IN THE MATTER OF AN APPLICATION BY IOANNIS TH. KTIMATIAS, FOR AN ORDER OF CERTIORARI,

and

IN THE MATTER OF THE DECISION AND/OR ORDER OF THE DISTRICT COURT OF NICOSIA, IN CRIMINAL CASE NO. 3115/77, COMMITTING THE APPLICANT FOR TRIAL BY AN ASSIZE COURT IN NICOSIA ON 9.5.77 WITHOUT THE HOLDING OF A PRELIMINARY INQUIRY.

(*Application No.* 3/77).

Criminal Procedure—Committal for trial without a preliminary inquiry—Section 3 *of the Criminal Procedure (Temporary Provisions) Law,* 1974 (*Law* 42/74)*—Prerequisites under s.* 3(*b*) *for serving on accused or his advocate the substance of the statement of each prosecution witness—How satisfied.*

Natural justice—Rules of—Committal for trial without a preliminary inquiry—Prerequisites of s. 3 *of the Criminal Procedure (Temporary Provisions)Law,* 1974 (*Law* 42/74) *satisfied—No violation of rules of natural justice established.*

Certiorari—Committal for trial without a preliminary inquiry—Section 3 *of the Criminal Procedure (Temporary Provisions) Law,* 1974 (*Law* 42/74)*—No error of law (including violation of the Constitution) or excess of jurisdiction, due to non-compliance with section* 3(*b*) *of Law* 42/74, *existing on the face of the record—Application dismissed.*

Constitutional Law—Human rights—Right to have adequate time and facilities for the preparation of defence—And right to a fair hearing—Articles 12.5(*b*) *and* 30 *of the Constitution and Article* 6(1) *and* 3(*b*) *of the European Convention on Human Rights of* 1950*—Said rights are minimum rights and, therefore, not exhaustive—Said Articles do not require anything more than a fair trial—Committal for trial without a preliminary inquiry—Section* 3 *of the Criminal Procedure (Temporary Provisions) Law,* 1974 (*Law* 42/74)*—Not imperative, on the strength of the above Articles, to*

hold a preliminary inquiry in relation to all criminal cases otherwise than as provided from time to time by legislation—Absence of a preliminary inquiry does not result in violation of the rights under the above Articles—And it does not result in depriving an accused person of a fair trial.

Human Rights—Fair trial—And right to have adequate facilities for the preparation of one's defence—See, also, under "Constitutional Law".

European Convention on Human Rights of 1950—*Right to have adequate facilities for the preparation of one's defence—Fair trial—Article* 6(1) *and* 3(*b*)—*See, also, under "Constitutional Law".*

The applicant was committed for trial by an Assize Court without there having been held a preliminary inquiry as provided for under section 92 of the Criminal Procedure Law, Cap. 155; such course was adopted under the provisions of section 3* of the Criminal Procedure (Temporary Provisions) Law, 1974 (Law 42/74).

Upon an application for an order of certiorari, counsel for applicant contended:

(a) That the committal is erroneous on the face of it in view of the fact that the committing Judge did not ascertain that the summaries of the evidence of eight prosecution witnesses did, in fact, contain the substance of the statements of the said witnesses and that, therefore, prerequisite (b) in section 3 of Law 42/74 has not been satisfied.

(b) That the procedure followed by the committing Judge has resulted in a contravention of Article 12.5(b)** of the Constitution.

(c) That Articles 12.5(b) and 30.2*** of the Constitution have been contravened because, due to the fact that no preliminary inquiry was held, the accused was deprived of the right to cross-examine prosecution witnesses

* Quoted at pp. 300–301 *post.*
** Quoted at p. 305 *post.*
*** Quoted at pp. 305–306 *post.*

at the stage of such inquiry, of the opportunity to hear the evidence as a whole of the said witnesses before the trial, and, also, of the possibility of establishing at the trial contradictions between the evidence of any witness at the trial and his deposition as taken at the preliminary inquiry.

