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THE REPUBLIC
v.
LEFKIOS
CHRISTODOULOU
RODOSTHENOUS

[JOSEPHIDES, J.]

THE REPUBLIC,

Applicant,

v.

LEFKIOS CHRISTODOULOU RODOSTHENOUS

Respondent.

(Application No. 2/1961).

Constitution—Member of the House of Representatives—“Representative”—Convicted and sentenced to a term of imprisonment—Enforcement of sentence—Leave by the High Court—Article 83, paragraph 2, of the Constitution—The jurisdiction of the High Court in the matter is “original”—Therefore it is exercised in the first instance by one Judge of the High Court sitting alone—Article 155, paragraph 2—Determination by the High Court dated the 19th December, 1960, under paragraph 2 of Article 155, to the effect that “each Judge of the High Court, except the President, shall exercise the original jurisdiction of the High Court, sitting alone, subject to Article 159 of the Constitution”—There is no ambiguity in the expression “High Court” in Article 83—Therefore, the submission that the matter should be referred for determination to the Supreme Constitutional Court under Article 149 (b) cannot be acceded to—The application by the Attorney-General for leave to enforce the sentence of imprisonment under Article 83, paragraph 2, is not a “decision” the alleged unconstitutionality of which would come within the ambit of Article 144 of the Constitution—Therefore, the question of its unconstitutionality is not a matter to be referred to the Supreme Constitutional Court under that Article.

High Court of Justice—Jurisdiction—Only two kinds of jurisdiction conferred on it—Appellate and original—Article 155 of the Constitution—Discrepancy between the English text of the second line of paragraph 2 of Article 155 and the corresponding Greek and Turkish texts—The English word “revisional”—The Greek and Turkish words “εἰς δεῦτερον βαθμὸν” and “istinafen”, respectively.

In proceedings under Article 83 of the Constitution, it is not within the competence of the High Court to decide the question whether by reason of the conviction of a Representative, the seat of such Representative has become vacant under the provisions of Articles 64(c) and 71 of the Constitution—The case therefore will pro-

ceed on the assumption that the respondent has not ceased to be a Representative.

The High Court in dealing with applications under Article 83, paragraph 2, of the Constitution has simply to decide whether to grant or refuse leave for the immediate enforcement of a sentence of imprisonment, on the assumption that the verdict and sentence of the trial court are correct—And not to review the correctness of the verdict or the sentence.

Article 83, paragraph 2, of the Constitution provides: “A Representative **cannot**, without leave of the High Court, be prosecuted, **arrested** or imprisoned so long as he continues to be a Representative.....”

By Article 155 of the Constitution it is provided: Paragraph 1: “The High Court shall be the highest appellate court in the Republic” Paragraph 2: “Subject to paragraphs 3 and 4 of this Article the High Court shall have such original and revisional jurisdiction as is provided by this Constitution or as may be provided by a law: Provided that where original jurisdiction is so conferred, such jurisdiction shall, subject to Article 159, be exercised by such judge or judges of the High Court as the High Court shall determine: Provided further that there shall be a right of appeal to the High Court from their decision”. It is to be noted that for the expression “revisional jurisdiction” in paragraph 2 of Article 155 the corresponding Greek and Turkish expressions are “δικαιοδοσία εις δεύτερον βαθμόν” and “istinafen”, respectively, which mean in effect “appellate jurisdiction”. The High Court, acting under the first proviso to paragraph 2 of Article 155 of the Constitution (*supra*) determined on the 19th December, 1960 that “each Judge of the High Court, except the President, shall exercise the original jurisdiction of the High Court, sitting alone, subject to Article 159 of the Constitution”. Article 159 of the Constitution is not material to this case.

Article 144, paragraph 1, of the Constitution provides: “A party to any judicial proceedings, including proceedings on appeal, may at any stage thereof, raise the question of the unconstitutionality of any law or decision or any provision thereof material for the determination of any matter at issue in such proceedings and thereupon the Court before which such question is raised shall reserve the question for the deci-

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sion of the Supreme Constitutional Court and stay further proceedings until such question is determined by the Supreme Constitutional Court”.

