1962
March 23,
July 3

SOLOMOS STYLIANOU
v
THE POLICE

[WILSON, P. ZEKIA, VASSILIADES and JOSEPHIDES, JJ]

SOLOMOS STYLIANOU,

Appellant,

v

THE POLICE,

Respondent

(*Criminal Appeal No* 2446)

Motor traffic—Driving or using a motor vehicle on a road without there being in force a policy of insurance against third-party risks—The Motor Vehicles (Third Party Insurance) Law, Cap. 333 (as amended by Law No 7 of the 7th July 1960) section 3(1) (2) (3) and (4)—Mandatory disqualification for a minimum period of time from holding or obtaining a driving licence—Unless there are "special reasons" for holding otherwise—Meaning of the phrase "special reasons"—Special to the facts constituting the offence and not a circumstance peculiar to the offender—Thus construed, and there can be no other interpretation, sub-sections (3) and (4) (supra) are repugnant to the provisions of paragraph 3 of article 12 of the Constitution—Because there may be cases where, regard being had to all the circumstances, including considerations of hardship and similar mitigating circumstances personal to the offender, a mandatory disqualification for a minimum period as provided in Cap 333 (as amended by Law No 7 of 1960) may amount to a punishment disproportionate to the gravity of the offence contrary to the provisions of paragraph 3 of article 12 of the Constitution—And inasmuch as Cap 333 (as amended by Law 7 of 1960) in a statute which was in force on the day of the coming into operation of the Constitution (i e., 16th August 1960) and thus preserved by article 188 paragraph 1, of the Constitution, it is incumbent on the trial courts, under paragraph 1, 4 and 5 of that article, to modify it in such a way as to bring it into conformity with the Constitution viz article 12, paragraph 3, thereof—And such modification should be that not only facts special to the offence but also all the circumstances of the case, including considerations of hardship and similar mitigating circumstances personal to the convicted person, should be taken into account in deciding whether the minimum period of disqualification should be imposed or not—

Constitutional Law—Laws in force on the date of the coming into operation of the Constitution (i.e on the 16th August, 1960)—Preserved in force by virtue of article 188 of the Constitution, subject to the

Constitution and the provisions contained in that article—Duties and powers of the Courts in applying the laws thus preserved as distinct from Laws enacted after the date of the coming into operation of the Constitution — It is incumbent on the trial Courts to decide the issues of the unconstitutionality of the laws thus preserved—Without any reference to the Supreme Constitutional Court under article 144, paragraph 1 of the Constitution—And to modify them as may be necessary to bring them into accord with the Constitution—Article 188, paragraphs 1, 4 and 5 of the Constitution—

Constitutional Law—"Punishment disproportionate to the gravity of the offence" not allowed—Article 12.3 of the Constitution—

Constitutional Law—"Decision" in article 144.1 of the Constitution — Whether a judicial decision comes within the ambit of the word "decision" in article 144.1 (supra)—The decision of the former Supreme Court of the Colony of Cyprus in the case Muharrem v. The Police 22 C.L.R. 150 whereby it has been held that the term "special reason" in section 3 of Cap. 333 (supra) means special to the offence and does not include circumstances special to the offender, is right—Contrary to what it has been held by the Supreme Constitutional Court in the case Nicosia Police and Djemal Ahmet 3 R.S.C.C. 50, Muharrem's case (supra) cannot be and is not unconstitutional—What is unconstitutional is that part of section 3 of Cap. 333 which correctly construed in accordance with the well-settled canons of legal interpretation offends against the provisions of paragraph 3 of article 12 of the Constitution as aforesaid — Therefore, contrary to what it has been held by the Supreme Constitutional Court in the case Superintendent of Gendarmerie, Lefka, and Christodoulos Antoni Hadji Yianni 2 R.S.C.C. 21, section 3(3) and (4) of Cap. 333 (as amended by Law 7 of 1960) is unconstitutional.

The importance of this case lies not so much on the question of construction of the statute Cap. 333 as on the various constitutional issues, raised and decided, especially with regard to matters arising out of the unconstitutionality of laws preserved in force under Article 188 of the Constitution and the powers of the civil courts in respect of the unconstitutionality thereof.

The appellant was convicted on his own plea of using a motor vehicle on a road without being covered by a policy of insurance against third party risks, contrary to section 3(1) of the Motor Vehicles (Third Party Insurance) Law, Cap 333 (as amended by section 2 of Law 7 of 1960, enacted in July 1960), and he was sentenced to pay a fine and disqualified for holding or obtaining a driving licence for a period of twelve months under section

3(2) and (4) of the statute The appellant was so disqualified, because he had a previous conviction of driving without due care and attention which is an offence under section 6 of the Motor Vehicles and Road Traffic Laws 1954 to 1959 (now Cap. 332).

Section 3(2) of Cap. 333 reads as follows : "Any person acting in contravention of this section shall be liable to imprisonment not exceeding one year or to a fine not exceeding one hundred pounds or to both such imprisonment and fine and a person convicted of an offence under this section shall be disqualified for holding or obtaining a driving licence".

Section 3(4) reads as follows : "On a second or subsequent conviction of any person of an offence under this section, or on a conviction of any person of an offence under this section after a previous conviction of an offence under section 5, section 6.....of the Motor Vehicles and Road Traffic Laws, 1954 to 1959, ..., the disqualification under the provisions of sub-section (2), unless the Court for special reasons otherwise orders, shall be for a period of not less than twelve months, or for such longer period as the Court shall, in all the circumstances of the case consider appropriate".

