

1982 September 16

[TRIANTAFYLIDES, P., MALACHTOS, SAVVIDES, JJ.]

CHARALAMBOS CHARALAMBOUS,

*Appellant.*

v.

THE POLICE,

*Respondents.*

(*Criminal Appeal No. 4325*).

*Criminal Law—Sentence—Quarrying without a licence—C£350 fine  
—Fact that appellant subsequently obtained a licence and paid  
all relevant fees, that he was a first offender and acted as he did  
while being under serious pressure of having to fulfil a contractual  
obligation of his not taken into account—Sentence wrong in prin-  
ciple and manifestly excessive—Reduced to C£75—Whether  
an order of compensation under section 24(1) of the Courts of  
Justice Law, 1960 (Law 14/60) could be made—Papaioannou v.  
Police, 1962 C.L.R. 232 at p. 235 distinguished.*

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The appellant pleaded guilty to the offence of quarrying with-  
out a licence, contrary to section 37(2) of the Mines and Quarries  
(Regulation) Law, Cap. 270 and was sentenced to pay a fine  
of C£350. The offence in question was committed when accused  
started to quarry stones from a field without a quarry permit  
because allegedly he had to fulfil a contractual obligation of  
his. Subsequently he obtained a quarry permit in respect of  
the said field and paid the relevant fees.

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In passing sentence the trial Court appeared to be influenced  
by the case of *Papaioannou v. The Police*, 1962 C.L.R. 232 at p.  
235 and it appeared, also, that the above fine was assessed so  
as to include the benefit of the alleged value of the quarry  
materials which appellant quarried.

*Upon appeal against sentence:*

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*Held*, that though on the one hand, it is proper to deter people  
from quarrying without a licence and thus infringing the rights

vested in the Republic under Article 23.1 of the Constitution, and causing, also, damage to private property on the other hand there have to be taken into account all the circumstances of this case, including the fact that the appellant has, even subsequently, obtained a quarry licence and paid the relevant fees to the Government, as well as the factors that he is a first offender and that he has acted as he did while being obviously under the serious pressure of having to fulfil urgently a contractual obligation of his; accordingly the sentence is wrong in principle and manifestly excessive and will be reduced to £75 (*Papaioannou* (supra) distinguished). 5 10

*Held*, further, that the appellant could have been ordered to pay compensation under section 24(1) of the Courts of Justice Law, 1960, but he could not be fined in lieu of, or by way of, such compensation; that this was not a proper case in which to make an order for compensation because there is nothing to show that there has been made any claim against the appellant. 15

*Appeal partly allowed.*

Cases referred to:

*Papaioannou v. Police*, 1962 C.L.R. 232 at p. 235. 20

#### Appeal against sentence.

Appeal against sentence by Charalambos Charalambous who was convicted on the 8th June, 1982 at the District Court of Larnaca (Criminal Case No. 4320/82) on one count of the offence of quarrying without a licence contrary to section 37(2) of the Mines and Quarries (Regulation) Law, Cap. 270 and was sentenced by Eliades, D.J. to pay £350.- fine. 25

*A. Indianos* with *K. Mouskos*, for the appellant.

*M. Photiou*, for the respondents.

TRIANTAFYLLIDES P. gave the following judgment of the Court. 30  
The appellant has appealed against the sentence of a fine of C£350 which was passed upon him after he had pleaded guilty to the offence of quarrying without a licence contrary to section 37(2) of the Mines and Quarries (Regulation) Law, Cap. 270.

The maximum fine payable for an offence of this kind has been increased by the Increase of Fines (Certain Statutory Provisions) Law, 1974 (Law 4/74) to C£750; also, a sentence of up to one year's imprisonment may be imposed, too. 35

The circumstances in which the offence was committed are stated in the judgment of the trial court as follows:

5           “The facts of the case relate to the construction of that part of the Larnaca–Nicosia road outside Koshi village, when accused was under contract to supply the contractor with stones known as ‘havarotsiakilon’. As the stones which he was extracting from a field, for which a quarry permit was issued to him, were unsuitable, he started quarrying without a licence from another field and this  
10           illegal activity forms the subject-matter of the present charges to which he has pleaded guilty”.

15           It is common ground that, subsequently, the appellant obtained a quarry licence in respect of the property in question and paid all relevant fees, but such licence was in relation to a period which commenced soon after the commission of the offence for which he was punished.

          The trial court in passing sentence referred to the case of *Papaioannou v. The Police*, 1962 C.L.R. 232, where Josephides J. said (at p. 235):

20           “With regard to the fine of £5 imposed on the first appellant, for driving a diesel motor lorry without a motor vehicle licence, we would observe that the fees payable for such a lorry are £27.100 mils per quarter, and this Court will not allow him to take advantage of his failure to pay the  
25           fees which he was bound to pay under the law. In the circumstances of the case we are of the view that the fine of £5 imposed on him is manifestly inadequate and we, accordingly, raise the fine from £5 to £30 on count 1”.

30           Though we do subscribe to the principle which was enunciated, as above, in the *Papaioannou* case, *supra*, we are of the view that the *Papaioannou* case is clearly distinguishable from the present one, because the appellant in the case before us has, eventually, paid the fees in respect of the relevant licence. We are, therefore, of the view that the trial court was erroneously  
35           influenced by the *Papaioannou* case in assessing the fine to be paid by the present appellant.

          It appears, also, that the said fine was assessed so as to include the benefit of the alleged value—(C£250)—of the quarry

materials which the appellant derived by quarrying without a licence. The appellant could have been ordered to pay, in this respect, compensation under section 24(1) of the Courts of Justice Law, 1960 (Law 14/60), as amended by the Courts of Justice (Amendment) Law, 1972 (Law 58/72) and the Courts of Justice (Amendment) Law, 1982 (Law 35/82), but he could not be fined in lieu of, or by way of, such compensation; and we do not think that this was a proper case in which to make an order for compensation because there is nothing to show that there has been made any claim against the appellant.

In the light of all the foregoing we think that the sentence which was passed upon the appellant is wrong in principle and manifestly excessive; on the one hand, it is proper to deter people from quarrying without a licence and thus infringing the rights vested in the Republic under Article 23.1 of the Constitution, and causing, also, damage to private property; on the other hand, however, there have to be taken into account all the circumstances of this case, including the fact that the appellant has, even subsequently, obtained a quarry licence and paid the relevant fees to the Government, as well as the factors that he is a first offender and that he has acted as he did while being obviously under the serious pressure of having to fulfil urgently a contractual obligation of his.

We have, consequently, decided to reduce the fine imposed on the appellant from C£350 to C£75 and his appeal is allowed accordingly.

*Appeal allowed. Sentence reduced to £75.-*