

1980 September 9

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF AN APPLICATION  
BY ANDREAS AZINAS  
FOR LEAVE TO APPLY FOR ORDERS OF  
CERTIORARI AND PROHIBITION,

and

IN THE MATTER OF CRIMINAL CASE NO. 10346/80 IN THE  
DISTRICT COURT OF NICOSIA,

(Application No. 30/80).

Prerogative orders—Certiorari—Prohibition—Leave to apply for—  
Principles applicable—Criminal trial—Wife of trial Judge publi-  
cising a letter hostile to the applicant in a newspaper—Contempora-  
neous sittings of a Commission of Inquiry—Actions of applicant,  
subject matter of the criminal charges, cannot be completely 5  
excluded from inquiry by the Commission—Issue of fair trial  
arising—Article 30 of the Constitution—Leave to apply for  
orders of certiorari and prohibition granted.

Constitutional Law—Human rights—Fair trial—Article 30 of the  
Constitution—Criminal trial—Wife of trial Judge publishing a 10  
letter hostile to applicant in a newspaper—Contemporaneous  
sittings of a Commission of Inquiry into matters that may be  
related with criminal charges—Leave to apply for orders of  
certiorari and prohibition granted.

Prerogative orders—Certiorari—Prohibition—Criminal trial—Stay 15  
pending determination of applications for orders of certiorari and  
prohibition—Within discretion of Judge granting leave—Conte-  
mporaneous sittings of Commission of Inquiry into matters that  
may be related with the criminal charges—Irreparable harm may  
be caused to applicant by continuation of criminal trial if applica- 20  
tions successful—Undesirable to have contemporaneously the  
sittings of the Commission of Inquiry and of the criminal case—  
Stay of criminal trial granted.

The applicant in this case, who was accused in a criminal

case before the District Court of Nicosia, sought leave to apply for orders of certiorari and prohibition for the purpose of quashing that part of a ruling of the trial Judge, by means of which he decided that he was not disqualified from continuing with the trial of the said criminal case by the fact that his wife has published in a newspaper a letter hostile to the applicant, and that part of such ruling by means of which he decided to continue with the trial of the criminal case simultaneously with the sittings of a Commission of Inquiry, which was appointed by the Council of Ministers, under the Commissions of Inquiry Law, Cap. 44 in relation to certain matters concerning Co-operative Societies in Cyprus.

Counsel for the applicant submitted that the publication of the said letter by the wife of the trial Judge creates, in view of its contents, and notwithstanding his indisputable integrity, a situation in which justice will not be manifestly seen to be done.

*Held*, (1) that leave to apply for prerogative orders, such as certiorari and prohibition, will be granted if the applicant has made out a prima facie case sufficient to justify such a course; that the publication of the said letter is a matter which is inextricably related to the notion of fair trial which is constitutionally safeguarded under Article 30 of the Constitution; and that, therefore, the applicant will be granted leave to apply for orders of certiorari and prohibition in this respect.

(2) That, as regards the matter of the contemporaneous sittings of the aforesaid Commission of Inquiry, this Court is satisfied that, notwithstanding the fact that actions of the applicant in his capacity as Registrar of Co-operative Societies and Commissioner of Co-operative Development which are the subject-matter of the charges in the criminal case in question are not covered by the terms of reference of the Commission, there nevertheless does, for variety of reasons, arise, due to the contemporaneous sittings of the Commission of Inquiry, an issue of fair trial of the applicant on the said charges, especially since, as it appears from the material already before the Court, the exclusion from the inquiry by the Commission of actions of the applicant in respect of which he is being prosecuted cannot be strictly and fully implemented in actual practice; and that, therefore, the applicant will be granted leave to apply for orders of certiorari and prohibition in this connection, too.

(3) *On the question whether the proceedings in the criminal case concerned should be stayed pending the determination of the application for orders of certiorari and prohibition which will be filed by the applicant pursuant to the leave granted to him today:*

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That in this respect the Court exercises a judicial discretion; that though it is undesirable to interrupt the hearing of a criminal case if the trial of the criminal case is allowed to be continued and, eventually, the applicant succeeds in obtaining an order of certiorari or an order of prohibition in respect of any of the grounds on which leave has been granted to him by means of this Decision then the harm to be caused to basic rights of the applicant by the continuation, in the meantime, of the criminal trial may be irreparable; that, moreover, the trial Judge himself has very rightly observed, in his ruling in question, that it would be desirable if the Commission of Inquiry would postpone its hearings until the determination of the criminal case which is being tried by him, though, as he has correctly pointed out, this is a matter outside his jurisdiction; that, therefore, it is, indeed, undesirable to have contemporaneously the sittings of the Commission of Inquiry and the hearing of the criminal case concerned; and that, accordingly, the leave which has been granted today should operate as a stay of proceedings in the criminal case in question until the determination of the application for orders of certiorari and prohibition, which should be filed by the applicant within ten days from today.

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*Application granted.*

#### **Application.**

Application for leave to apply for orders of certiorari and prohibition in connection with proceedings pending in relation to applicant before the District Court of Nicosia in respect of charges preferred against him in Criminal case No. 10346/80.