It was argued on behalf of the appellant, *inter alia*, that the trial judge should have taken into account not only the facts special to the offender but also the circumstances peculiar to the offender. In making his submission counsel for the appellant relied on the decision of the Supreme Constitutional Court in Case No. 2/62 between *Nicosia Police and Djemal Ahmet*, (reported in 3 R.S.C.C. 50), which was given on the 12th February, 1962, that is, after the order of disqualification was made by the trial judge in this case. In that decision it was declared that—

"The decision of the Supreme Court of the former Colony of Cyprus in the case of *Hassan Muharrem v. Police* (Cyprus Law Reports, Vol. 22, page 150), is unconstitutional as being contrary to, and inconsistent with, paragraph 3 of article 12 of the Constitution in so far as it affects the application of section 3 of the Motor Vehicles (Third Party Insurance) Law, Cap. 333 as amended by Law No. 7 of 1960 enacted on the 6th July, 1960".

Held : (1) On the true construction of section 3(3) and (4)

the term "special reasons" means reasons special to the facts of the particular case, that is, special to the facts constituting the offence and does not include circumstances peculiar to the offender, such as hardship, and other similar mitigating circumstances personal to the offender.

Muharrem's case (*supra*) *followed.*

(2) In holding so, the aforesaid sub-sections (3) and (4) of section 3 (as amended by section 2 of Law 7 of 1960, enacted in July 1960) are rendered unconstitutional as being contrary to or inconsistent with, paragraph 3 of article 12 of the Constitution, which provides that "No Law shall provide for a punishment which is disproportionate to the gravity of the offence". Indeed, on the true construction of sections 3(3) and (4) the punishment to be imposed would be disproportionate to the gravity of the offence — having regard to all the circumstances of the case, including consideration of hardship and similar mitigating circumstances personal to the offender — this would be repugnant to the provisions of paragraph 3 of article 12 of the Constitution, and as Cap. 333 (as amended by Law 7 of 1960) is a statute which was in force on the day of the coming into operation of the Constitution, it is the duty of the trial Court to modify the Law in such a way as to bring it into conformity with the provisions of the Constitution, as provided by paragraph 4 of article 188.

(3) As the aforesaid section is unconstitutional it is incumbent on a criminal court applying this statute to apply it, under the provisions of article 188. 4 of the Constitution, with such modification as may be necessary to bring it into accord with the provisions of the Constitution. As the expression "modification" includes "amendment" and "adaptation" (see article 188, paragraph 5), it is the duty of the trial court to adapt sub-sections (3) and (4) of section 3 of Cap. 333 (as amended), so that the expression "special reasons" shall include not only facts which are special to the offence but also circumstances peculiar to the offender, including hardship.

(4) In the circumstances of this case we are of the opinion that, having regard to the above considerations, the minimum period of disqualification should be reduced from twelve to eight months.

(5) A judicial decision interpreting a statute in accordance with the well settled canons of construction cannot be said to

be unconstitutional itself — What may be unconstitutional is the statute itself — Therefore such judicial decision as in the *Muharrem's* case does not come within the ambit of the word "decision" in article 144 1 of the Constitution—

Nicosia Police and Djemal Ahmet 3 R S C C 50, *dissented*

Appeal allowed Order of disqualification modified.

Cases referred to

The Superintendent of Gendarmerie, Lefka and Christodoulos Antoni Hadji Yianni 2 R S C C 21 ,

Nicosia Police and Djemal Ahmet 3 R S C C 50 ,

Hassan Muharrem v The Police 22 C L R 150 ,

The King (Magill) v Crossan (1939) 1 N I 106 ,

Murray v. Macmillan (1942) J C. 10 ;

Whitall v Kirby (1946) 2 All E R 552 ,

Rennison v Knowler (1947) 1 All E.R 302 ;

Gazi v The Police 19 C.L R 34 ;

Chakkarto v The Attorney-General 1961 C L.R 231 ,

Ratibe Abdulhamid v. The Republic 1961 C L R 400 ,

Mahmut Hafiz Hussein Fethi v The Republic reported in this Volume, p. 139, *ante*.

Per VASSILIADES J. (WILSON P. concurring)

The word "decision" in article 144.1 of the Constitution does not include a judicial decision

Per VASSILIADES J (WILSON P. concurring) :

(A) This case gives yet one more illustration of the confusion which can be created when Courts of first instance will not act in accordance with the provisions of article 188 on the Constitution, clear and practical as these provisions happen to be, though new to the law of this country

Paragraph 1 of Article 188 reads —

"1. Subject to the provisions of this Constitution and to the following provisions of this article, all laws in force of the

date of the coming into operation of this Constitution shall, until amended,..... ..... continue in force and after that date, and shall, as from that date be construed and applied with such modification as may be necessary to bring them into conformity with this Constitution".

And paragraph 4 reads :

"4. Any Court in the Republic applying the provisions of any such law which continues in force under paragraph 1 of this article, shall apply it in relation to any such period, with such modification as may be necessary to bring it into accord with the provisions of this Constitution including the Transitional Provisions thereof".

It is perfectly clear from the above provisions, that the Courts of the Republic, civil and criminal, communal or otherwise, in discharging their function of applying the law, have to construe and apply *all laws preserved in force by art. 188*, with such "modification as may be necessary to bring them into conformity with the Constitution". And it is obvious on the face of it, that the statute governing this case (Cap. 333, as amended by Law 7 of 1960) is now part of the law of the Republic by operation of art. 188(1) of the Constitution.

