

[TRIANTAFYLIDES, P., STAVRINIDES, L. LOIZOU,
HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

THE REPUBLIC OF CYPRUS,

Applicant,

v.

ANDREAS EVANGELOU LIASSIS,

Respondent.

1973
Oct. 31

THE REPUBLIC
OF CYPRUS

v.

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LIASSIS

(*Question of Law Reserved No. 158*).

Jurisdiction—Assize Court—Trial of Respondent on a charge for preparing war contrary to section 40 of the Criminal Code, Cap. 154—Said offence triable by a Court constituted under Article 156 of the Constitution—Impossibility of having a Court composed as prescribed by that Article—Article 156 became thus inoperative—Consequently, the offence is within the jurisdiction of the Assize Court—Cf. further immediately herebelow.

*Constitutional Law—Article 156 of the Constitution—Offences such as treason or other offences against the security of the Republic—Triable by a Court composed under Article 156—And presided over by the President of the High Court in the first instance—And on appeal by the High Court presided over by the President of the Supreme Constitutional Court—Article 156 rendered inoperative due to the exceptional events which preceded, and eventually led to, the enactment of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33 of 1964), as such events are described in the case *The Attorney-General v. Ibrahim*, 1964 C.L.R. 195—And the position continuing to be now as it was then (a fact of which the Supreme Court took judicial notice)—Consequently the relevant part of section 20(1) of the Courts of Justice Law, 1960 (Law No. 14 of 1960) safeguarding the provisions of said Article 156 became inoperative, too, at the same time—The jurisdiction of the Assize Court becoming thus unimpaired by aforesaid Article 156—Said offence being now triable by the Assize Court—Cf. *infra*.*

*Emergency—Exceptional events—Effect on Article 156 of the Constitution and section 20(1) of the Courts of Justice Law, 1960—See *supra*.*

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*Courts of Justice Law, 1960 (Law No. 14 of 1960)—Section 20(1)—
Part thereof safeguarding provisions of Article 156 of the Con-
stitution—Inoperative—Exceptional events etc.—See supra.*

On October 26, 1973, an Assize Court in Famagusta, at the commencement of the trial of the Respondent on a charge for preparing war (contrary to section 40 of the Criminal Code Cap. 154), reserved for the opinion of the Supreme Court under section 148 of the Criminal Procedure Law, Cap. 155, two questions of law:

- “(a) Is the part of section 20(1) of the Courts of Justice Law, 1960 (Law No. 14 of 1960) safeguarding the provisions of Article 156 of the Constitution still operative, in view of the enactment of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33 of 1964)?
- (b) If the answer is in the affirmative, in what way can the provisions of Article 156 of the Constitution be applied?”.

Article 156 reads as follows:

“ The following offences in the first instance shall be tried by a Court composed of such Judges belonging to both Communities as the High Court shall determine presided over by the President of the High Court:—

- (a) Treason and other offences against the security of the Republic;
- (b) offences against the Constitution and the Constitutional order.

Provided that in the appeal from any decision of such Court the High Court shall be presided over by the President of the Supreme Constitutional Court...”.

It is not disputed that the offence with which the Respondent has been charged is one which comes within the ambit of Article 156 of the Constitution and that, but for such Article, the Assize Court has jurisdiction to try the offence charged.

Held, (1). In our opinion Article 156 was rendered totally inoperative by the exceptional events which preceded, and eventually led to, the enactment of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/1964) and which

are described in the judgments delivered in the case of *Attorney-General v. Ibrahim*, 1964 C.L.R. 195.

(2) It was stated in those judgments, *inter alia*, that the posts of the President of the Supreme Constitutional Court and of the President of the High Court had become vacant due to the aforesaid exceptional events, before the enactment of Law No. 33 of 1964 (*supra*); and we take judicial notice that the position continues in this respect, to be now as it was then.

(3) So, apart from the impossibility of having a Court composed, under Article 156, of Judges "belonging to both Communities" (*supra*), there does not exist in office a President of the High Court, who would have to preside over such Court, nor does there exist in office a President of the Supreme Constitutional Court who would have to preside at the appeal from such Court.

(4) In the light of the above we are of the opinion, as regards question (a) (*supra*), that since *before* the enactment of Law No. 33 of 1964 (*supra*) Article 156 of the Constitution (*supra*) was rendered completely inoperative, and as a result the relevant part of section 20(1) of the Courts of Justice Law, 1960 (*supra*) became inoperative, too, at the same time when Article 156 became inoperative, it follows that there does not arise the issue of whether or not the said part of section 20(1) was rendered inoperative by the subsequently enactment of Law No. 33 of 1964 (*supra*). And this answers also question (b).

(5) It follows that the Assize Court of Famagusta, which has reserved the said two questions, has jurisdiction to proceed to try the Respondent and that the case is remitted to it with our opinion as stated hereinabove.

Order accordingly.

Cases referred to:

The Attorney-General of the Republic v. Ibrahim, 1964 C.L.R. 195.

Question of Law Reserved.