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*L. Clerides with St. Charalambous and C. Clerides, for the applicant.*

*S. Nicolaidis, Senior Counsel of the Republic, for the Attorney-General of the Republic.*

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*Cur. adv. vult.*

TRIANTAFYLLIDES P. read the following decision. The applicant is seeking leave to apply for orders of certiorari and

prohibition in relation to a ruling given on August 12, 1980, by the District Court of Nicosia in the Proceedings in criminal case No. 10346/80.

5 It has been contended on behalf of the applicant that there should be quashed that part of the said ruling by means of which the trial Judge has decided that he is not disqualified from continuing with the trial of the said criminal case by the fact that his wife, Mrs. Anna Artemides, has published, on May 19, 1980, in the newspaper "Kypros" a letter hostile to the applicant, and, 10 also, that there should be quashed that part of the ruling by means of which it was decided to continue with the trial of the criminal case contemporaneously with the sittings of a Commission of Inquiry, which was appointed by the Council of Ministers, under the Commissions of Inquiry Law, Cap. 44, in relation to 15 certain matters concerning Co-operative Societies in Cyprus.

As already held in *Vassiliou and another v. Police Disciplinary Committees*, (1979) 1 C.L.R. 46, 49, and in the case-law referred to in the judgment in that case, leave to apply for prerogative orders, such as certiorari and prohibition, will be granted if 20 the applicant has made out a prima facie case sufficient to justify such a course.

In the present case counsel for the applicant has submitted that the publication of the aforesaid letter by the wife of the trial Judge creates, in view of its contents, and notwithstanding 25 his indisputable integrity, a situation in which justice will not be manifestly seen to be done.

This is a matter which is inextricably related to the notion of fair trial which is constitutionally safeguarded under Article 30 of the Constitution.

30 I have, therefore, decided to grant leave to the applicant to apply for orders of certiorari and prohibition in this respect.

As regards the matter of the contemporaneous sittings of the aforesaid Commission of Inquiry I am satisfied that, notwithstanding the fact that actions of the applicant in his capacity as 35 Registrar of Co-operative Societies and Commissioner of Co-operative Development which are the subject-matter of the charges in the criminal case in question are not covered by the terms of reference of the Commission (see the relevant Order,

No. 142 in the Third Supplement, Part I, to the Official Gazette of the Republic dated June 6, 1980), there nevertheless does, for a variety of reasons, arise, due to the contemporaneous sittings of the Commission of Inquiry, an issue of fair trial of the applicant on the said charges; especially since, as it appears from the material already before me, the exclusion from the inquiry by the Commission of actions of the applicant in respect of which he is being prosecuted cannot be strictly and fully implemented in actual practice. 5

I have, therefore, decided to grant to the applicant leave to apply for orders of certiorari and prohibition in this connection, too. 10

In the course of the hearing of the present application it has been submitted by counsel for the applicant that the aforementioned ruling of the trial Court, dated August 12, 1980, contains expressions which indicate a certain degree of bias against the applicant on the part of the trial Court. In my opinion this complaint is not well-founded and, therefore, no leave is granted for an application for an order of certiorari or an order of prohibition in this respect. 15 20

I have to consider, next, whether the proceedings in the criminal case concerned should be stayed pending the determination of the application for orders of certiorari and prohibition which will be filed by the applicant pursuant to the leave granted to him today. In this respect I have to exercise a judicial discretion (see rule 1(5) of Order 53 of the Rules of the Supreme Court in England, in the Supreme Court Practice, 1976, vol. 1, p. 796, Halsbury's Laws of England, 4th ed., vol. 11, p. 814, para. 1549, and Atkin's Court Forms, 2nd ed., 1972, vol. 14, p. 53). 25 30

I have taken duly into account that it is, undoubtedly, undesirable to interrupt the hearing of a criminal case; but, on the other hand, I have had to pay due regard to the fact that if the trial of the criminal case is allowed to be continued and, eventually, the applicant succeeds in obtaining an order of certiorari or an order of prohibition in respect of any of the grounds on which leave has been granted to him by means of this Decision then the harm to be caused to basic rights of the applicant by the continuation, in the meantime, of the criminal trial may be irreparable. 35 40

I have, also, duly borne in mind that the learned trial Judge himself has very rightly observed, in his ruling in question, that it would be desirable if the Commission of Inquiry would postpone its hearings until the determination of the criminal case  
5 which is being tried by him, but, as he has correctly pointed out, this is a matter outside his jurisdiction. I do agree with him that it is, indeed, undesirable to have contemporaneously the sittings of the Commission of Inquiry and the hearing of the criminal case concerned.

10 In the light of all pertinent considerations I have reached the conclusion that I should order that the leave which I have granted today should operate as a stay of proceedings in the criminal case in question—No. 10346/80 in the District Court of Nicosia—until the determination of the application for orders  
15 of certiorari and prohibition, which should be filed by the applicant within ten days from today.

*Application granted.*