(d) That there existed a violation of the rules of natural justice. These rules are that "no man shall be Judge in his own cause" and that "both sides in a case shall be heard".

Held, that where, at the committal stage, under section 3 of Law 42/74, a summary of the evidence of a prosecution witness is served on the accused or his advocate, and it is reasonable for a District Judge to conclude, on perusing that summary, that it purports to contain the substance of the statement of such witness, section 3(b) of Law 42/74 does not require the Judge to proceed further in order to conduct an inquiry as to whether or not the summary does contain, in actual fact, the substance of the statement made to the police by the witness; that the Judge is entitled to treat prerequisite (b), under section 3 of Law 42/74, as satisfied if it appears, prima facie, to him that what *purport to be* summaries containing the substance of the statements of the prosecution witnesses have been served on the accused or his advocates; that the summaries of the statements of the eight prosecution witnesses concerned could be reasonably treated, prima facie, as summaries of their statements to the police, and there was nothing placed before the Judge to show that they were not, in fact, sufficiently comprehensive summaries, satisfying the said prerequisite (b); and that, accordingly, the committal is not erroneous in law because of non-compliance with section 3(b) of Law 42/74.

(2) That since it has not been shown that the summaries do not, actually, contain the substance of the statements, the applicant has not been deprived of the necessary facilities for the preparation of his defence, in the sense of Article 12.5(b) of the Constitution; and that, accordingly, it cannot be found that there exists, at present, in this respect, any contravention of such Article.

(3) That the rights safeguarded under Article 12.5 of the

Constitution and Article 6(3) of the European Convention* on Human Rights (of 1950) are minimum rights and, therefore, they are not exhaustive; that from the texts of Articles 12 and 30 of the Constitution and of Article 6 of the Convention, it is quite clear that they do not require anything more than a fair trial of an accused person; that, likewise, it cannot be held that it is imperative, on the strength of either Articles 12 and 30 of the Constitution or of Article 6 of the Convention, to hold a preliminary inquiry in relation to all criminal cases otherwise than as provided from time to time by legislative provisions; and that it cannot be accepted, in the abstract, that inevitably the absence of a preliminary inquiry results in a violation of the rights of an accused person under Articles 12.5(b) and 30.3(b) of the Constitution, or under Article 6(3)(b) of the Convention concerning the preparation of his defence, or that, in general, it results in depriving an accused person of a fair trial.

(4) That to the extent to which the operation of the rules of natural justice might not be covered fully by the notion of fair trial there is no reason for coming to the conclusion that any violation of the said rules has been established.

(5) That there does not exist on the face of the record before this Court either an error of law (including violation of the Constitution) or excess of jurisdiction due to non-compliance with section 3(b) of Law 42/74; and that, accordingly, the application for an order of certiorari has to be dismissed.

Application dismissed.

Cases referred to:

X against Austria, (decision of the European Commission of Human Rights in Application No. 4428/70, reported in No. 15 (1972) Yearbook of the European Convention on Human Rights, pp. 264, 286);

X against the United Kingdom (decision of the European Commission of Human Rights in Application No. 4607/70, reported in No. 14 (1971) Yearbook of the European Convention on Human Rights, pp. 634, 662);

Georghadji and Another v. *Republic* (1971) 2 C.L.R. 229 at p. 238;

Attorney-General of the Republic v. *Christou*, 1962 C.L.R. 129.

* Article 30.2 of the Constitution corresponds to Article 6(1) of the European Convention on Human Rights, which has been ratified by Cyprus by virtue of Law 39/62, while Article 12.5 of the Constitution corresponds to Article 6(3) of the Convention.

Application for an Order of Certiorari.

Application for an order of certiorari to remove into the Supreme Court and quash the order made by the District Court of Nicosia (A. Ioannides, D.J.) on the 15th March, 1977, in Criminal Case No. 3115/77, whereby applicant was committed for trial by an Assize Court in Nicosia on charges of homicide, riot and unlawful carrying of firearms without the holding of a preliminary inquiry.