This Court has more than once made reference to the provisions of this article, both in civil and in criminal appeals (*Chakkarto v. The Attorney-General* 1961 C.L.R. 231 ; *Ratibe Abdulhamid v. The Republic* 1961 C.L.R. 400 ; *Mahmut Hafiz Hussein Fethi v. The Republic* (reported in this Volume p. 139, *ante*). We have on such occasions, stated our views as to the duty which this article 188 imposes on all Courts applying the law preserved in force on the establishment of the Republic (as distinguished form the law enacted by the Republic under the Constitution) to make such preserved law, subject to the provisions of the Constitution, and to apply it to the facts and circumstances of each case, modified accordingly, whenever necessary

(8) It is, in my opinion, perfectly clear, and beyond any doubt or ambiguity, that when art. 144 makes provision for the reservation of questions of constitutionality, arising in judicial proceedings, for the decision of the Supreme Constitutional Court, it is intended to maintain strictly, the separation of functions established by the Constitution ; and to deep out of the ordinary Courts, matters which were placed exclusively,

in the peculiar province of the Constitutional Court which is also the administrative and the electoral Court of the State. It was obviously intended to avoid overlapping of powers and duplicity of functions.

Questions of the unconstitutionality of laws made by the legislative organs of the Republic, and of decisions made by its executive or administrative organs, "material for the determination of any matter in issue in any judicial proceeding" are to be decided by the Constitutional and Administrative Court; and not by the ordinary Court dealing with the case, so as to avoid conflict of opinion and consequent clashings of power. But such decision, if to the effect that the "law" or "decision" (or any provision thereof) is unconstitutional", is to operate so as to make "such law or decision" *inapplicable to such proceedings only*. (article 144.3).

To hold that "law" in art. 144 includes law preserved in force by art. 188, and "decision" includes judgment of a Court of competent jurisdiction functioning in the Republic, (or, a fortiori, judgment of the Supreme Court of the Colony of Cyprus) amounts, in my opinion, to disregarding the obvious intention and *effect* of the Constitution, to keep strictly separate and distinct, the functions of the 'Ανώτατον Συνταγματικὸν Δικαστήριον in part IX of the Constitution, from those of the 'Ανώτατον Δικαστήριον καὶ τῶν ὑπὸ τοῦτο τεταγμένων Δικαστηρίων in part X.

I have used advisedly the terms in which these Courts are referred to in the Greek version of the Constitution, as the difference in the style which found its way in the English text (Supreme Constitutional Court and High Court) which does not exist in the Greek or the Turkish text ('Ανώτατον Συνταγματικὸν Δικαστήριον καὶ 'Ανώτατον Δικαστήριον, Yuksek Anayasa Mahkemesi, ve Yuksek Mahkeme) appears to have a misleading effect sometimes. And unfortunately practice has already shown, the difficulties and confusion which can be created, if the functions and standing of these Courts, are not kept strictly separate and distinct, as put by the Constitution.

With these constitutional provisions in mind, it is, I think, obvious that where any law preserved in force by art. 188, appears to offend against or to be inconsistent with the provisions of art. 12.3 of the Constitution regarding punishment,

in that it provides for a punishment which "is disproportionate to the gravity of the offence", and makes such punishment mandatory, (taking away from the Court the usual power to measure sentence according to the gravity of the offence and the circumstances of the offender) it is the duty to adapt it to the Constitution by such modification as it may be necessary "to bring it into accord" with the provisions of the Constitution.

And, it is, moreover, in my opinion, equally clear from the provisions of the Constitution in question, as well as from the provisions of the Courts of Justice Law (14 of 1960) enacted by the Republic, that the remedy open to any person dissatisfied or aggrieved by the Court's adaptation and application of such law, lies in his right of appeal ; and not in a recourse to the Constitutional Court.

Appeal against sentence.

The appellant was convicted on the 31.10.61 at the District Court of Nicosia sitting at Lefka (Cr. Case No. 799/61) on one count of the offence of driving a motor vehicle without a policy in respect of Third Party risks contrary to ss. 3 (1) (2) and (4) of the Motor Vehicles (Third Party Insurance) Law, Cap. 333 (as amended by Law 7 of 1960) and was sentenced by Papaioannou, D.J. to pay a fine of £5.— and he was further disqualified from holding or obtaining a driving licence for a period of 12 months.

A. Triantafyllides with *K. Michaelides* for the appellant.

O. Beha for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment delivered by JOSEPHIDES, J.

WILSON, P. : In this case the judgment was written by Josephides, J. and Vassiliades, J. has given some additional reasons. I concur in the result in both cases and I desire to add this comment that I think both judgments have been very well reasoned out and that they should make an addition to the jurisprudence of Cyprus.

ZEKIA, J. : I had the occasion to read the judgment which was prepared by Josephides, J. and I concur.

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SOLOMOS
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JOSEPHIDES, J. : The appellant in this case pleaded guilty to the offence of using a motor vehicle on a road without being insured against third-party risks, contrary to the provisions of section 3(1) of the Motor Vehicles (Third Party Insurance) Law, Cap.333 (as amended by Law 7 of 1960), and he was sentenced, under the provisions of section 3, sub-sections (2) and (4), to pay a fine of £5 and disqualified for holding or obtaining a driving licence for a period of twelve months.

He now appeals against the order of disqualification on the ground that —

(a) the Judge misdirected himself as to the effect of the evidence adduced, and that the appellant established "special reasons" entitling the Court to reduce the period of disqualification under section 3(4) ; and

(b) that the Judge failed to take into account circumstances peculiar to the appellant as distinguished from the offence.

The appellant was disqualified under the provisions of section 3(4) because he had a previous conviction of driving without due care and attention which is an offence under section 6 of the Motor Vehicles and Road Traffic Laws, 1954 to 1959 (now Cap. 332).

Section 3(2) of the Motor Vehicles (Third Party Insurance) Law, Cap. 333, reads as follows :

"(2) Any person acting in contravention of this section shall be liable to imprisonment not exceeding one year or to a fine not exceeding one hundred pounds or to both such imprisonment and fine and a person convicted of an offence under this section shall be disqualified for holding or obtaining a driving licence".

