England at the time of independence.

Mr Loucaides for his part supported every aspect of the judgment of the trial Court and refuted the submission that the reasons furnished fell short of the attributes of a reasoned judgment.

Necessary as it is in every case to reason a judgment, as required by article 30.2 of the Constitution, the form, extent and content of reasoning, may vary infinitely with the subject of the judgment. Where the conclusions of the Court rest on inescapable or inevitable inferences the reasonig may be correspondingly short, as pointed out in *Papageorghiou v. HjiPieras***** and *Hambou and Others v. Michael and Another.******

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* *(See, Constantinides v. Vima Ltd. (1983) 1 C.L.R. 348).*

** *(Halsbury's Statutes of England, 3rd ed., Vol. 8, p.308 et seq.).*

*** *(1986 Commonwealth Law Reports (Constitutional) p. 618).*

**** *(1988) 1 C.L.R. 302.*

***** *(1981) 1 C.L.R. 560, at 563, 564.*

****** *(1981) 1 C.L.R. 618.*

The test of committal in Cyprus is, in the submission of Mr. Loucaides, different from that obtaining in England. In Cyprus the test is that of probable presumption of guilt* whereas in England, that of sufficiency of evidence to put the accused on trial;** a test interpreted as requiring the making out of a prima facie case *** The material disclosed in the statements to which brief reference was made, in support of the committal of the accused, warranted the charges for which the appellant was committed to trial.

Because of the need to ensure that the trial before the Assize Court was not interrupted for an unduly long interval of time, we gave our judgment shortly after the conclusion of the appeals. Both appeals were dismissed. Below, we give the reasons for our decision:

(A) The reasoning of a judgment:

The furnishing of reasons explaining the decision reached, is a fundamental attribute of the judicial process, and a condition under article 30.2 of the Constitution for the valid determination of a judicial cause or matter. The need to furnish due reasons and the form that the reasoning may take, was the subject of discussion and analysis in a good number of cases.**** In *Neophytou v. Police,***** to which our attention was drawn, it was observed that the due reasoning of a judgment is not only constitutionally ordained but also essential for the sustenance of the trust of the public in the mission of the Judiciary. No laxity can be countenanced in this area of the administration of justice. The repercussions that may flow from failure to reason a judgment were the subject of analysis in the fairly recent decision of *Psaras and Another v. Republic.*******

In the instance under consideration the reasons for the decision of the Court were clearly indicated, namely, that the statements of prosecution witnesses supported the charges for which the accused was committed to trial. In accordance with s.94, Cap.

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* *(s 94, Cap 155)*

** *(s 7, Magistrates Courts Act 1952 - Halsbury's Statutes of England, 2nd ed , Vol 32).*

*** *(R v Epping and Harlow JJ , ex parte Massaro [1973] 1 All E R 1011, 1012)*

**** *(See, inter alia, Panayi v. Police (1968) 2 C L R 124, Ioannides v Dikeos (1969) 1 C L R 235, Pioneer Candy Ltd v Tryfon & Sons (1981) 1 C L R 540)*

***** *(1981) 2 C L R 195.*

****** *(1987) 2 C L R 132*

155, the statements should be judged objectively. No element of subjective judicial evaluation of the evidential value came into play. Even contradictions should be ignored for purposes of committal. The statements fell to be judged on their face value. The Court of Appeal is in the same position as the first instance Court to reflect upon their implications. The material by reference to which the soundness of the judgment of the trial Court falls to be judged is the same and being of the same opinion, having looked at the statements, as the trial Court, we cannot fault the reasons for the judgment of the Court for inadequacy. They were comprehensive to the extent of laying the premise on which the judgment was founded and providing the material upon which the soundness of that premise could be judged on appeal. Very probably the learned President felt that analysis and discussion of the incriminating inferences apt to be drawn from the statements, might conceivably prejudice the fair trial of the accused and for that reason expressed his reasons laconically in the way he did. For the above reasons we cannot uphold this ground of appeal.