M. Christophides, for the applicant.

A. Evangelou, Counsel of the Republic, for the Attorney-General of the Republic.

Cur. adv. vult.

The following judgment was delivered by:-

TRIANTAFYLLIDES, P.: By the present application the applicant seeks an order of certiorari for the purpose of quashing the decision and order of a District Judge in Nicosia by means of which he was, on March 15, 1977, committed for trial by an Assize Court in Nicosia on May 9, 1977, on charges of homicide, riot and unlawful carrying of firearms, in criminal case No. DCN3115/77 (see, *inter alia*, in this respect, the affidavit of the applicant dated April 12, 1977).

The applicant sought leave to apply for an order of certiorari on April 12, 1977; he was granted such leave on April 14, 1977, and he filed the present application on April 15, 1977. The case was heard on April 26, 1977, and judgment was reserved until today.

The applicant was committed for trial without there having been held a preliminary inquiry, as provided for under section 92 of the Criminal Procedure Law, Cap. 155; such course was adopted under the provisions of the Criminal Procedure (Temporary Provisions) Law, 1974 (Law 42/74), section 3 of which reads as follows:-

"3. Διαρκούσης τῆς ἰσχύος τοῦ περὶ Δικαστηρίων (Προσωριναὶ Διατάξεις) Νόμου τοῦ 1974 καὶ παρὰ τὰς διατάξεις τοῦ ἄρθρου 92 τοῦ περὶ Ποινικῆς Δικονομίας Νόμου εἰς περιπτώσεις ἀδικημάτων προβλεπομένων ὑπὸ τοῦ Ποινικοῦ Κώδικος ἢ οἱουδήποτε ἑτέρου ἐν ἰσχύϊ Νόμου, ἐξαιρουμένων ἀδικημάτων τιμωρουμένων διὰ τῆς ποινῆς τοῦ θανάτου, ἐὰν—

(α) ὁ Γενικὸς Εἰσαγγελεὺς τῆς Δημοκρατίας παράσχῃ

γραπτὴν συγκατάθεσιν περὶ τῆς μὴ ἀναγκαιότητος διεξαγωγῆς τοιαύτης προανακρίσεως καὶ

(β) ἡ οὐσία τῆς καταθέσεως ἑκάστου μάρτυρος κατηγορίας τὸν ὁποῖον προτίθεται νὰ καλέσῃ ἡ κατηγοροῦσα Ἀρχή, ἐπιδοθῇ προηγουμένως εἰς τὸν κατηγορούμενον ἢ τὸν δικηγόρον αὐτοῦ,

τὸ Δικαστήριον κέκτηται ἐξουσίαν νὰ παραπέμψῃ εἰς δίκην ἄνευ προανακρίσεως οἱονδήποτε κατηγορούμενον".

("3. During the continuance in force of the Courts of Justice (Temporary Provisions) Law, 1974, and notwithstanding the provisions of section 92 of the Criminal Procedure Law, in cases of offences created by the Criminal Code or any other Law in force, with the exception of offences punishable with the death penalty, if—

(a) the Attorney-General of the Republic gives his written consent to the effect that it is not necessary to hold a preliminary inquiry; and

(b) the substance of the statement of each prosecution witness, whom the prosecution intends to call, is served in advance on the accused or his advocate,

the Court has power to commit for trial, without a preliminary inquiry, any accused person").

The Courts of Justice (Temporary Provisions) Law, 1974 (Law 43/74) was in force at all material, for the purposes of the present case, times.

It is common ground that the word 'Court' in section 3 of Law 42/74 includes a District Judge.

The applicant is accused 1 (together with five other accused persons) in the aforementioned criminal case No. DCN3115/77.

The relevant part of the record of the proceedings before the District Judge, on March 15, 1977 (see *exhibit* "A") reads as follows:-

"15.3.77

For prosecution: Mr. Angelides
Accused 1 present; for him Mr. Christofides.
Accused 2 present; for him Mr. Indianos.

