

1982 October 11

[A. LOIZOU, MALACHTOS, SAVVIDES, JJ.]

NADJET HOUSSEIN,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 4339*).

Criminal Law—Sentence—Publication of news relating to defence works—Two years' imprisonment—Seriousness of the offence—Sentence not manifestly excessive—Appeal dismissed.

5 This was an appeal against the sentence of two years' imprisonment imposed on the appellant who had been found guilty on his own plea of the offence of publication of news relating to defence works. The appellant at various dates between July, 1980 and the 11th June, 1982 in the Districts of Limassol and Kyrenia and without lawful authority communicated to an
10 unauthorised person, namely a certain Turk of the Turkish Information Services, named Niazi, information relating to fortifications of works of defence, camps, military stores or other places occupied or used by, or for the needs of the armed forces of the Republic, or relating to the stationing, concentration, movement, or activities thereof. The maximum sentence
15 provided by Law has been increased by the Criminal Code (Amendment) Law, 1979, from three to six years' imprisonment.

Upon appeal against sentence:

20 *Held*, that the sentence imposed upon the appellant by the trial Judge could not be considered in any way as manifestly excessive justifying any interference with it whatsoever by this Court on appeal; that the seriousness of offences of this nature, especially at a time when the dangers to the very existence of our country are an obvious reality, need hardly be stressed;
25 accordingly the appeal must be dismissed.

Appeal dismissed.

Appeal against sentence.

Appeal against sentence by Nadjat Houssein who was convicted on the 8th July, 1982 at the District Court of Nicosia (Criminal Case No. 11965/82) on one count of the offence of publishing news relating to defence works, contrary to section 50(A) of the Criminal Code Cap. 154 (as amended by the Criminal Code (Amendment) Law, 1979 (Law 13/79)) and was sentenced by S. Nicolaidis, D.J. to two years' imprisonment. 5

Appellant appeared in person.

A. *Frangos*, Senior Counsel of the Republic, for the respondents. 10

A. LOIZOU J. gave the following judgment of the Court. This is an appeal against the sentence of two years imprisonment imposed on the appellant who had been found guilty on his own plea of the offence of publication of news relating to defence works, contrary to section 50(A) of the Criminal Code, Cap. 154, as amended by the Criminal Code (Amendment) Law 1979 (Law No. 13 of 1979), on the ground that same is manifestly excessive. 15

According to the particulars of the offence set out in the charge-sheet, the appellant at various dates between July 1980 and the 11th June 1982 in the Districts of Limassol and Kyrenia and without lawful authority communicated to an unauthorised person, namely a certain Turk of the Turkish Information Services, named Niazi, information relating to fortifications of works of defence, camps, military stores or other places occupied or used by, or for the needs of the armed forces of the Republic, or relating to the stationing, concentration, movement, or activities thereof. 20 25

The maximum sentence provided by Law has been increased by the Criminal Code (Amendment) Law, 1979, from three to six years' maximum imprisonment, hence the consent of the Attorney-General given under section 24, subsection 2 of the Courts of Justice Law, 1960 (Law No. 14 of 1960) for the summary trial of the case by a member of the District Court, instead of, on information, by an Assize Court. 30 35

The facts of the case as related at the trial are briefly as follows:

The appellant is a Turkish Cypriot born in Limassol where

he was residing and where he stayed on residing after the Turkish invasion of 1974. He is a Customs' Guard at the British Sovereign Base of Akrotiri. On the 12th June 1982, after the case was reported to the Police in Nicosia, the appellant was
5 arrested on the strength of a judicial warrant, he was told the reasons of his arrest and cautioned and he replied "all right".

On the same day he gave a voluntary statement to the Police in which he mentioned inter alia that in the summer of 1980 he secured a permit from the Turkish authorities to visit his
10 family in Kyrenia through the good services of a certain Imbrahim Mehmet Maliali. Three or four days later they met outside Dhekelia Police Station and through Pergamos village he was conveyed by him to Kyrenia. There he was introduced to a certain Niazi from Turkey telling him, "this is Mr. Niazi
15 and he is the one who helped for the issue to you of the permit. to come here and we must help him too". Niazi then asked the appellant various questions about the National Guard, its camps and about any soldiers from Greece and he was given instructions when he would return to Limassol to collect in-
20 formation relating to the National Guard, to keep an eye on any disembarkation of Greek soldiers at the Limassol port, the possible importation of tanks, armaments and the ascertain-ment of locations where camps of the National Guard are situate and that he would once more secure for him a permit to
25 visit Kyrenia when he would transmit to him the information. The appellant agreed to this, stayed in Kyrenia for nine days and then returned to Limassol through Dhekelia and went about in Limassol town and district collecting information. In December 1980, after a telephone communication with the
30 said Maliali his transportation to Kyrenia was once more arranged through the Dhekelia Sovereign Base Area and it was then that he was informed that Niazi was serving in the In-formation Branch. Whilst in Kyrenia he gave to the said Niazi information regarding the National Guard, but Niazi
35 was not satisfied and gave him a camera and after he instructed him how to use same he gave him instructions to photograph Camps of the National Guard, military installations of interest and to collect other relevant information and he was warned to be careful not to be arrested. He stayed in Kyrenia for ten
40 days and returned to Limassol with the camera.

