

1983 May 4

[HADJIANASTASSIOU, STYLIANIDES, PIKIS, JJ.]

ANDREAS LOUROUTZIATIS.

*Appellant.*

v.

THE REPUBLIC.

*Respondent.*

(Criminal Appeal No. 4397).

*Road traffic—Sentence—Disqualification—Careless driving—Road  
accident caused through sleepiness of driver—Sleepiness an aggra-  
vating factor—Eight months' disqualification—Need that Courts  
should make recourse to disqualification for the effective protection  
of Society in view of the mounting number of road accidents—  
5 Personal circumstances of accused to be taken into consideration—  
Inadequate consideration given to fact that accused suffered con-  
siderably as a result of his conduct and that he was a first offender  
—Period of disqualification reduced to six months.*

10 The appellant caused, because of lack of due care, an accident  
on the main Nicosia-Limassol road, the prime victim of which  
was himself, suffering injuries and damage to his property,  
amounting to approximately one thousand pounds. He collided  
into the rear of a lorry and thereafter his car, apparently out of  
15 control, skidded across the entire width of the road, and came to  
a standstill on the berm. The justification advanced by the  
appellant for the accident was inability to exercise proper control  
over his vehicle on account of sleepiness.

20 He was convicted of the offence of careless driving and senten-  
ced to a fine of £20 and disqualified for eight months. Upon  
appeal against the sentence of disqualification it was contended  
that it was excessive because of the unblemished past of the  
appellant and the consequences he suffered, physical and ma-  
terial, as a result of the accident, amounting to a kind of punish-  
ment for his negligent conduct.

*Held*, that sleepiness is an easily foreseeable hazard against which every driver can readily guard; that far from being a mitigating factor sleepiness is an aggravating one because of a driver's ability to prevent it from becoming a cause of the accident; that the mounting number of road accidents and the considerable waste of human and material resources associated therewith, make recourse to disqualification, a measure necessary for the effective protection of society; that in the discharge of this duty, Courts must not flinch from the responsibility of applying the law effectively; and that, therefore, disqualification was, given the conduct of the appellant, warranted by the circumstances of the case; that on the other hand, sentencing is a composite process that requires balancing all elements and factors relevant to sentence; that the sentence must take heed to the degree necessary of the personal circumstances of the accused; that in this case the trial Court paid inadequate consideration to the fact that accused suffered considerably as a result of his conduct and that he was a first offender; accordingly the period of disqualification will be reduced to six months.

*Held*, further, that disqualification serves to emphasize that driving is not an inherent right but a right exercised on licence that may be withheld in the face of abuse of the qualified right. The continued exercise of the right is subject to the condition inherent in the licence to observe traffic rules and regulations as well as the rights of other users of the road.

*Appeal allowed*

Cases referred to:

- Zachariades v. Police* (1968) 2 C.L.R. 121 at p. 123;
- Suleiman v. Police* (1963) 1 C.L.R. 106;
- Lazarou v. Police* (1970) 2 C.L.R. 18;
- Armeftis v. Police* (1970) 2 C.L.R. 185;
- Havatzia v. Police* (1980) 2 C.L.R. 195.

**Appeal against sentence.**

Appeal against sentence by Andreas Louroutziatis who was convicted on the 31st March, 1983 by a Military Court sitting at Larnaca (Case No. 84/83) on one count of the offence of negligent driving contrary to sections 8 and 19 of the

Motor Vehicles and Road Traffic Law, 1972 (Law No. 86/72) and section 5 of the Military Criminal Code and Procedure Laws, 1964 - 1979 and was sentenced to £20.- fine and was disqualified from holding or obtaining a driving licence for a period of eight months.

A. Poetis , for the appellant.

P. Ioulianos , for the respondents.

HADJIANASTASSIOU J.: The judgment of the Court will be delivered by Mr. Justice Pikis.

10 PIKIS J.: This is an appeal against the sentence imposed upon conviction on a charge of negligent driving. The appellant caused, because of lack of due care, an accident on the main Nicosia- Limassol road, the prime victim of which was himself, suffering injuries and damage to his property, amounting to  
15 approximately one thousand pounds. He collided into the rear of a lorry; thereafter, his car, apparently out of control, skidded across the entire width of the road, ending on the berm whereto his car came to a standstill.