Accused 3 present; for him Mr. Clerides.
Accused 4 present; for him Mrs. Georghiadou.
Accused 5 present; for him Mr. Charalambous.
Accused 6 present; for him Mr. I. Michaelides.

Mr. Angelides:– All documents promised to the other side had been given to them as promised by us on the other day. I also file in Court the dates when statements of witnesses were taken.

Exh. 2(*a*) *Court*:– Put in, *Exh.* 2(a).

Mr. M. Christofides:– The whole evidence of the 18th witness was given, but I ask for the whole statement for other witnesses as well. That is witnesses 1, 2, 7, 8, 12 15, 35 and 37. I cite the book of Loizou & Pikis page 178 and I submit that the whole statements should be given to us.

Mr. Indianos:– I aso ask that the whole statements of the 8th, 12th and 20th, 30th and 31st be given to us.

Mr. Clerides:– As regards the 3rd witness I do not ask any statements and I do not object to committal.

Mrs. L. Georghiadou:– I have no objection and I do not need any statements.

Mr. Charalambous:– I do not object and I do not want any statements.

Mr. Michaelides:– I have no objection.

Mr. Angelides:– The substance of the evidence was given to the defence. The whole statements is not necessary to be given now in accordance with Law 42/74.

Court:– The Law 42/74 provides that the substance of the statements should be given to the accused and from reading the statements given to the accused and filed in Court, I find that the substance is given. Therefore the prosecution has complied with the law and they should not give the whole statements to the accused.

(*Sgd*) *A. Ioannides,*
D.J.

Mr. M. Christofides:– In view of the Ruling of the Court

on this point, I object to the committal of the accused without holding a preliminary inquiry.

Mr. Indianos:– I also object to the committal of the accused without holding a preliminary inquiry. It is for the Court to decide. It is a discretionary matter and from the substance of evidence given accused cannot defend himself properly.

Mr. Angelides:– Since the two prerequisites, provided in Law 42/74 exist, accused cannot object to the committal without preliminary inquiry. It is for the Court to decide whether to hold a preliminary inquiry or to commit directly accused to Trial.

Court:– The question of whether to commit the accused for trial at the Assize Court without holding a preliminary inquiry is for the discretion of the Court. In my opinion the Court shall take into consideration before deciding on this question whether the consent of the Attorney–General was given for not holding a preliminary inquiry and whether the substance of the statements of the witnesses were given to the accused.

Further in my opinion the Court should take into consideration before deciding on this question whether from the substance of the statements given to the accused and filed in Court there exist sufficient grounds to commit the accused for trial on all counts and further whether in these statements sufficient particulars are given so that each accused knows what is the evidence against him so that he can prepare his defence at the Assize Court.

The above in my opinion are the main considerations which should guide the Court in deciding whether to hold a preliminary inquiry or not, in deciding that the Court should take into account the wishes of the accused and the reasons, if any, for his objection, if any, to the committal, but always having in mind the above considerations.

Now after examining the substance of the statements filed in Court of the prosecution witnesses it appears in my opinion that there are sufficient grounds for committing all the accused for trial on all counts. Further in the substance of the statements given to the accused sufficient particulars are given so that each accused knows the

evidence against him, so that he can prepare his defence at the Assize Court.

For the above reasons I decided that in accordance with the Law 42/74 all accused are committed for trial without holding a preliminary inquiry, at the next Assize sitting in Nicosia on 9.5.77.

(*Sgd*) *A. Ioannides*,
D.J.".

The first point raised by counsel for applicant in the present application is that the committal of his client, for trial by the Assize Court, is erroneous on the face of it in view of the fact that the District Judge concerned did not ascertain that the summaries of the evidence (see *exhibit* "*B*") of eight prosecution witnesses (Nos. 1, 2, 7, 8, 12, 15, 35 and 37) did, in fact, contain the substance of the statements of the said witnesses; he, therefore, contends that prerequisite (b) in section 3 of Law 42/74 has not been satisfied.