(B) The merits of the decision:

An order of committal is not in itself authority for the prosecution of the person committed thereby before the Assize Court. Its effect is confined to conferring authority on the Attorney-General to found an information thereon, as provided in s.107 of the Criminal Procedure Law - Cap. 155. A person can only be put on trial before the Assize Court «... upon an information filed by the Attorney-General in the Assize Court in which such person is to be tried.» The filing of an information by the Attorney-General is a prerequisite for the exercise of the jurisdiction vested in the Assize Court by s.20 of the Courts of Justice Law - 14/60.

A committal order exhausts its force upon the filing of the information. Its validity cannot be reviewed thereafter by way of certiorari. Before the filing of the information it may, being an order of an inferior court, be reviewed and in a proper case quashed in the exercise of the jurisdiction conferred on the Supreme Court by article 155.4; and if discharged, it deprives the Attorney-General of authority to found an information thereon. After the laying of the information the committal order merges in the information and cannot be reviewed unless there is jurisdiction to review by way of certiorari the decision of the Attorney-General to file an information before the Assize Court. In reality, the

application for the review of the order of committal is but an indirect attempt to review by way of certiorari the pertinent decision of the Attorney-General.

Neither in England nor in Cyprus, are decisions of the Attorney-General subject to judicial review by way of certiorari. The Attorney-General is under the Constitution trusted with power to prosecute at his discretion (article 113.2 of the Constitution). Subject to the limits of the power vested in him by the Constitution, he is the arbiter of the public interest under article 113.2. The decision of the Full Bench in *Police v. Athienitis** (a majority decision) and the caselaw cited therein, do establish that in his domain the actions of the Attorney-General are not subject to judicial control. In *Xenophontos v. Republic*** it was acknowledged that he is not subject to the revisional jurisdiction of the Court either.

Provided the Attorney-General heeds the procedural requisites set down in s.107, Cap. 155, his action is not subject to judicial review by way of certiorari. Moreover, s.108 of the Criminal Procedure Law makes the Attorney-General the arbiter of the content of the information. It is specifically provided that the information shall contain the offences which *in the opinion* of the Attorney-General are disclosed by the deposition. The formation of such opinion and the reasons for it, cannot be the subject of review by way of certiorari. The assumption of such jurisdiction would compromise the constitutional independence of the Attorney-General in his domain. And being incompetent for the Court to go behind the information and inquire into his reasons or their content, it is by the same reasoning impermissible to query after the filing of the information the validity of the committal order. The Assize Court can, of course, as the trial Court in every case, in the exercise of its judicial power, set aside one or more charges contained in the information for non compliance with the procedural rules relevant to the framing of charges, the joinder of offences and the joinder of offenders. Section 110, Cap. 155, removes any doubt that could be entertained in that regard. The Assize Court was not concerned with procedural irregularities apparent on the face of the information but with the premise upon which the information was founded.

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* *(1983) 2 C.L.R. 194.*

** *(2 R.S.C.C. 89).*

For the reasons earlier indicated, no jurisdiction lies under article 155.4 of the Constitution to inquire into the premise of the information.

We are also in agreement with the learned President in ruling that the Assize Court had no jurisdiction to review the validity of the committal order. A judicial order can only be reviewed in either of two ways:-

(a) By way of appeal when a right of appeal is bestowed by it, or

(b) by way of certiorari.

Both jurisdictions vest exclusively in the Supreme Court; appellate jurisdiction and jurisdiction to issue prerogative orders vests exclusively in the Supreme Court in virtue of para. 1 and para. 4 of article 155 of the Constitution, respectively.

Section 86 of the Criminal Procedure Law does not confer jurisdiction on the Assize Court to review either the validity of an information filed before the Assize Court or the committal order preceding it. Its ambit is confined to empowering the Court to throw out a prosecution «not within the reasonable contemplation of the accused.» The enactment provides in essence the necessary procedural safeguards for the protection of the rights vested in the accused by the provisions of article 12(5)(a) and (b), entrenching as a fundamental human right the right of every person accused of crime to be informed promptly «and in detail, of the nature of the grounds of the charge preferred against him» and «to have adequate time and facilities for the preparation of his defence.»

For the reasons indicated above, the appeals were dismissed.

KOURRIS, J.: I had the opportunity of reading in advance the reasons for Judgment delivered by Pikis, J. I am in full agreement and I have nothing useful to add.

Appeals dismissed.