

ALKIVIADES CHRYSANTHOU,

Appellant,

v.

THE POLICE,

Respondents.

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ALKIVIADES
CHRYSANTHOU
v.
THE POLICE

(*Criminal Appeal No. 3095*).

Criminal Procedure—Charge—Crime committed in a foreign country (England) by a Cypriot with dual citizenship—British and Cypriot citizenship—How the charge ought to have been framed—Criminal Code, Cap. 154, section 5 (1) (d) as amended by section 4 of the Criminal Code (Amendment) Law, 1962 (Law No. 3 of 1962)—Trial and conviction on charges erroneously framed and unknown to our law—Treated as nullity—Therefore, no scope for amendment under the Court's discretion under section 145 (1) (c) of the Criminal Procedure Law, Cap. 155—No new trial can be ordered either.

Charge—Framing of—See supra.

Extraterritorial Criminal Jurisdiction—Section 5 (1) (d) of the Criminal Code, Cap. 154, as amended supra—Such extraterritorial jurisdiction should be restricted only to cases of persons who possess Cypriot citizenship and who are not at the same time citizens of the foreign country where they have allegedly committed the offence—See also infra.

Statutes—Construction—Section 5 (1) (d) of the Criminal Code, Cap. 154, as amended early in 1962 by Law No. 3 of 1962, supra—Article 11.2 (f) of the Constitution—Article 5 (1) (f) of the European Convention of Human Rights, which convention was ratified in Cyprus by the European Convention of Human Rights (Ratification) Law, 1962 (Law No. 39 of 1962)—On the true construction of said section 5 (1) (d) of the Criminal Code the extraterritorial criminal jurisdiction created thereby should be restricted in the manner indicated supra.

Extradition—Article 11.2 (f) of the Constitution—Read and applied together with Article 5 (1) (f) of the European Convention of Human Rights (supra) the aforesaid constitutional provision should be given a restrictive interpretation—So that it should be treated as, in effect, preventing only the extradition of a Cypriot citizen who is not also an alien.

1969
Aug. 4,
1970
July 10
—
ALKIVIADES
CHRYSANTHOU
v.
THE POLICE

Constitution—Article 11.2 (f)—Construction and scope—See supra.

European Convention of Human Rights—Article 5 (1) (f)—See supra.

Territorial application of the criminal laws—See supra under Extraterritorial criminal jurisdiction.

Criminal laws—Extraterritorial application of—Section 5 of the Criminal Code as amended—See supra.

Citizenship—Dual citizenship—Cypriot and British—Sections 2 (2) (b) and 3 (2) (j), respectively, of Annex D to the Treaty of Establishment of the Republic of Cyprus signed on August 16, 1960.

In this case the appellant was convicted by the District Court of Nicosia on four counts charging him with the following offences :

- (1) Unlawful possession of a revolver ;
- (2) Unlawful possession of a pistol ;
- (3) Unlawful possession of explosive substances viz. ammunition ; and
- (4) Unlawful possession of plates and instruments for the purpose of making stamps ; and other instruments capable of making forged British £3 postal orders.

The appellant was charged with having committed all these offences in London on December 5, 1968 (when the articles described in the different counts were found in his house there) contrary to the law of Cyprus. The proceedings have been instituted under the provisions of section 5 (1) (d) of the Criminal Code, Cap. 154, as amended by section 4 of the Criminal Code (Amendment) Law, 1962 (Law No. 3 of 1962) which reads :

“ 5 (1) The Criminal Code and any other Law creating an offence are applicable to all offences committed.....
(d) in any foreign country by a citizen of the Republic (of Cyprus) if the offence is one punishable in the Republic with death or imprisonment exceeding two years and the act or omission constituting the offence is also punishable by the law of the country where it was committed.....”

The appellant is a Cypriot, born in Cyprus in May 1934 ; he was ordinarily resident in Cyprus until the 10th of February, 1960, and as from that date ordinarily resident in the United

Kingdom. The trial Judge found quite rightly that at the material time to this case the appellant had a dual citizenship *viz.* he was both a citizen of the Republic of Cyprus and a British subject under sections 2 (2) (b) and 3 (2) (j), respectively, of Annex D to the Treaty of Establishment of the Republic of Cyprus signed on August 16, 1960.

Allowing the appeal and quashing the convictions, the Court :

Held, (I). As to the question of the appellant's citizenship :

(1) On the evidence we think that the learned trial Judge rightly found that at the material time the appellant was both a citizen of the Republic of Cyprus and a British subject. In this respect it is useful to read together sections 2 (2) (b) and 3 (2) (j) of Annex D to the Treaty of Establishment of the Republic of Cyprus signed on the 16th August, 1960. In our view these two provisions are not mutually exclusive in their application.