I cannot accept as correct the proposition that in a case in which, at the committal stage, under section 3 of Law 42/74, a summary of the evidence of a prosecution witness is served on the accused or his advocate, and it is reasonable for a District Judge to conclude, on perusing that summary, that it purports to contain the substance of the statement of such witness, section 3(b) of Law 42/74 requires the Judge to proceed further in order to conduct an inquiry as to whether or not the summary does contain, in actual fact, the substance of the statement made to the police by the witness; in my opinion, the Judge is entitled to treat prerequisite (b), under section 3 of Law 42/74, as satisfied if it appears, prima facie, to him that what *purport to be* summaries containing the substance of the statements of the prosecution witnesses have been served on the accused or his advocate.

In the present case, the summaries of the statements of the eight prosecution witnesses concerned could reasonably be treated, prima facie, as summaries of their statements to the police, and there was nothing placed before the Judge to show that they were not, in fact, sufficiently comprehensive summaries, satisfying the said prerequisite (b); I cannot, therefore, agree that the committal is erroneous in law because of non-compliance with section 3(b) of Law 42/74.

It has been contended further, by counsel for the applicant, that the procedure followed, as above, by the District Judge,

has resulted in a contravention of Article 12.5(b) of the Constitution, which reads as follows:-

"ARTICLE 12

.....

5. Every person charged with an offence has the following minimum rights:-

.....

(b) to have adequate time and facilities for the preparation of his defence;

....."

Since it has not been shown, either before the District Judge or before me, that the summaries in question (*exhibit "B"*) do not, actually, contain the substance of the statements to the police of the eight prosecution witnesses concerned, I cannot hold that the applicant is being deprived of the necessary facilities for the preparation of his defence, in the sense of Article 12.5(b); and, therefore, I cannot find that there exists, at present, in this respect, any contravention of such Article.

It has been submitted, further, that Article 12.5(b) above, as well as Article 30.2, have been contravened in the present instance, because, due to the fact that no preliminary inquiry was held, the accused was deprived of the right to cross-examine prosecution witnesses at the stage of such inquiry, of the opportunity to hear the evidence as a whole of the said witnesses before the trial, and, also, of the possibility of establishing at the trial contradictions between the evidence of any witness at the trial and his deposition as taken at the preliminary inquiry.

Article 30.2 reads as follows:-

"ARTICLE 30

.....

2. In the determination of his civil rights and obligations or of any criminal charge against him, every person is entitled to a fair and public hearing within a reasonable time by an independent, impartial and competent Court established by law. Judgment shall be reasoned and pronounced in public session, but the press and the public may be excluded from all or any part of the trial upon a decision of the Court where it is in the interest of the security of the Republic or the constitutional order or the

public order or the public safety or the public morals or where the interests of juveniles or the protection of the private life of the parties so require or in special circumstances where, in the opinion of the Court, publicity would prejudice the interests of justice.

.....".

The above constitutional provision corresponds to Article 6(1) of the European Convention on Human Rights (of 1950), which has been ratified by Cyprus by means of the European Convention on Human Rights (Ratification) Law, 1962 (Law 39/62); the said Article 6(1) reads as follows:-

"ARTICLE 6

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the Court in special circumstances where publicity would prejudice the interests of justice".

Article 6(3) of the aforesaid Convention corresponds to Article 12.5 of our Constitution, rather than to Article 30(3) of our Constitution; and, actually, Article 6(3)(b) o the Convention is the same as Article 12.5(b) of our Constitution.

The rights safeguarded under Article 12.5 of our Constitution and Article 6(3) of the Convention are minimum rights and, therefore, they are not exhaustive; so, consequently, a trial may not conform to the general standard of "fair" trial in Article 30.2 of our Constitution, and Article 6(1) of the Convention, even if the said minimum rights have been respected (see, on this point, the Digest of Case-Law Relating to the European Convention on Human Rights, 1955-1967, pp. 88, 90, para. 98, as well as, *inter alia*, the decision of the European Commission of Human Rights in Application No. 4428/70, *X. against Austria*, in No. 15 (1972) Yearbook of the European Convention on Human Rights, pp. 264, 286).

