

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

1973
Dec. 7

THE ATTORNEY-GENERAL OF THE REPUBLIC,
Applicant,

THE ATTORNEY-
GENERAL OF
THE REPUBLIC
v.

v.

KYRIACOS CHRISTOU TSEKOURAS AND OTHERS,
Respondents.

KYRIACOS
CHRISTOU
TSEKOURAS
AND OTHERS

(*Criminal Application No. 17/73*).

*Change of place of preliminary inquiry from Famagusta to Nicosia—
Risk that an attempt may be made to assist Respondents to escape
on the way to and from Famagusta, cannot be reasonably excluded
—Application for such change, granted—Section 174 (1) (e) of
the Criminal Procedure Law, Cap. 155.*

Preliminary inquiry—Change of place—See supra.

*Criminal Procedure—Preliminary inquiry—Change of place—See
supra.*

The facts sufficiently appear in the judgment of the Court,
granting the application by the Attorney-General for change of
the place of the preliminary inquiry from Famagusta to Nicosia.

Cases referred to:

The Attorney-General v. Rossides (1970) 2 C.L.R. 105.

Application.

Application by the Attorney-General of the Republic for an
order that the Preliminary Inquiry in Criminal Case No. 6535/
73, before the District Court of Famagusta, be held before the
District Court of Nicosia.

M. Kyprianou, Senior Counsel of the Republic, for the
Applicant.

K. Saveriades, for Respondent No. 1.

Chr. Solomis, for Respondents Nos. 2-5.

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The judgment of the Court was delivered by:

TRIANTAFYLLIDES, P.: This is an application made by the Attorney-General of the Republic under section 174(1)—paragraphs (a) and (e)—of the Criminal Procedure Law, Cap. 155, for an order that the preliminary inquiry in Criminal Case No. 6535/73, before the District Court of Famagusta, should be held before the District Court of Nicosia. The Respondents are the accused in the said case.

The material parts of section 174 read as follows:—

“ 174.(1) Whenever, upon application as hereinafter provided, it is made to appear to the Supreme Court —

(a) that a fair and impartial preliminary inquiry or trial cannot be held in any Court;

.....
(e) that such an order is expedient for the ends of justice, it may order that the preliminary inquiry or trial be held by or before a Court other than the Court before which, but for such order, it would have been held.
.....

..... ”.

In the light of the material placed before us by the Applicant, which we have carefully considered, we think that the order sought could possibly be made only under paragraph (e) of subsection (1), as being an order “expedient for the ends of justice”, on account of the risk of an attempt being made to assist the Respondents to escape from lawful custody, on the way to and back from Famagusta where they would have to be taken daily, for the purpose of the preliminary inquiry, from Nicosia, where they are being kept in custody; the preliminary inquiry is expected to last about ten days.

Although some of us entertain some doubts whether the consideration of the risk of escape falls within the said paragraph (e), nevertheless as it has been so treated in *The Attorney-General v. Rossides* (1970) 2 C.L.R. 105, by Josephides J., and as this point has not been sufficiently argued before us today, we are not now prepared to disagree with the view taken in the *Rossides* case.

We shall, next, proceed to consider the merits of the application:

It is with quite some difficulty that we have decided to grant the order applied for, because, on the material before us, we cannot reach the conclusion that the forces of law and order of the Republic have no effective control over the Nicosia-Famagusta road. What has, in the end, weighed with us decisively, making us grant the order, is that the risk that an attempt may be made to assist Respondents to escape, on the way to and from Famagusta, cannot be reasonably excluded, and if this were to happen human lives would be endangered, including the lives of the Respondents themselves.

Therefore, the order that the preliminary inquiry should be held in Nicosia is granted. Arrangements should be made to prevent delay of the proceedings; also, any costs of the defence that may be occasioned by this order will be borne by the Republic.

Application granted.

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