Three months later together with Imbrahim Maliali he visited Kyrenia for the third time where at the house of Maliali he met Niazi and returned to him the camera which he had not used out of fear that he might be caught. He visited, he said, the Turkish occupied area of Kyrenia in all three more times in the years 1981 - 1982 but he claimed that he did not pass on any information. 5

On the 17th June 1982, he gave a second voluntary statement and said that in the summer of 1980 he went on motor-cycle twice at the rear side of the camp of the National Guard at Polemidhia and after he approached it from a distance of about two hundred meters he ascertained that in the camp there were four to five tanks, ten to fifteen lorries and a number of land-rovers, as well as soldiers training. On the same day when he went to his work at Akrotiri, he recorded everything in a letter which he sent to Maliali in order to take it to Niazi in Kyrenia. In December 1980, at the second meeting of the appellant with Niazi in Kyrenia, the latter gave him instructions to go to Palodia village in the Limassol district and collect information about some stores there and which might possibly contain military equipment for the National Guard. The appellant went there but he did not locate these military stores. 10 15 20

Two or three months later, he went to Moni village on his motorcycle where there is a camp of the National Guard. He approached it to a distance of about two hundred meters from its rear side where he ascertained that in it there were soldiers, installations and military vehicles. He did not see tanks or guns, contrary to what Niazi had told him. He passed on this information to Maliali for transmission to Niazi. One day whilst in his house at Franklin Rousvelt Avenue, in Limassol, he saw four buses full of soldiers for which there was information that it was a replacement of Contingents of ELDYK and he gave this information to Maliali to pass same to Niazi in Kyrenia. On various occasions he went to the new Limassol Port with the intention of observing if there was any unloading of arms, disembarkation of soldiers and other relevant movements but he did not see anything. 25 30 35

He claimed that at the meeting with Niazi in Kyrenia, the latter was exerting pressure on him asking him for more in- 40

formation otherwise he would not permit him to visit Kyrenia and see his relatives, that is why he was collecting and transmitting information and prayed for leniency on the ground that he was really acting under pressure, that he did not do
5 everything he was asked to do and that he has sincerely repented for his acts.

The learned trial Judge, in passing sentence, referred to the gravity of the offence, as evidenced by the sentence provided by the Law to the prevailing conditions in the Island and to the
10 fact that such offences by their very nature undermine the defence of the Republic and reduce the potentiality of the State to defend itself whenever this becomes necessary. In mitigation he took, however, into consideration that many people could have access to that kind of information from the
15 way the appellant was approaching the camps and after taking into consideration the personal circumstances of the appellant including the clean past record, he sentenced him to two years' imprisonment.

The appellant in presenting himself his case before us repeated
20 the same approach as that he put forward before the Court below and also pointed out the consequences that his conviction and sentence has entailed in that he has lost his job and his stay both in the Republic and in the Turkish occupied area will be problematic. We sympathise with his predicament,
25 which he has brought upon himself by his acts; but we cannot lose sight of the fact that the pressure alleged to have been exerted on him could have been shaken off once he came back to the area under the control of the Republic.

The functions of this Court regarding its power to interfere
30 with sentences on appeal are limited within the boundaries laid down by well established principles which have been expounded in a number of cases and we need not repeat it to say that in considering the propriety of the sentence imposed
30 this Court will not replace the trial Court and will not interfere merely because had we tried the case we would have imposed a different sentence.

Having given our best consideration to the facts and circumstances of the case, including those personal to the appellant

himself, we have come to the conclusion that the sentence imposed upon him by the learned trial Judge could not be considered in any way as manifestly excessive justifying any interference with it whatsoever by this Court on appeal. The seriousness of offences of this nature, especially at a time when the dangers to the very existence of our country are an obvious reality, need hardly be stressed. .5

For all the above reasons the appeal is dismissed.

Appeal dismissed.