On the other hand, it seems to be quite clear, from the texts of both Articles 12 and 30 of our Constitution and of Article 6 of the Convention, that they do not require anything more than a fair trial of an accused person; that is why it has been held in *Georghadji and another* v. *The Republic*, (1971) 2 C.L.R. 229, 238, that it does not seem to be imperative, either under our own Article 30.2 or under Article 6(1) of the Convention, to provide for a right of appeal in relation to all decisions of trial Courts (see, also, Fawcett on the Application of the European Convention on Human Rights (1969) p. 123, and Castberg on the European Convention on Human Rights (1974) p. 118, as well as, *inter alia*, the decision of the European Commission of Human Rights in Application No. 4607/70, *X. against the United Kingdom* in No. 14 (1971) Yearbook of the European Convention on Human Rights, pp. 634, 662).

The fact that, by virtue of Article 155.1 of our Constitution, appellate jurisdiction was conferred on the High Court of Justice (now this Supreme Court) does not necessarily entail that there must always exist, in every case, a right of appeal.

Likewise, it cannot be held that it is imperative, on the strength of either Articles 12 and 30 of our Constitution or of Article 6 of the Convention, to hold a preliminary inquiry in relation to all criminal cases otherwise than as provided from time to time by legislative provisions. I cannot accept, in the abstract, that inevitably the absence of a preliminary inquiry results in a violation of the rights of an accused person under Article 12.5(b) (or Article 30.3(b)) of our Constitution, or under Article 6(3)(b) of the Convention, concerning the preparation of his defence; or that, in general, it results in depriving an accused person of a fair trial. As correctly stressed by counsel for the respondent Attorney-General of the Republic, had the opposite been true then all summary trials, in particular for serious offences, would have been precluded by the aforementioned provisions in our Constitution and the Convention, as being incompatible with them.

As pointed out by Fawcett, *supra*, at p. 122 "In general hearings or inquiries preliminary and auxiliary to trial, and interlocutory proceedings, will be excluded from the scope of Article 6".

It has, also, been submitted by applicant's counsel that because of the matters complained of by him, in the present case,

there exists a violation of the rules of natural justice. The said rules are "that no man shall be Judge in his own cause" and that "both sides in a case shall be heard" (see, Marshall on Natural Justice (1959), p. 5, and Jackson on Natural Justice (1973), pp. 10 and 22). To the extent to which the operation of such rules might not be covered fully by the notion of fair trial—(and I have already held that the applicant is not necessarily being deprived of a fair trial merely because of the fact that he was committed for trial without a preliminary inquiry having been held)—I see no reason for coming to the conclusion that any violation of the said rules has been established.

For all the above reasons I find that there does not exist on the face of the record before me (see, *inter alia*, *The Attorney-General of the Republic* v. *Christou*, 1962 C.L.R. 129) either an error of law (including violation of the Constitution), or excess of jurisdiction due to non-compliance with section 3(b) of law 42/74, and, therefore, this application for an order of certiorari has to be dismissed.

Before concluding this judgment I would like to make it abundantly clear that I have refused the order of certiorari because, at this juncture, I have not found, as already explained hereinbefore, any ground for granting such order. I am not deciding in the least, at this stage, and before the actual trial, whether or not a refusal of the prosecution to make available to the applicant the statements of the eight prosecution witnesses concerned or the non-holding of a preliminary inquiry may bring about, eventually, a situation inconsistent with either Articles 12 and 30 of our Constitution or of Article 6 of the European Convention on Human Rights. These are matters dependent upon, and interrelated with, possible developments at the applicant's trial and I leave them entirely open.

Application dismissed.