Article 149 of the Constitution provides: The Supreme Constitutional Court shall have exclusive jurisdiction — (a) . . . (b) to make in case of ambiguity, any interpretation of this Constitution, due regard being had to the letter and spirit of the Zurich Agreement dated the 11th February, 1959, and of the London Agreement dated the 19th February, 1959”.

The respondent, a member of the House of Representatives (*i.e.* a Representative), was convicted by the Assize Court of Nicosia of a number of offences and sentenced to a term of imprisonment of one year. The Attorney-General applied to the High Court under Article 83, paragraph 2, of the Constitution for leave for the enforcement of the sentence of imprisonment imposed on the respondent. The application came before Josephides, J. Counsel for the respondent raised the preliminary point that a Judge of the High Court, sitting alone, has no jurisdiction to deal with the application and that, therefore, it must be heard by the Full Bench of the High Court of Justice. In that context, counsel for the respondent argued, *inter alia*, that there is an ambiguity in that regard in Article 83, paragraph 2, and applied for the matter to be referred to the Supreme Constitutional Court under Article 149 (b) of the Constitution. He further argued that the application of the Attorney-General is unconstitutional and that a question is thus raised involving the unconstitutionality of “a decision” within the meaning of Article 144, a matter which, under that Article, should be referred for determination to the Supreme Constitutional Court. Counsel for the Republic in the course of his argument at the final stage of these proceedings, submitted that under the provisions of Articles 71 and 64(c) of the Constitution the seat of the respondent as a Representative has become vacant on the ground that the offences of which the latter has been convicted involve moral turpitude; and he asked the Court to declare the seat vacant.

Held: On the preliminary points, overruling the objections raised on behalf of the respondent:

(1) Under Article 155 of the Constitution, the jurisdiction of the High Court of Justice is twofold: (a) appellate and (b) original. The jurisdiction of the High Court in the matters

referred to in Article 83, paragraph 2, of the Constitution is original.

(2) Consequently, under Article 155, paragraph 2 of the Constitution, an application for leave to enforce a sentence of imprisonment imposed on a Representative, made pursuant to Article 83, paragraph 2, must be dealt with in the first instance by a Judge of the High Court, sitting alone, in view of the determination of the 19th December, 1960, by the High Court of Justice (*supra*).

(3) There is no ambiguity as to the expression "High Court" in Article 83, paragraph 2, of the Constitution.

(4) Therefore, no question arises of any reference of the matter to the Supreme Constitutional Court, under Article 149 (b) of the Constitution.

(5) The present application by the Attorney-General is not a "decision" within the meaning of Article 144 of the Constitution.

(6) Therefore the question of its unconstitutionality cannot be referred to the Supreme Constitutional Court under the provisions of Article 144.

Held: On the merits:

(1) In proceedings under Article 83, paragraph 2, of the Constitution, it is not within the competence of the High Court to decide the question whether by reason of the conviction of a Representative, the seat of such Representative has become vacant under Articles 64(c) and 71 of the Constitution.

(2) The case, therefore, must be dealt with on the assumption that the respondent has not ceased to be a Representative.

(3) In dealing with applications under Article 83, paragraph 2, of the Constitution, the High Court has simply to decide whether to grant or refuse leave for the immediate enforcement of a sentence of imprisonment, on the assumption that the verdict and sentence of the trial court are correct. And not to review the correctness of the verdict or sentence.

(4) Taking into consideration all the circumstances of the case, leave as applied for, granted.

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Application under Article 83, paragraph 2, of the Constitution.

Application by the Attorney-General of the Republic under the provisions of Article 83.2 of the Constitution, applying for the leave of the High Court for the enforcement of the sentence of imprisonment imposed on the respondent by the Assize Court of Nicosia on the 15th May, 1961.

K.C. Talarides for the applicant.

St. Pavlides for the respondent.

JOSEPHIDES, J., delivered on the 26th May, 1961 (a) his Ruling whereby he overruled the preliminary objections raised by counsel for the respondent, and (b) his Judgment on the merits whereby he granted the leave applied for by the Attorney-General.