And section 3(4) reads as follows :

"(4) On a second or subsequent conviction of any person of an offence under this section, or on a conviction of any person of an offence under this section after a previous conviction of an offence under section 5, section 6.....of the Motor Vehicles and Road Traffic Laws, 1954 to 1959,....., the disqualification under the provisions of sub-section

(2), unless the Court for special reasons otherwise orders, shall be for a period of not less than twelve months, or for such longer period as the Court shall, in all the circumstances of the case consider appropriate".

The appellant was charged together with his employer, the latter being charged with permiting a motor vehicle to be used without being insured against third party risks. They both pleaded guilty and called evidence to establish "special reasons".

On the evidence adduced the Judge found that the employer was the proprietor of several lorries which were registered as public lorries for hire on payment. The employer was a transport contractor who undertook to transport chromium ore with his lorries from Kakopetria to Famagusta. He had all his vehicles insured in respect of third party risks. In January, 1961, the employer bought from the British Army four other lorries, including lorry No.B.J. 329, which was the lorry driven on the day of the offence by the appellant (21st April, 1961). The employer applied to the Registrar of Motor Vehicles to have these four lorries registered as "T" vehicles for public use but his application was refused. The employer thereupon had these vehicles, including lorry No. B.J.329 registered as private lorries. This vehicle was insured by the employer against third-party risks for the period 1st March, 1961, to the 28th February, 1962. The insurance certificate which was an exhibit before the trial Court, did not cover use for hire or reward. On the 21st April, 1961, the appellant admitted carrying chromium ore in lorry B.J. 329 which he was driving.

The employer put forward several grounds but the trial Judge did not accept any of those grounds as amounting to "special reasons" entitling the Court to impose a disqualification less than the minimum provided by the Law.

The appellant satisfied the Judge that he had been a professional driver for the past 11 or 12 years and that he was married and had 3 children. He had worked for his employer five or six months in 1960 and he was reengaged by him as a driver in March, 1961, in order to drive "private" motor lorry B.J. 329. When reengaged by the employer in 1961 the appellant alleged that he asked his employer if the said vehicle was insured in respect of third-party risks and that the latter replied that it was, and that the insurance certificate

which is written out in English was handed by the employer to the appellant. The appellant alleged that he did not know English. The appellant further alleged that he handed the insurance certificate to a co-villager who knew English to read it for him and that the latter told him that it was "all right". The appellant further stated that he did not explain to his co-villager that he was transporting chromium ore in that lorry. The appellant failed to call this person as a witness to corroborate him on this point and the trial court did not accept his version and, on the evidence, found that the appellant's alleged belief that the vehicle was covered by the insurance policy was not based on reasonable grounds and that the appellant failed to establish "special reasons", and the Judge imposed a disqualification of 12 months.

On the first ground of appeal we are satisfied that there was adequate material for the Judge to come to the conclusion to which he came and that he exercised his judgment properly on those facts.

As regards the second ground of appeal, that is to say, that the trial Judge should have taken into account not only the facts special to the offence but also the circumstances peculiar to the offender, the appellant's counsel in making his submission relied on the decision of the Supreme Constitutional Court in Case No. 2/62 *Nicosia Police* and *Djemal Ahmet*, (reported in 3 R.S.C.C. 50) which was given on the 12th February, 1962, that is, after the order of disqualification was made by the trial Judge in this case. In that decision it was declared that—

> "The decision of the Supreme Court of the former Colony of Cyprus in the case of *Hassan Muharrem* v. *Police* (Cyprus Law Reports, Vol.22, page 150), is unconstitutional as being contrary to, and inconsistent with, paragraph 3 of article 12 of the Constitution in so far as it affects the application of section 3 of the Motor Vehicles (Third Party Insurance) Law, Cap.333 as amended by Law No. 7 of 1960 enacted on the 6th July, 1960".

Now, one question which arises for consideration is whether a decision construing a statute can be said to be unconstitutional or whether the statute itself is unconstitutional.

For this purpose it will be necessary to consider at some

length both this decision of the Supreme Constitutional Court (Case No.2/62) as well as a previous decision given in Case No. 52/61 between *The Superintendent of Gendarmerie, Lefka* and *Christodoulos Antoni Hadji Yianni*, dated the 9th October, 1961, and reported in 2 R.S.C.C. 21.

In Case No.52/61 the District Court of Nicosia, sitting at Lefka, referred, under article 144 of the Constitution, to the Supreme Constitutional Court the following question :

> "whether the provision of section 3 of the Motor Vehicles (Third Party Insurance) Law, Cap.333, as amended by section 2 of Law 7/60 is unconstitutional as offending article 12.3 of the Constitution". (2 R.S.C.C. 21, 22).

The Supreme Constitutional Court declared that —

> "The provisions of section 3 of the Motor Vehicles (Third Party Insurance) Law, Cap.333, as amended by section 2 of Law No. 7 of 1960, enacted on the 6th July, 1960, are not unconstitutional as being contrary to or inconsistent with paragraph 3 of article 12 of the Constitution". (2 R.S.C.C. 21, 22) ;

and in the concluding paragraph of its Judgment stated:

> "As the aforesaid decision of *Hassan Muharrem v. Police* is not the subject-matter of this reference the Court does not propose to express an opinion about the constitutionality or otherwise of its effect should such decision be followed now. In case, however, by means of a judicial decision binding on a trial court, such a restrictive interpretation is to be placed on the expression 'special reasons' in sub-sections (3) and (4) of section 3, as would lead any litigant to challenge it on the ground that *it renders the section in question* unconstitutional, it would then be for such trial Court to refer the matter to this Court under article 144, because the expression "decision" in paragraph 1 of article 144 has been interpreted in case No. 8/61 to mean, inter alia, a judicial decision binding on a trial Court". (The italics are mine)