Question of Law Reserved by the Assize Court of Famagusta (Savvides, P.D.C., Demetriou, S.D.J. and Chrysostomis, D.J.) for the opinion of the Supreme Court under the provisions of section 148 of the Criminal Procedure Law, Cap. 155 upon an objection taken by counsel for the defence, at the commence-

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ment of the trial, as to the jurisdiction of the Court to try the Respondent of the offence of preparing war against the Government of the Republic contrary to section 40 of the Criminal Code, Cap. 154.

L. Loucaides, Senior Counsel of the Republic, for the Applicant.

K. Saveriades, for the Respondent.

The decision of the Court was delivered by:—

TRIANTAFYLLIDES, P.: On the 26th October, 1973, an Assize Court in Famagusta, at the commencement of the trial of the Respondent in respect of the offence of preparing war (contrary to section 40 of the Criminal Code, Cap. 154), reserved for the opinion of this Court, under section 148 of the Criminal Procedure Law, Cap. 155, two questions of law which were placed before us, by the President of the Assize Court, as follows:—

“On the 25th October, 1973, the accused was charged before this Court, and before pleading to the information, his counsel, pursuant to the provisions of section 69 of Cap. 155, entered a special plea, to the effect that this Court has no jurisdiction over him in its present constitution, in view of the provisions of Article 156 of the Constitution. Counsel for the Republic applied for an adjournment till this morning, to consider the point raised.

This morning, Mr. Antoniadès applied on behalf of the Attorney-General that the Court does state a question of law for the opinion of the Supreme Court under section 148 of the Criminal Procedure Law, Cap. 155. Such point of law was framed as follows:

- (a) Is the part of section 20(1) of the Courts of Justice Law No. 14/1960 safeguarding the provisions of Article 156 of the Constitution still operative, in view of the enactment of the Administration of Justice (Miscellaneous Provisions) Law No. 33/1964?
- (b) If the answer is in the affirmative, in what way can the provisions of Article 156 of the Constitution be applied?

Under the provisions of section 148(2) of Cap. 155, the President of the Assize Court is bound to make a record

of the question reserved and transmit a copy thereof to the Chief Registrar. A record has been made accordingly and we hereby reserve for the determination of the Supreme Court, in accordance with the application on behalf of the Attorney-General, the following questions of law:-

- (a) Is the part of section 20(1) of the Courts of Justice Law No. 14/1960 safeguarding the provisions of Article 156 of the Constitution still operative, in view of the enactment of the Administration of Justice (Miscellaneous Provisions) Law, No. 33/1964?
- (b) If the answer is in the affirmative, in what way can the provisions of Article 156 of the Constitution be applied?"

In dealing with question (a) we must observe that the relevant part of section 20(1) of the Courts of Justice Law, 1960 (14/60), is merely a saving clause intended to limit, in view of the provisions of Article 156 of the Constitution, the jurisdiction of Assize Courts as laid down by the said section 20.

Article 156 reads as follows:-

“ The following offences in the first instance shall be tried by a Court composed of such Judges belonging to both Communities as the High Court shall determine presided over by the President of the High Court:-

- (a) Treason and other offences against the security of the Republic;
- (b) offences against the Constitution and the constitutional order:

Provided that in the appeal from any decision of such Court the High Court shall be presided over by the President of the Supreme Constitutional Court in the place of the President of the High Court and in such a case the President of the Supreme Constitutional Court shall have all the powers vested in the President of the High Court”.

It is not disputed that the offence with which the Respondent has been charged is one which comes within the ambit of Article 156.

Counsel for the Respondent has declared that he does not contend that in the at present prevailing circumstances it is

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feasible to fulfil the requirement of composing the Court envisaged by Article 156 of Judges belonging to both "Communities", but he has asked us to hold that it is still otherwise possible to give effect to the provisions of such Article.

In our opinion Article 156 was rendered totally inoperative by the exceptional events which preceded, and eventually led to, the enactment of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64), and which are described in the judgments delivered in the case of *The Attorney-General v. Ibrahim*, 1964 C.L.R. 195.

In the judgments delivered in the *Ibrahim* case it was stated, *inter alia*, that the posts of the President of the Supreme Constitutional Court and of the President of the High Court had become vacant due to the aforesaid events, before the enactment of Law 33/64; and we take judicial notice that the position continues, in this respect, to be now as it was then. So, apart from the impossibility of having a Court composed, under Article 156, of Judges belonging to both "Communities", there does not exist in office a President of the High Court, who would have to preside over such Court, nor does there exist in office a President of the Supreme Constitutional Court who would have to preside at the appeal from such Court.

In the light of all the foregoing we are of the opinion, as regards question (a), that as since *before* the enactment of Law 33/64 Article 156 was rendered completely inoperative, and as a result the relevant part of section 20(1) of Law 14/60 became inoperative, too, at the same time when Article 156 became inoperative, it follows that there does not arise the issue of whether or not the said part of section 20(1) was rendered inoperative by the subsequently enacted Law 33/64.

What we have already stated in this Decision answers also question (b).

In conclusion, we would sum up by stating that the Assize Court in Famagusta, which has reserved the said two questions, has jurisdiction to proceed to try the Respondent and the case is remitted to it with our opinion as stated hereinabove.

Order accordingly.