JOSEPHIDES, J.: This is an application by the Attorney-General of the Republic under the provisions of Article 83, paragraph 2, of the Constitution, applying for the leave of the High Court for the enforcement of the sentence of imprisonment imposed on the respondent by the Assize Court of Nicosia on the 15th May, 1961.

The respondent, who is a Representative in the House of Representatives, was found guilty of the following offences and was sentenced to one year's imprisonment on each count to run concurrently as from the 15th May, 1961:—

- (a) attempting to extort money by threats, contrary to section 288(a) of the Criminal Code, Cap. 154;
- (b) demanding money with menaces, contrary to section 290 of the Criminal Code; and

***Editor's Note :**

On appeal from that order of Josephides J., the High Court held that the proceedings being *ab initio* misconceived should be struck off for want of jurisdiction, in that, whereas Article 83, paragraph 2, of the Constitution is only applicable to cases where the person sentenced is at the time of the taking of the proceedings thereunder a Representative, in the instant case the Attorney-General failed to satisfy the High Court that the conviction of Rodosthenous had not the effect of disqualifying him from being a member of the House of Representatives. (*Vide: Rodosthenous v. The Republic* reported in this Volume at p. 382 *post*).

- (c) stealing money by intimidation, contrary to sections 255 and 262 of the Criminal Code.

Article 83, paragraph 2, so far as material for the purposes of this case, reads as follows:

“A Representative cannot, without the leave of the High Court, be prosecuted, arrested or imprisoned so long as he continues to be a Representative”.

Paragraph 4 of the same Article reads as follows:—

“If the High Court refuses to grant leave for the enforcement of a sentence of imprisonment imposed on a Representative by a competent court, the enforcement of such sentence shall be postponed until he ceases to be a Representative”.

Mr. Pavlides for the respondent has raised the question that a Judge of the High Court of Justice sitting alone has no jurisdiction to deal with an application under Article 83 of the Constitution, and that such an application must be heard by the Full High Court composed of all its members; and he, accordingly, submitted that the matter should be referred to the Supreme Constitutional Court for determination. He based his submission on two alternative grounds:

- (a) that there is an unconstitutionality of a decision material for determination of the matter at issue in these proceedings, under the provisions of Article 144 of the Constitution; or
- (b) that there is an ambiguity as to the meaning of the expression “High Court” in Article 83 of the Constitution, which must be interpreted by the Supreme Constitutional Court under the provisions of Article 149(b) (originally Mr. Pavlides based this submission on Article 180, paragraph 3, but he subsequently relied on article 149 (b)).

First, as to ground (a) of Mr. Pavlides’ submission, *i.e.* as to whether there is an unconstitutionality of a decision material for the determination of the matter at issue in these proceedings. If the question of the unconstitutionality of any law or decision or any provision thereof material for the determination of any matter at issue in any judicial proceedings is raised, it is incumbent on the Court to reserve the question for the decision of the Supreme Constitutional Court

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and stay further proceedings until such question is determined by that Court. Mr. Pavlides submitted that the decision the constitutionality of which is challenged in these proceedings is the present application by the Attorney-General to this Court for the enforcement of the sentence of imprisonment imposed on the respondent. Mr. Pavlides further submitted that the question of the unconstitutionality of such decision is material for the determination of the matter at issue in these proceedings. In interpreting the expression "decision" in Article 144 of the Constitution it is helpful to refer to Article 179, paragraphs 1 and 2, which clarify the position as to what is meant by that word. Article 179 reads as follows

- "1. This Constitution shall be the supreme law of the Republic.
2. No law or decision of the House of Representatives or of any of the Communal Chambers and no act or decision of any organ, authority, or person in the Republic exercising executive power or any administrative function shall in any way be repugnant to, or inconsistent with, any of the provisions of this Constitution".

From a perusal of the above Article it becomes apparent that the "decision" referred to in Article 144 means a decision of a legislative, executive or administrative organ, authority, or person in the Republic. In the present case it cannot be said that the filing of the application by the Attorney-General is a legislative, executive or administrative decision. Consequently, as the question raised by Mr. Pavlides does not concern the unconstitutionality of a "decision" within the ambit of Article 144 of the Constitution the question cannot be reserved for the decision of the Supreme Constitutional Court under the provisions of that Article.