Following that decision the District Court of Nicosia on the 29th December, 1961, referred to the Supreme Constitutional Court the following question, which is the subject-matter of the decision in Case No. 2/62, between *Nicosia Police* and *Djemal Ahmet* :

"Whether the decision of the Supreme Court in the case of *Hassan Muharrem v. Police* renders section 3 of the Motor Vehicles (Third Party Insurance) Law, unconstitutional". The Supreme Constitutional Court in its Judgment stated : "The question of unconstitutionality raised by the reference does not, in effect relate to the unconstitutionality of section 3 of the Motor Vehicles (Third Party Insurance) Law, Cap.333, as amended by section 2 of Law No. 7 of 1960 enacted on the 6th July, 1960 (hereinafter referred to as 'section 3') but to the unconstitutionality of the said decision in the case of *Hassan Muharrem v. Police*, in so far as it affects the application of section 3".

And the Court then declared that the decision in *Muharrem v. Police* is unconstitutional (see the wording of the Court's declaration quoted earlier in this judgment).

In the course of its judgment the Supreme Constitutional Court stated :

"In the decision of *Hassan Muharrem v. Police* the said expression 'special reasons' has been interpreted, on the strength of English Common Law precedents, as meaning reasons special to the facts constituting the offence and not including reasons special to the offender".

Pausing there for a moment, it may be observed, with respect, that strictly speaking the *Muharrem* case was not decided on the strength of "English Common Law precedents", but it was a decision on the construction of a Cyprus statute which was based on an English statute ; and in construing the Cyprus statute the former Supreme Court of Cyprus followed the English decisions on the point.

Our Motor Vehicles (Third Party Insurance) Law, Cap. 333, was enacted in 1954 and came into operation on the 1st April, 1957. So far as material, the Cyprus statute reproduces the provisions with regard to "special reasons" which were originally embodied in the English Road Traffic Act, 1930, section 35(2), in which it was provided that any person driving without being insured against third party risks, on conviction shall be disqualified for a period of not less than 12 months unless the Court for "special reasons" otherwise orders.

This provision was considered and construed in several

Northern Irish, Scottish and English cases, but I need only refer to four such cases.

In the Irish case *The King (Magill) v. Crossan* (1939) 1 N.I. 106 at pp. 112, 113, Andrews L.C.J. said :-

> "A 'special reason' within the exception is one which is special to the facts of the particular case, that is, special to the facts which constitute the offence. It is, in other words, a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence, and one which the Court ought properly to take into consideration when imposing punishnent. A circumstance peculiar to the offender as distinguished from the offence is not a "special reason" within the exception. The fact that the defendant in the present case is engaged in the motor business is a circumstance of this latter character. If Parliament intended that such persons should enjoy an immunity from disqualification for holding licences it should, and I have no doubt would, have said so.
>
> We can see no reason whatever why a man engaged in the motor business, who uses his motor on the public highway without having a policy of insurance in force, should be in a more privileged position than any other member of the public. In our opinion his connection with the business would naturally make it all the more incumbent upon him to ensure that the requirements of the law in regard to the use of motor vehicles are complied with....."

In the Scottish case of *Murray v. Macmillan* (1942) J.C.10, at page 18, Lord Jamieson had this to say regarding the object of the legislature in making disqualification imperative in the absence of "special reasons" :-

> "It was, doubtless, because of the importance attached, in the public interest, to proper provision being made for the compensation of third parties that sub-section (2) was made imperative, and the disqualification for holding or obtaining a licence made, in the absence of special reasons, to follow automatically and that whether the offence be the use of a car by the offender himself or the giving of another person permission to use it, without there being in force a policy covering such use. Even

the most expert and careful driver may commit an error in judgment and causes injury to other persons, and it is in order to safeguard the rights of injured persons that section 35 appears in the statute".

In the English case of *Whittall v. Kirby* (1946) 2 All E.R. 552, at page 554, that eminent Judge, Lord Goddard, expressed his views about the mandatory nature of the disqualification and the interpretation to be given to the expression "special reasons" in this way :

"It is to be observed that the sections are mandatory and that Parliament has provided that a period of disqualification shall be imposed or, in the case of exceeding the speed limit, that the licence shall be endorsed, but they have given a discretion to the court which obviously is a limited discretion to be exercised only for special reasons. The limited discretion must be exercised judicially. The reasons inducing the court to exercise it must be special, and special is the antithesis of general. The facts that a man is a first offender or that he has committed no motoring offence for many years are reasons of the most general character than can be well imagined. Every year hundreds of first offenders are brought before courts. It frequently happens that people who have driven for very many years have been doing so without offending against the provision of the Act. That a man is a professional driver cannot, as it seems to me by any possibility be called a special reason. The fact that drivers are professional drivers would of itself indicate that they are more likely to be habitually on the roads than people who drive themselves, so there is all the more reason for protecting the public against them. By exercising discretion in favour of an offender because he is a professional driver or merely because he drives himself for business purposes, it is obvious that the court is taking into account the fact that in such cases disqualification is likely to work greater financial hardship than in the case of a person who uses his car for social or casual purposes. There is no indication in the Act that Parliament meant to draw any distinction between drivers who earn their living by driving or who drive for purposes connected with their business and any other users of motor cars. That in many cases serious hardship will result to a lorry driver or private chauffeur from the imposition of a disqualifi-

cation is, no doubt, true, but Parliament has chosen to impose this penalty and it is not for courts to disregard the plain provisions of an Act of Parliament merely because they think that the action that Parliament has required them to take in some cases causes some or it may be considerable hardship. Had Parliament intended that special consideration was to be shown to (a) professional drivers or (b) first offenders they would have so provided.

