

CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL
FROM THE ASSIZE COURTS AND DISTRICT COURTS

[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU, JJ.]

THEODOROS HERODOTOU,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 3611).

1975
Jan. 8

THEODOROS
HERODOTOU

v.
THE POLICE

*Criminal Law—Sentence—One month's imprisonment for
unlawful possession of property—Section 309 of the
Criminal Code Cap. 154—Looting of abandoned and
unprotected property—Need to deal with offences of this
5 nature with severity—Sentence inadequate—Increased.*

Sentence—Inadequate sentence—Increase.

*Unlawful possession of property—Section 309 of the Criminal
Code Cap. 154—Sentence—Increase of sentence.*

Sentence—Mitigating factors—Family circumstances.

10 This was an appeal against a sentence of one month's
imprisonment which was passed upon the appellant
after he had pleaded guilty to the offence of unlawful
possession of property, worth £10, namely three iron
sticks and three water pipes, which were reasonably
15 suspected of being stolen; actually, the appellant had
admitted to the police that he took the sticks and the
pipes from abandoned houses in the Turkish village of
Episkopi.

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Counsel for the appellant has argued, mainly, that the sentence imposed on his client is wrong in principle, because the judge took unduly into account the fact that the country was facing destruction as a result of the Turkish invasion, and that the sentence is excessive inasmuch as the trial judge disregarded mitigating personal circumstances of the appellant. He was a married man, thirty-three years old, with a sick wife and five minor children; he was also a first offender. 5

Held, (1) We cannot agree that the situation created by the Turkish invasion of Cyprus was an irrelevant consideration in the present case: There can be no doubt that as a result of such situation many innocent people found themselves in the unfortunate position of having to abandon their properties; amongst them were the Turkish-Cypriot owners of the houses from which the appellant stole the sticks and pipes; what has happened in this case is in fact looting of abandoned and unprotected property. 10 15

(2) We fully share the view expressed in the rather similar case of *Tattaris and Others v. The Republic* (1965) 2 C.L.R. 1 (at p. 7) by Vassiliades, J., (as he then was) and, therefore, we regard the punishment which has been imposed on the appellant as being inadequate and having to be increased. 20 25

(3) We do agree, however, that his family circumstances must be taken into account as mitigating factors (see, *inter alia*, *Evangelou v. The Police* (1970) 2 C.L.R. 45). So, we shall refrain from imposing on him a sentence of imprisonment more severe than double the one which was originally passed and we, consequently, sentence him to two months' imprisonment as from to-day. 30

Appeal dismissed.

Cases referred to:

Georgiou v. The Police (1966) 2 C.L.R. 18; 35

Tattaris and Others v. The Republic (1965) 2 C.L.R. 1 at p. 7;

Evangelou v. The Police (1970) 2 C.L.R. 45.

Appeal against sentence.

1975
Jan 8

THEODOROS
HERODOTOU

v.
THE POLICE

Appeal against sentence by Theodoros Herodotou who was convicted on the 27th December, 1974 at the District Court of Limassol (Criminal Case No. 10515/74) on one count of the offence of unlawful possession of property contrary to sections 309 and 20 of the Criminal Code Cap. 154 and was sentenced by S. Demetriou, S.D.J. to one month's imprisonment.

C. Tsirides, for the appellant.

Gl. Michaelides, for the respondents.

The judgment of the Court was delivered by:-

TRIANAFYLLIDES, P.: The appellant has appealed against the sentence of one month's imprisonment which was passed upon him on the 27th December, 1974, after he had pleaded guilty to the offence of unlawful possession of property, worth £10, namely three iron sticks and three water pipes, which were reasonably suspected of being stolen; actually, the appellant had admitted to the police that he took the sticks and the pipes from abandoned houses in the Turkish village of Episkopi.

Counsel for the appellant has argued, mainly, that the sentence imposed on his client is wrong in principle, because the judge took unduly into account the fact that the country was facing destruction as a result of the Turkish invasion, and that the sentence is excessive inasmuch as the trial judge disregarded mitigating personal circumstances of the appellant.

We agree with counsel for the appellant that—as was stated in, *inter alia*, *Georghiou v. The Police* (1966) 2 C.L.R. 18—"the sentence in every case depends to a great extent on the facts of that particular case"; but, we cannot agree that the situation created by the Turkish invasion of Cyprus was an irrelevant consideration in the present case: There can be no doubt that as a result of such situation many innocent people found themselves in the unfortunate position of having to abandon their properties; amongst them were the Turkish-Cypriot owners of the houses from which the appellant stole the sticks and pipes; what has happened in this case is in fact looting of abandoned and unprotected property.

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THEODOROS
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In the rather similar case of *Tattaris and Others v. The Republic* (1965) 2 C.L.R. 1, Vassiliades, J. as he then was, said (at p. 7) :-

“Coming now to the appeal against sentence of appellant No. 1, the situation prevailing in Limassol at the time the offence in question was committed, namely, during the last week of March of this year, must not be lost sight of. The circumstances in which the cow in question was stolen amount to looting and it seems clear that the accused, taking advantage of the situation resorted to looting. Bearing this important factor in mind and also the leading part played by this appellant in the commission of this offence, the Court is of the opinion that, in all the circumstances, the sentence of three years imposed on this appellant by the trial Court is manifestly inadequate; and therefore, making use of our powers under section 145(2) of the Criminal Procedure Law (Cap. 155), we increase the sentence of the first appellant on count (1) to a sentence of five years imprisonment from the date of conviction. The offence could not have been looked upon as being mere animal stealing; at times such as the present, looting property of any citizen of the Republic, be he Greek or Turk, who happens not to be in a position to look after it, is an abominable crime against society as a whole, and nothing less than full severity is an adequate measure for it.”

We fully share the above view and, therefore, we regard the punishment which has been imposed on the appellant as being inadequate and having to be increased.

We do agree, however, that his family circumstances must be taken into account as mitigating factors (see *inter alia*, *Evangelou v. The Police* (1970) 2 C.L.R. 45) : He is a married man, thirty-three years old, with a sick wife and five minor children; he is, also, a first offender. So, we shall refrain from imposing on him a sentence of imprisonment more severe than double the one which was originally passed and we, consequently, sentence him to two months' imprisonment as from today.

Appeal dismissed.
Sentence increased.