With regard to ground (b) of the respondent's submission, *i.e.* to the effect that there is an ambiguity as to the meaning of the expression "High Court" in Article 83 of the Constitution, Mr. Pavlides argued that the power conferred on the High Court under Article 83 is neither appellate nor original jurisdiction within the meaning of Article 155 of the Constitution. He submitted that this is not original jurisdiction in the sense of jurisdiction as it must have been intended in Article 155, *i.e.* full power of adjudication. This power, he said, is "the exercise of a function", and he concluded by

submitting that, as there was an ambiguity, the matter should be determined by the Supreme Constitutional Court under Article 149(b) of the Constitution.

There is no doubt that if there is an ambiguity the Supreme Constitutional Court is the proper court to make an interpretation of the Constitution. Consequently, it is necessary to consider whether there is an ambiguity before the matter can be referred to that Court for interpretation.

Now, Article 83, paragraph 2, confers on the "High Court" the power to grant or refuse leave for the enforcement of a sentence of imprisonment imposed on a Representative by a competent court. Article 155 of the Constitution lays down the jurisdiction conferred on the High Court of Justice. Paragraph 1 of that article provides that the High Court is the highest appellate court in the Republic, and that it has jurisdiction to hear and determine all appeals from any court other than the Supreme Constitutional Court. Paragraph 2 of Article 155, which is material, reads as follows:—

"Subject to paragraphs 3 and 4 of this Article the High Court shall have such original and revisional jurisdiction as is provided by this Constitution or as may be provided by law:

Provided that where original jurisdiction is so conferred, such jurisdiction shall, subject to Article 159, be exercised by such judge or judges of the High Court as the High Court shall determine :

Provided further that there shall be a right of appeal to the High Court from their decision".

On the 19th December, 1960, the High Court determined that "each Judge of the High Court, except the President, shall exercise the original jurisdiction of the High Court, sitting alone, subject to Article 159 of the Constitution". Finally, paragraph 4 of Article 155 provides that the High Court shall have exclusive jurisdiction to issue orders in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*.

It should be observed that for the expression "revisional" jurisdiction in paragraph 2 of Article 155, in the Greek text of the Constitution the words "εις δέντερον βαθμόν" and in the Turkish text of the Constitution the Turkish word

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“istinafen” appear, which are exactly the same words used in paragraph 1 of Article 155, which describes the High Court as the highest “appellate” court (Τὸ ἀνώτατον δευτεροβάθμιον δικαστήριον).

From all these it follows that only two kinds of jurisdiction are conferred on the High Court of Justice under the Constitution, *i.e.* appellate and original. And under paragraph 2 of Article 155 the original jurisdiction so conferred shall be exercised by such judge or judges of the High Court as such court shall determine, and it has already been determined that one judge shall exercise such jurisdiction. Undoubtedly the jurisdiction conferred on the High Court under paragraph 2 of Article 83 of the Constitution is original and not appellate ; and on reading Article 155 of the Constitution it is quite clear that there cannot be a third kind of jurisdiction as the one submitted by Mr. Pavlides, *i.e.* “the exercise of a function” other than appellate or original jurisdiction.

Mr. Pavlides’s submission is that only the Full High Court has jurisdiction to hear these proceedings in the first instance. But if the jurisdiction conferred on the High Court under paragraph 2 of Article 83 is original jurisdiction, as it undoubtedly is, then it means that the respondent would have the right of appeal from the single judge to the Full High Court under the provisions of paragraph 2 of Article 155. And this interpretation would be a more favourable interpretation for the respondent than the one submitted on his behalf.

Where the draftsman of the Constitution intended that the High Court in the exercise of a jurisdiction conferred on it should be composed of all its members, he provided so expressly in the Constitution, as in Article 163 proviso to paragraph 3, which lays down expressly that for the hearing of any appeal the High Court shall be composed of all its members.