As I have already said, these grounds are of the most general description and cannot by any possibility be construed as amounting to special reasons. If anything were needed to make the intention of Parliament clearer than it is, it can be found by comparing the provisions as to the endorsement of licences for exceeding the speed limit in the Motor Car Act, 1903, now repealed and replaced by s.5 of the Act of 1934. Under the Act of 1903, it was expressly provided that a licence should not be endorsed for a first or second offence. That indulgence is no longer given in the Act of 1934, which requires endorsement on any conviction for exceeding the speed limit, unless special reasons are found for refraining from taking that course.

What then can be said to be a special reason beyond saying that it must be one that is not of a general character ? This was expressly considered by the King's Bench Division of Northern Ireland in R. *v. Crossan*. In that case the court adopted a test that I had ventured to use in an address that I gave to the magistrates assembled at the Summer Assizes for Essex in 1937. I suggested that the reasons must be special to the offence, and not to the offender, and the court in adopting what I had said used these words".

And he then quoted an extract from the Irish case *The King v. Crossan* which appears earlier in this judgment.

Further on in his judgment Lord Goddard (at page 556) said:

"The same conclusion as was reached by the High Court of Northern Ireland has been come to in the High Court of Justiciary in Scotland in *Muir v. Sutherland* and in *Adair v. Munn* and *Adair v. Brash*, and, in my opi-

tion, magistrates both in quarter and petty sessions must take it to be the law that no considerations of financial hardship, or of the offender being before the court for the first time, or that he has driven for a great number of years without complaint, can be regarded as a special reason within these "sections" ."Although this case is not concerned with s 35 of the Act of 1930, which deals with disqualification for driving or allowing a vehicle to be driven when the owner or driver is uninsured against third party risks, it appears that in Scotland there has been some divergence of opinion among the Lords of Justiciary as to the tests to be applied in determining what in such cases would amount to special reasons see *Murray v. Macmillan* and *Fairlie v Hill.*' I do not propose to discuss those cases in detail because, as the present case is not connected with s.35, any observation would really be obiter but I may say for myself that I find it very difficult to apply any different test for construing the words "special reasons" in s 35 from that which applies to s 11 and s 15 I confess that I think exactly the same considerations apply, and from the reasoning of the High Court of Northern Ireland it seems that they would take the same view. For myself, I would say that I strongly incline to the opinion that a person who drives or causes or permits a vehicle to be driven when there is not policy in force must be disqualified unless the court can find in relation to the particular offences some mitigating circumstances, and that mere forgetfulness or carelessness in not taking out a policy could not amount to a special reason. In one of the Scottish cases the offender was a doctor whose services were urgently needed in war time. It may, perhaps, be that in a national emergency such as was caused by the late war overwhelming considerations of public benefit might be taken into account and amount to a special reason, but in ordinary circumstances I should find it difficult to hold that the fact that the offender was a doctor was any ground for treating him differently from any other driver Had the Legislature intended different treatment for medical men they would have said so" (p 556)

Finally, Lord Goddard in *Rennison v Knowles* (1947) 1 All E R 302, at page 305 said

"It must be understood that disqualification is part of

the punishment which Parliament has prescribed for certain motoring offences. Everyone will agree that, certainly where a fine and not imprisonment is imposed, it is the most serious part of the punishment. That it often inflicts hardship, and in many cases grievous hardship, none will deny, but it is the punishment which Parliament has ordained, and, moreover, has enacted that *prima facie*, at least, it is to be imposed in all cases to which this penalty applies. There are in the statute book laws which in terms allow the courts to take, or refrain from taking, steps on the ground of exceptional hardship, but there is no such provision in the Road Traffic Acts. This court has already laid down that financial hardship is not a matter which can be taken into account in this respect, and we desire to emphasise that this applies to any other form of hardship. It may often be distasteful to a court to impose a penalty or to take a certain course which it may think is disproportionate to the offence, but it is not for them to question what the legislature has enacted. It is no doubt true that disqualification may work very hardly in a case where a man drives for his living and have little effect in the case of another who can afford to employ someone to drive him while the disqualification is in force. Parliament has not seen fit to draw that distinction and the decisions may now be said to be uniform throughout the United Kingdom that hardship is not a special reason for refraining from imposing this punishment. It is the duty of all courts to apply the law as enacted and as interpreted by the courts".

The net result of all these decisions is that —

(a) because of the importance attached, in the public interest, to proper provision being made for the compensation of third parties, disqualification was made imperative in the absence of "special reasons";

(b) "special reason" is one which is special to the facts of the particular case, that is, special to the facts which constitute the offence and not a circumstance peculiar to the offender ;

(c) hardship is not a special reason for refraining from imposing disqualification ; and

(d) although it may be distasteful to a Court to impose a penalty or to take a certain course which it may think disproportionate to the offence, it is not for them to question what the legislature has enacted.

The former Supreme Court of Cyprus in the case of *Muharrem*, relying on the above authorities, construed the Cyprus statute in the same way.

In interpreting the expression "special reasons" in Cap. 333, it should be borne in mind that the legislature, following *Muharrem's* case which was decided in 1957, amended section 3 of Cap. 333 by Law 7 of 1960 in July, 1960, and it retained the expression "special reasons", *i.e.* the provision for a mandatory disqualification. On the contrary, in a new sub-section (7) of section 3, for the review of orders of disqualification, the legislature included expressly personal circumstances peculiar to the offender (as distinct from the offence) in the matters to be taken into account by a Court in considering whether disqualification should be removed or not. If anything were needed to make the intention of the legislature clearer than it is in sub-sections (3) and (4) of section 3, it can be found by comparing them with the provisions as to the review of the disqualification order under sub-section (7) of the same section. If the legislature intended that circumstances peculiar to the offender, as distinct from the offence, should be taken into account by the trial court in the first instance, in deciding whether disqualification should be ordered or not, it would have expressly provided so.