(2) Therefore, the appellant, who was born in Cyprus after the 5th of November, 1914, and was ordinarily resident here until February 10, 1960—that is, for a considerable time during the five years' period immediately before the Treaty (*supra*)—but who was also—as from February, 1960—ordinarily resident in the United Kingdom immediately before such date (*i.e.* August 16, 1960), has come to possess both Cypriot and British citizenship.

Held, (II). As to the defective framing of the charge :

(1) The counts on which the appellant was convicted as framed for the purpose of bringing him to trial before a Court in Cyprus, in respect of offences allegedly committed in the United Kingdom, do not amount, in our opinion, to charges known to our law.

(2) We think the appellant should have been charged with having committed the offences in question in London, contrary to English law ; and there should have been stated in each count that the particulars therein set out amounted, also, to an offence contrary to a specific provision of the law of Cyprus, instead of charging him—as it was done in this case—that he committed the offences in London contrary to the law of Cyprus, without even mentioning in any of the counts that the particulars therein constituted, also, an offence under English law.

1969
Aug. 4,
1970
July 10

—
ALKIVIADES
CHRYSANTHOU
v.
THE POLICE

1969
Aug. 4,
1970
July 10

—
ALKIVIADES
CHRYSANTHOU
v.
THE POLICE

(3)—(a) The appellant has been, thus, convicted on charges unknown to our law.

(b) Bearing in mind the basic defects in the original counts (as well as our hereinafter stated conclusion on the issue of jurisdiction), we have reached the conclusion that it would not be proper for us to use our discretion under section 145 (1) (c) of the Criminal Procedure Law, Cap. 155, and proceed to amend the charges at this stage for the purposes of making now new counts on which to convict and sentence the appellants.

(c) As a result, the trial of the appellant on the original counts, for charges unknown to our law, and his conviction thereon, have to be treated as a nullity.

Held, (III). As to whether or not a new trial should be ordered and as to the question whether or not in view of the dual citizenship of the appellant, the Cyprus Courts possess jurisdiction in the matter :

(1) We would have ordered a new trial, as we think that such a course was desirable in the present case in the interest of justice. But we found ourselves unable to do so because, on a proper construction of section 5 of the Criminal Code, Cap. 154, (as amended by Law No. 3 of 1962, *supra*) we are of the view that the Cyprus Courts possess no jurisdiction in the matter.

(2) In this connection, having taken into account the history of the amendment of section 5 (*supra*), we think that it was not the object of the amendment to render liable to be tried in Cyprus, in a situation such as that in the present case, a person possessing dual citizenship—in this case Cypriot and British—like the appellant.

(3)—(a) It is clear to us that the amendment became necessary as a result of the decision of the then Supreme Constitutional Court in the case of *The Attorney-General of the Republic and Afamis*, 1 R.S.C.C. 121, in which it was held that the use of the word “alien” in Article 11.2 (f) of our Constitution (*infra*) was intended to restrict to cases concerning aliens the power to arrest or detain with a view to extradition, and that such power could not be used in relation to Cypriot citizens.

(b) In this context, we are of the view that we should not give to the said amendment of section 5 (*supra*) a wider scope of application than what is required by the exigencies of the

situation which it was intended to meet ; and, thus, the extra-territorial criminal jurisdiction which it introduced should be restricted only to cases of persons who possess Cypriot citizenship and who are not, at the same time citizens of a country where they have allegedly committed an offence, as in the present case.

(c) The more so, because as at present advised, and subject to any argument which may be advanced in a future case, we are of the opinion that the appellant, who in view of his British citizenship is also an alien, is not entitled to the protection afforded under Article 11.2(f) of the Constitution* against arrest and detention for purposes of extradition.

Appeal allowed.

Per curiam : After the decision in the *Afamis* case in 1961 (*supra*) there followed in 1962 the enactment of the European Convention of Human Rights (Ratification) Law, 1962 (Law No. 39 of 1962). Under the provisions of Article 5(1)(f) of the Convention, which are applicable in Cyprus by virtue of Article 169 of the Constitution, any person, whether an alien or a Cypriot citizen, might be arrested and detained for purposes of extradition, for trial abroad, in respect of a crime committed abroad ; but the provisions of Article 11.2(f) of our Constitution prohibit such a course in the case of a citizen of Cyprus. In the circumstances we are of the view that there should be given to Article 11.2(f) a restrictive interpretation ; so that it should be treated as, in effect, preventing only the extradition of a Cypriot citizen who is not also an alien.