For all these reasons I have no hesitation whatsoever in holding that it is clear and unambiguous that the jurisdiction conferred on the High Court under Article 83 is original jurisdiction which can be exercised by one judge of this Court, and no question of any ambiguity in the interpretation of the Constitution arises. As the matter is clear and there is no ambiguity I am of opinion that no question

arises for the interpretation of the Constitution by the Supreme Constitutional Court under Article 149(b).

Having held that one judge of the High Court of Justice has jurisdiction to deal with this application, I now propose to hear the parties on the merits.

JOSEPHIDES, J. : This is an application by the Attorney-General of the Republic under the provisions of Article 83, paragraph 2 of the Constitution, applying for leave of the High Court for the enforcement of the sentences of imprisonment imposed on the respondent by the Assize Court of Nicosia on the 15th May, 1961.

The respondent was found guilty of the following offences and was sentenced to one year's imprisonment on each count to run concurrently :—

- (a) attempting to extort money by threats, contrary to section 288(a) of the Criminal Code, Cap. 154;
- (b) demanding money with menaces, contrary to section 290 of the Criminal Code; and
- (c) stealing money by intimidation, contrary to sections 255 and 262 of the Criminal Code.

In my ruling this morning I have held that one judge of the High Court has jurisdiction to deal with the present application.

The respondent, who is a member of the House of Representatives, was arrested and prosecuted by leave of the High Court, and he was duly committed to the Assizes. He was tried by the Nicosia Assizes and convicted and sentenced on the 15th May, 1961.

On the 16th May, 1961, the present application was filed by the Attorney-General. The first hearing of the application was held on the 19th May, 1961, when objection to the jurisdiction of a judge sitting alone was taken.

On the 25th May, 1961, the time limit for the filing of an appeal against the conviction and/or sentence of the Assize Court expired, and no appeal has been filed by or on behalf of the respondent.

Mr. Talarides on behalf of the Attorney-General submitted that under the provisions of Articles 71 and 64(c) of

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the Constitution the seat of the respondent as a Representative has become vacant. He based that submission on the allegation that the offences of which the respondent has been convicted involve moral turpitude ; and he asked this Court to declare that the seat of the respondent, as a Representative, has become vacant.

Mr. Pavlides opposed that submission.

Having considered the matter, I accept Mr. Pavlides's submission that in a proceeding under Article 83 of the Constitution, such as the present application by the Attorney-General, it is not within the competence of this Court to decide the question whether the seat of a Representative has become vacant under the provisions of Articles 71 and 64(c) of the Constitution. The only issue before this Court in the present proceedings is whether the sentence of imprisonment imposed on the respondent by the Assize Court should be enforced forthwith or postponed until the respondent ceases to be a Representative. I shall, therefore, deal with this matter on the assumption that the respondent has not ceased to be a Representative.

As I have already indicated, in the course of the hearing, this Court is not sitting as an appellate court to review the correctness of the verdict or the sentence of the Assize Court, but simply as a Court to decide whether to grant or refuse leave for the immediate enforcement of a sentence of imprisonment, on the assumption that the verdict and sentence of the trial court are correct.

Mr. Pavlides, on behalf of the respondent, submitted that it would be fair for this Court to adjourn the present application for some time to give an opportunity to the officers of the Republic to take such proceedings, as they may be advised, to have the seat of the respondent declared vacant in the House of Representatives under the provisions of Articles 71 and 64(c) of the Constitution ; and if those proceedings proved successful, then this Court could deal with the present application and order the enforcement of the sentence of imprisonment. I have given careful and anxious consideration to Mr. Pavlides's submission, having especially in mind the capacity of a member of the House of Representatives, but I regret I am unable to accept it.

I have read carefully the judgment of the Assize Court of Nicosia consisting of 35 typewritten pages, and I have

taken into consideration the nature of the offences of which the respondent has been convicted, as well as the circumstances of the case and the submissions made by learned counsel appearing in the present case, and I am satisfied that this is a proper case in which the sentence of imprisonment imposed on the respondent should be enforced forthwith.

I accordingly grant leave for the enforcement of the sentences of imprisonment imposed on the respondent by the Assize Court of Nicosia on the 15th May, 1961.

*Leave to enforce the sentence
of imprisonment granted.*

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