The statutory provision as to knife-carrying is to the point. Under section 79, sub-section (2) of the Criminal Code, Cap.13, in the 1949 edition of the Statute Laws of Cyprus, it was provided that unless the Court for "special reasons" to be recorded thought fit to order otherwise, no sentence imposed under that sub-section should be for a term less than six months. The expression "special reasons" was interpreted by the Supreme Court of Cyprus in 1951, in the case of *Gazi v. The Police*, 19 C.L.R. 34, as circumstances directly connected with the commission of the offence and not peculiar to the offender. Following that decision and in order to relieve courts from having to impose penalties which might be disproportionate to the offence and in order to mitigate hardship in certain cases, the legislature in 1952 (by Law 28 of 1952) amended that provision and gave power to the

Courts in deciding whether to impose or not a minimum sentence of six months imprisonment, to take into account "all the circumstances of the case, including consideration of hardship and similar mitigating circumstances *personal* to the convicted person" (see now section 82, sub-section (2) of the Criminal Code, Cap.154).

Finally, it is interesting to observe that the English prototype of our section 3 of Cap. 333 was in 1956 amended by section 29(2) of the Road Traffic Act, 1956 (c.67), and the position in England now is that in cases of conviction under section 35(2) of the Road Traffic Act, 1930, disqualification is not mandatory but discretionary.

From all these it is abundantly clear that if our legislature intended the Courts to take into account circumstances peculiar to the offender as distinct from the offence, it would have so provided in the amending Law No. 7 of 1960, enacted in July, 1960, but in fact it did not.

Undoubtedly decisions of the English, Scottish and Irish Courts are not binding upon the Courts of the Republic of Cyprus, though entitled to the highest respect. I am of the view that, as a general rule, our Court should as a matter of judicial comity follow decisions of the English Courts of Appeal on the construction of a statute, unless we are convinced that those decisions are wrong. And if we were today to construe the expression "special reasons" in section 3 of Cap. 333, we would still interpret it in the same way. In doing so, sub-sections (3) and (4) of section 3 (as amended by section 2 of Law 7 of 1960) are rendered unconstitutional as being contrary to, or inconsistent with, paragraph 3 of article 12 of the Constitution, which provides that:

> "No Law shall provide for a punishment which is disproportionate to the gravity of the offence".

But the fact remains that the decision of the former Supreme Court of Cyprus in the *Muharrem* case cannot be said to be unconstitutional itself. What is unconstitutional is section 3, sub-sections (3) and (4) of Cap. 333 (amended by Law 7 of 1960), as interpreted in accordance with the well-settled canons of legal interpretation.

As the aforesaid section is unconstitutional it is incumbent on a criminal court applying this statute to apply it,

under the provisions of article 188. 4 of the Constitution, with such modification as may be necessary to bring it into accord with the provisions of the Constitution. As the expression "modification" includes "amendment" and "adaptation" (see article 188, paragraph 5), it is the duty of the trial court to adapt sub-sections (3) and (4) of section 3 of Cap. 333 (as amended), so that the expression "special reasons" shall include not only facts which are special to the offence but also circumstances peculiar to the offender, including hardship.

To sum up : (a) the only correct interpretation of the term "special reasons" in accordance with the well-established principles of interpretation is that given in the *Muharrem* case by the former Supreme Court *of Cyprus*, which we adopt for the purposes of our judgment ;

(b) for the reasons stated earlier in this judgment, the decision of the former Supreme Court of Cyprus in the *Muharrem* case construing a statute cannot be and is not unconstitutional ;

(c) but as, on this interpretation, the punishment to be imposed would be disproportionate to the gravity of the offence — having regard to all the circumstances of the case, including consideration of hardship and similar mitigating circumstances personal to the offender — this would be repugnant to the provisions of paragraph 3 of article 12 of the Constitution, and as Cap. 333 (as amended by Law 7 of 1960) is a statute which was in force on the day of the coming into operation of the Constitution, it is the duty of the trial Court to modify the Law in such a way as to bring it into conformity with the provisions of the Constitution, as provided by paragraph 4 of article 188 ;

and

(d) we are of the view that the modification which is necessary to bring sub-sections (3) and (4) of section 3 of Cap. 333 (as amended by Law 7 of 1960) into conformity with the Constitution is that not only facts special to the offence but also all the circumstances of the case, including consideration of hardship and similar mitigating circumstances personal

to the convicted person, should be taken into account in deciding whether the minimum period of disqualification should be imposed or not.

In the circumstances of this case we are of the opinion that, having regard to the above considerations, the minimum period of disqualification should be reduced from twelve to eight months, and we order accordingly.

VASSILIADES, J. : I have had the advantage of reading the judgment prepared by my brother Mr. Justice Josephides and I may say at once, with all respect, that I find myself in full agreement with him, on his approach to the questions arising in this appeal ; on his view of the law regarding "special reasons" in this kind of cases ; and on the four points he makes at the end of his judgment, regarding the application of the statutory provisions in question, under the Constitution.

This case gives yet one more illustration of the confusion which can be created when Courts of first instance will not act in accordance with the provisions of article 188 of the Constitution, clear and practical as these provisions happen to be, though new to the law of this country.