Thus, we do not think that the appellant, through his not being amenable to the jurisdiction of the Cyprus Courts, can or indeed need escape trial for any offence that he may have committed in England ; because he does not have protection under Article 11.2(f) of the Constitution against arrest and detention with a view to his being extradited to the United Kingdom.

* Article 11.2(f). No person shall be deprived of his liberty save in the following cases when and as provided by law :—

- (f) the arrest or detention of a person to prevent him effecting an unauthorised entry into the territory of the Republic or of an alien against whom action is being taken with a view to deportation or extradition.

1969
Aug. 4,
1970
July 10

—
ALEXANDER
CHRYSANTHOU
v.
THE POLICE

1969
Aug. 4,
1970
July 10

Cases referred to :

The Attorney-General of the Republic and Afamis, 1 R.S.C.C.
121.

ALKIVIADES
CHRYSANTHOU
v.
THE POLICE

Appeal against conviction.

Appeal against conviction by Alkiviades Chrysanthou who was convicted on the 1st May, 1969, at the District Court of Nicosia (Criminal Case No. 3154/69) on 4 counts of the offences of possessing a revolver and a pistol, contrary to section 4 (1) (2) (b) of the Firearms Law, Cap. 57 (as amended), of possessing explosive substances, contrary to section 4 (4) (d) of the Explosive Substances Law, Cap. 54, and of possessing plates or instruments for the purpose of making stamps, contrary to section 35 (a) of the Criminal Code, Cap. 154, and was sentenced by Stylianides, D.J., to one year's imprisonment on each of the firearms counts and on the last count and to six months' imprisonment on the possession of explosives count, the sentences to run concurrently.

L. Clerides, for the appellant.

K. Talarides, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court.

VASSILIADES, P. : This appeal was allowed and the conviction and sentence of the appellant were set aside, soon after the hearing, when we intimated that we would give our reasons later. Mr. Justice Triantafyllides will now give the reasons for our judgment.

TRIANTAFYLLIDES, J. : In this case the appellant was convicted, by the District Court of Nicosia, in criminal case No. 3154/69, on four counts charging him with the following offences :

1. Unlawful possession of a revolver ;
2. Unlawful possession of a pistol ;
3. Unlawful possession of explosive substances, *viz.* ammunition ; and

4. Unlawful possession of plates and instruments for the purpose of making stamps, *viz.* copper plates and other instruments capable of making forged British £3 postal orders.

1969
Aug. 4,
1970
July 10
—

ALKIVIADES
CHRYSANTHOU
v.
THE POLICE

The appellant was charged with having committed all these offences in London, on the 5th December, 1968, when the articles described in the different counts were found in his house there.

At that time the appellant was residing in London, where he had settled since the 10th February, 1960. He came to Cyprus on the 26th January, 1969, while he was on bail to appear, on the 29th January, 1969, before an English Court, in connection with what had been found in his house, on the 5th December, 1968.

The appellant is a Cypriot, born at Lythrodonta village on the 13th May, 1934. He was, initially, issued with a passport, No. 126605, on the 15th January, 1960, by the then British colonial Government of Cyprus. Then, nine years later, on the 16th January, 1969, he was issued in London with a British passport, No. 762383.

The learned trial Judge rightly, we think, found that the appellant, at the material time, was both a citizen of the Republic of Cyprus and a British subject. In this respect it is useful to read together sections 2 (2) (b) and 3 (2) (j) of Annex D to the Treaty of the Establishment of the Republic of Cyprus, signed on the 16th August, 1960. In our view these two provisions are not mutually exclusive in their application; and, therefore, the appellant, who was born in Cyprus after the 5th November, 1914, and was ordinarily resident here, until the 10th February, 1960, that is for a considerable time during the five years immediately before the date of the Treaty, but who was, also—as from February, 1960—ordinarily resident in the United Kingdom immediately before such date, has come to possess both Cypriot and British citizenship.

As the appellant left London and came to Cyprus before his trial in connection with the articles found in his house on the 5th December, 1968, he was charged and tried here in respect thereof; the proceedings having been instituted under the provisions of section 5 (1) (d) of the Criminal Code, Cap. 154, as amended by section 4 of the Criminal Code (Amendment) Law, 1962 (Law 3/62), which reads:—

“ 5 (1) The Criminal Code and any other Law creating an offence are applicable to all offences committed . . .

1969
Aug. 4,
1970
July 10

—
ALKIVIADES
CHRYSANTHOU
v.
THE POLICE

(d) in any foreign country by a citizen of the Republic if the offence is one punishable in the Republic with death or imprisonment exceeding two years and the act or omission constituting the offence is also punishable by the law of the country where it was committed”

The first issue with which we had to deal in this appeal was whether or not the counts on which the appellant was convicted, amounted, as framed against him for the purpose of bringing him to trial before a Court in Cyprus, in respect of offences allegedly committed in the United Kingdom, to charges known to our law.