The justification advanced by the appellant for the accident and the negligent conduct associated therewith, was professed inability to exercise proper control over his vehicle on account of sleepiness. Sleep overcame him, as he mentioned in a statement after the accident, repeated before the trial Court, to a degree disabling him from exercising proper control over  
20 his car. The military Court dealt with his case because at the time he was serving as a conscript with the National Guard. He is still serving as a national guardsman, due to be demobilised in September.

The trial Court took a serious view of the accident, rightly  
30 in our view, in view of the conduct of the appellant and, sentenced him to a fine of £20.- and disqualification for eight months. The appeal is solely directed against the length of the period of disqualification. Counsel for the appellant acknowledged that disqualification was, in the circumstances, an appropriate  
35 punishment, justified in principle, but contended it was excessive because of the unblemished past of the appellant and the consequences he suffered, physical and material, as a result of the accident, amounting to a kind of punishment for his negligent conduct.

We have anxiously debated among ourselves the sentencing principles relevant to the circumstances of the case in order to evaluate whether the sentence was in any respect excessive. Counsel for the Republic supported it as right in principle and warranted by the facts of the case. 5

Sleepiness is an easily foreseeable hazard against which every driver can readily guard. It is a circumstance exclusively within the control of the driver, in no way precipitated by the conduct of other users of road. Responsibility consequently rest squarely on the shoulders of the driver losing proper control on account of sleepiness. Culpability in cases of negligent driving is primarily measured by reference to the risks posed to other users of the road and generally members of the public, likely to be affected by one's negligent conduct. Sleepiness, far from being a mitigating factor, is an aggravating one because of the driver's ability to prevent it from becoming a cause of negligent driving. 10 15

Disqualification is an especially apt form of punishment for negligent driving. (See, *Costas Zachariades v. The Police* (1968) 2 C.L.R. 121, 123). In our judgment, disqualification serves to emphasize that driving is not an inherent right but a right exercised on licence that may be withheld in the face of abuse of the qualified right. The continued exercise of the right is subject to the condition inherent in the licence to observe traffic rules and regulations as well as the rights of other users of the road. The mounting number of road accidents and the considerable waste of human and material resources associated therewith, make recourse to disqualification, a measure necessary for the effective protection of society. In the discharge of this duty, Courts must not flinch from the responsibility of applying the law effectively. We find, therefore, ourselves in agreement with the decision of the military Court that disqualification was, given the conduct of the appellant, warranted by the circumstances of the case. On the other hand, sentencing is a composite process that requires balancing all elements and factors relevant to sentence. This applies to cases of negligent driving as well, notwithstanding that culpability is basically determined by an objective standard. The sentence must take heed to the degree necessary of the personal circumstances of the accused. No single factor must be allowed to predominate to the exclusion of all others; 20 25 30 35 40

to predominate yes, but not exclusively. Counsel for the Republic was, like counsel for the appellant, unable to support the length of disqualification in view of the after-effects of the accident and personal circumstances of the appellant.

5 In the submission of both counsel, as we may gather from their addresses, sentence was not individualised to the degree necessary to do justice to the person of the appellant.

The course of justice, firm and certain as it must be, must never eliminate from consideration the intrinsic facts of the case and personal circumstances of the accused. It must reflect these considerations in order that sentence may fit the person of the accused as well. A series of decisions cited by counsel for the two sides - though bearing no direct relevance to the facts of this case - tend to suggest that the period of

10 disqualification was rather longer than the period usually approved in cases of this nature, having no serious repercussions on third parties. (See, *Yusuf Suleiman v. The Police* (1963) 1 C.L.R. 106; *Savvas Lazarou v. The Police* (1970) 2 C.L.R. 18; *Matheos Chr. Armeftis v. The Police* (1970) 2 C.L.R. 185; *Havatzia v. The Police* (1980) 2 C.L.R. 195). While we affirm that sentencing is primarily the province of the trial Court and uniformity in sentencing subject to inevitable differences between the facts of any two cases, it must be appreciated that consistency in

15 sentencing, subject to the above, is highly desirable.

After careful review of the facts of the case, we are left with the impression that the trial Court paid inadequate consideration to the fact that accused suffered considerably as a result of his conduct and that he was a first offender. Not without

20 hesitation, we have decided to reduce the period of disqualification to six months. To that extent, the appeal is allowed.

Appeal allowed - Sentence of disqualification reduced to six months.

35 *Appeal allowed.  
Disqualification  
reduced to six months.*