Paragraph 1 of article 188 reads :—

"1. Subject to the provisions of this Constitution and to the following provisions of this article, all laws in force on the date of the coming into operation of this Constitution shall, until amended,..... ..... continue in force and after that date, and shall, as from that date be construed and applied with such modification as may be necessary to bring them into conformity with this Constitution".

And paragraph 4 reads :—

"4. Any Court in the Republic applying the provisions of any such law which continues in force under paragraph 1 of this article, shall apply it in relation to any such period, with such modification as may be necessary to bring it into accord with the provisions of this Constitution including the Transitional Provisions thereof".

It is perfectly clear from the above provisions, that the Courts of the Republic, civil and criminal, communal or otherwise, in discharging their function of applying the law, have to construe and apply *all laws preserved in force by art.* 188, with such "modification as may be necessary to bring them into conformity with the Constitution". And it is obvious on the face of it, that the statute governing this case (Cap. 333, as amended by Law 7 of 1960) is now part of the law of the Republic by operation of art. 188. 1 of the Constitution.

This Court has more than once made reference to the provisions of this article, both in civil and in criminal appeals (*Chakkarto v. The Attorney-General*, 1961 C.L.R. 231 ; *Ratibe Abdulhamid v. The Republic*, 1961 C.L.R. 400 ; *Mahmut Hafiz Hussein Fethi v. The Republic*, reported in this volume, p. 139, *ante*). We have on such occasions, stated our views as to the duty which this article 188 imposes on all Courts applying law preserved in force on the establishment of the Republic (as distinguished from law enacted by the Republic under the Constitution) to make such preserved law, subject to the provisions of the Constitution, and t apply it to the facts and circumstances of each case, modified accordingly, whenever necessary.

Article 179 of the Constitution expressly provides that the Constitution "shall be the supreme law of the Republic". And article 155. 1 likewise provides that this Court shall be the highest appellate Court in the State in the exercise of the judicial power, excepting such matters (art. 152) as are within the functions of the Constitutional and Administrative Court established under part IX of the Constitution ; and matters within the jurisdiction of the Communal Courts established under art. 87.

It is, in my opinion, perfectly clear, and beyond any doubt or ambiguity, that when art. 144 makes provision for the reservation of questions of constitutionality, arising in judicial proceedings, for the decision of the Supreme Constitutional Court, it is intended to maintain strictly, the separation of functions established by the Constitution ; and to keep out of the ordinary Courts, matters which were placed exclusively, in the peculiar province of the Constitutional Court which is also the administrative and the electoral Court of the State.

It was obviously intended to avoid overlapping of powers and duplicity of functions.

Questions of the unconstitutionality of laws made by the legislative organs of the Republic, and of decisions made by its executive or administrative organs, "material for the determination of any matter in issue in any judicial proceeding" are to be decided by the Constitutional and Administrative Court ; and not by the ordinary Court dealing with the case, so as to avoid conflict of opinion and consequent clashings of power. But such decision, if to the effect that the "law" or "decision" (or any provision thereof) is "unconstitutional", is to operate so as to make "such law or decision" *inapplicable to such proceedings only.* (art. 144. 3).

To hold that "law" in art. 144 includes law preserved in force by art. 188, and "decision" includes judgment of a Court of competent jurisdiction functioning in the Republic, (or, a fortiori, judgments of the Supreme Court of the Colony of Cyprus) amounts, in my opinion, to disregarding the obvious *intention* and *effect* of the Constitution, to keep strictly separate and distinct, the functions of the 'Ανώτατον Συνταγματικὸν Δικαστήριον in part IX of the Constitution, from those of the 'Ανώτατον Δικαστήριον καὶ τῶν ὑπὸ τοῦτο τεταγμένων Δικαστηρίων in part X.

I have used advisedly the terms in which these Courts are referred to in the Greek version of the Constitution, as the difference in the style which found its way in the English text (Supreme Constitutional Court and High Court) which *does not exist* in the Greek or the Turkish text ('Ανώτατον Συνταγματικὸν Δικαστήριον καὶ 'Ανώτατον Δικαστήριον, Yuksek Anayasa Mahkemesi, ve Yuksek Mahkeme) appears to have a misleading effect sometimes. And unfortunately practice has already shown, the difficulties and confusion which can be created, if the functions and standing of these Courts, are not kept strictly separate and distinct, as put by the Constitution.

With these constitutional provisions in mind, it is, I think, obvious that where any law preserved in force by art. 188, appears to offend against or to be inconsistent with the provisions of art. 12. 3 of the Constitution regarding punishment, in that it provides for a punishment which "is disproportionate to the gravity of the offence", and makes such

punishment mandatory, (taking away from the Court the usual power to measure sentence according to the gravity of the offence and the circumstances of the offender) it is the duty of the Court called upon to apply such law, to adapt it to the Constitution by such modification as it may be necessary "to bring it into accord" with the provisions of the Constitution.

And, it is, moreover, in my opinion, equally clear from the provisions of the Constitution in question, as well as from the provisions of the Courts of Justice Law (14 of 1960) enacted by the Republic, that the remedy open to any person dissatisfied or aggrieved by the Court's adaptation and application of such law, lies in his right of appeal ; and not in a recourse to the Constitutional Court.

I have one more point to touch. The question whether a disqualification Order, is a "punishment", or it is a legal provision in the law, made "in the public interest", with the result of subjecting the individual interest to public interest, has not been raised or argued in this appeal ; and does not fall to be decided in this case. I am only referring to this question, in order to make it clear that, speaking for myself, I consider that matter open ; and I do not purport to express any view or opinion thereon in this judgment.

In conclusion, I agree, as I have already stated that the disqualification Order (assuming it is a "punishment" and that it has been made as such) be reduced to one of eight months from the date it was made.

Appeal allowed. Order of disqualification modified.