We have reached the conclusion that they did not : We think that the appellant should have been charged with having committed the offences in question in London, contrary to English law ; and there should have been stated in each count that the particulars therein amounted, also, to an offence contrary to a specific provision of the law of Cyprus, instead of charging him—as it was done—that he committed the offences in London contrary to the law of Cyprus, without even mentioning in any of the counts that the particulars therein constituted, also, an offence under English law.

The conclusion was, thus, unavoidable that the appellant was convicted on charges unknown to our law.

Under section 145 (1) (c) of the Criminal Procedure Law, Cap. 155, the conviction of the appellant on the erroneously framed counts could be substituted by a conviction for offences of which he might have been convicted by the trial Court on the evidence adduced at the trial ; and this Court could then proceed to sentence him accordingly.

This is, however, a discretionary power ; and, bearing in mind the basic defects in the original counts, as well as our hereinafter stated conclusion on the issue of jurisdiction, we have reached the conclusion that it would not be proper to amend the charges at this stage for the purpose of making out of the original counts new ones on which to convict and sentence the appellant.

As a result, the trial of the appellant on the original counts, for charges unknown to our law, and his conviction thereon, have to be treated as a nullity.

The question that, naturally, arose next was whether or not we should make an order for a new trial.

1969
Aug. 4,
1970
July 10

—
ALKIVIADIS
CHRYSANTHOU
v.
THE POLICE

We would have ordered a new trial, as we think that such a course was desirable in the present case in the interests of justice. But we found ourselves unable to do so because, on a proper construction of section 5 of the Criminal Code, Cap. 154, as amended by Law 3/62, we are of the view that the Cyprus Courts possess no jurisdiction in the matter.

In this connection, having taken into account the history of the amendment of section 5, as effected by Law 3/62, we think that it was not the object of the amendment to render liable to be tried in Cyprus, in a situation such as that in the present case, a person possessing dual citizenship—in this case Cypriot and British—like the appellant. It is clear to us that the amendment became necessary as a result of the decision of the Supreme Constitutional Court in the case of *The Attorney-General of the Republic and Afamis* (1 R.S.C.C. 121) in which it was held that the use of the word "alien" in Article 11.2 (f) of our Constitution, instead of the word "person", which is used in Article 5 (1) (f) of the corresponding provision of the European Convention of Human Rights, was intended to restrict to cases concerning aliens the power to arrest or detain with a view to extradition, and that such power could not be used in relation to Cypriot citizens.

In this context, we are of the view that we should not give to the said amendment of section 5 a wider scope of application than what is required by the exigencies of the situation which it was intended to meet; and, thus, the extraterritorial criminal jurisdiction which it introduced should be restricted only to the cases of persons who possess Cypriot citizenship and who are not, at the same time, citizens of a country where they have allegedly committed an offence, as in the present case.

The more so, because, as at present advised, and subject to any argument that may be advanced in a future case, we are of the opinion that the appellant, who in view of his British citizenship is also an alien, is not entitled to the protection afforded under Article 11.2 (f) of the Constitution against arrest and detention for purposes of extradition.

In this respect it would be useful to bear in mind that after the decision by the Supreme Constitutional Court in the *Afamis* case, in 1961, there followed in 1962 the enactment of The European Convention of Human Rights (Ratification) Law, 1962 (Law 39/62). Under the provisions of Article 5 (1) (f), which are applicable now in

1969
Aug. 4,
1970
July 10
—

ALKIVIADES
CHRYSANTHOU
v.
THE POLICE

Cyprus by virtue of Article 169 of our Constitution, any person, whether an alien or a Cypriot citizen, might be arrested and detained for purposes of extradition, for trial abroad, in respect of a crime committed abroad ; but the provisions of Article 11.2 (f) of the Constitution prohibit such a course in the case of a citizen of Cyprus. In the circumstances, when the said Constitutional provision and the relevant provision of the Convention are read and applied together, we are of the view that there should be given to Article 11.2 (f) a restrictive interpretation ; so that it should be treated as, in effect, preventing only the extradition of a Cypriot citizen who is not also an alien.

Thus, we do not think that the appellant, through his not being amenable to the jurisdiction of the Cyprus Courts, can, or, indeed, need, escape trial for any offence that he may have committed in England ; because, he does not enjoy protection under Article 11.2 (f) against arrest and detention with a view to his being extradited to the United Kingdom, should it be decided to take proceedings against him there.

For the above reasons the appeal of the appellant was allowed and his conviction was set aside as a nullity ; and the sentence imposed on him was consequently also set aside.

Appeal allowed.