

1984 April 10

[TRIANTAFYLIDIS, P., LORIS, PIKIS, JJ.]

ZOHRAP KARAOGLANIAN,

Appellant.

v

THE POLICE,

Respondents.

(Criminal Appeal No. 4497).

Alien—Engaging an alien in one's service without due notification to a Registration Officer—Regulation 38 of the Aliens and Immigration Regulations, 1972—Application of, not restricted to a master and servant relationship—Concept of engaging someone in one's service wider than that of employing someone in one's work—Appellant receiving in his service an alien for the purpose of testing his skill and ability as a mechanic in order to report to a customer about suitability of the alien for employment by the customer—Not giving notice of this engagement to Immigration Authorities—Committing an offence under reg. 38.

The appellant, the owner of a mechanical workshop at Larnaca, received in his service an alien, a Syrian subject, for the purpose of testing his skill and ability as a mechanic, in order to report to a customer about the suitability of the alien for employment by the customer. He failed to notify, as allegedly required by reg. 38, of the Aliens and Immigration Regulations, 1972, the Immigration Authorities of the fact that he had received in his service an alien; and was prosecuted and convicted, for his failure to do so, on a charge found on the provisions of reg. 38.

Upon appeal against conviction Counsel for the appellant submitted that the nature of the relationship between appellant and the alien was not such as to require notification to the Immigration Authorities; and that only where a relationship of master and servant exists between the employer and the alien the law casts a duty to report the engagement of the services of an alien to the Immigration Authorities.

Held, that the application of reg. 38 is not restricted to a master and servant relationship; that the application of reg. 38 is mainly dependent not on the employment of an alien but on his engagement (προσλαμβάνει) in the service of a resident of Cyprus; that the concept of engaging someone in one's service is wider than that of employing someone in one's work; that, moreover, by the terms of reg. 38 the object for which one is engaged in another's service is irrelevant; that on a proper appreciation of the facts before this Court what emerges is that appelland engaged the services of an alien who was actually seen working at his workshop; that of this engagement he failed to give due notice to the Immigration Authorities, committing thereby an offence; accordingly the appeal must fail.

Appeal dismissed.

Cases referred to:

Seraphim v. Police (1981) 2 C.L.R. 227.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Zohrap Karaoglanian who was convicted on the 11th January, 1984 at the District Court of Larnaca (Criminal Case No. 6332/83) on one count of the offence of engaging in his services an alien without due notification to a Registration Officer contrary to regulation 38 of the Aliens and Immigration Regulations, 1972 and was sentenced by Arestis, D.J. to pay £15.- fine and was further bound over £100.- for one year to keep the law and regulations.

A. Poetis, for the appelland.

A. M. Angelides, Senior Counsel of the Republic, for the respondents.

TRIANAFYLLIDES P.: The judgment of this Court will be delivered by Mr. Justice Pikis.

PIKIS J.: Appelland was found guilty of engaging in his service an alien without due notification to a Registration Officer, as required by regulation 38 of the Aliens and Immigration Regulations, 1972 (see, Gazette of 22.12.72 - Part Three (I) - No. 242). The facts upon which the conviction was founded, not in dispute, are the following:

Appelland, the owner of a mechanical workshop at Larnaca, received in his service an alien, a Syrian subject, for the purpose

of testing his skill and ability as a mechanic, in order to report to a customer about the suitability of the alien for employment by the customer. He failed to notify, as allegedly required by reg. 38, the Immigration Authorities of the fact that he had
5 received in his service an alien. He was prosecuted and convicted, for his failure to do so, on a charge found on the provisions of reg. 38.

Counsel for the appellant submitted the nature of the relationship between appellant and the alien was not such as to require
10 notification to the Immigration Authorities. Only where a relationship of master and servant exists between the employer and the alien the law casts a duty to report the engagement of the services of an alien to the Immigration Authorities. He argued that the only decision of the Supreme Court on the subject,
15 namely, *Seraphim v. The Police* (1981) 2 C.L.R. 227, did not decide otherwise. In the aforesaid case, the Supreme Court rejected the submission that application of reg.38 presupposes the existence of a concrete master and servant relationship, or that it only prohibits gainful employment. In the words of
20 Triantafyllides, P., who gave the judgment of the Court in the aforesaid case -

“We cannot find anything in regulation 38 which could lead to its interpretation as contended, by counsel for the
25 appellant. This regulation is framed in such a way as to render an offence the taking into employment of an alien without proper notification to the appropriate authority, even if the employment is without a contract for this purpose and, even, also, without remuneration.....”

The decision in *Seraphim* is indicative of the regulatory nature
30 of the offence created by reg. 38 and suggestive of the ambit of the regulation, a regulation designed to ensure that the engagement of the services of aliens is properly controlled. Obviously, no control can be exercised unless proper information is passed to the authorities.

35 We appreciate that the facts of the present case present features that distinguish it from those in *Seraphim*. Nevertheless, the decision in *Seraphim* is, for the reasons indicated above, most instructive as to the tenor of the law and the breadth of its provisions.

The application of reg.38 is not restricted to a master and servant relationship. This is evident from the words chosen by the legislator to convey its intentions. The application of reg.38 is mainly dependent not on the employment of an alien but on his engagement (προσλαμβάνει) in the service of a resident of Cyprus. The concept of engaging someone in one's service is wider than that of employing someone in one's work. For instance, someone may be engaged in the service of another for a concrete purpose to be exclusively carried out by the former. It would nonetheless constitute an engagement in one's service notwithstanding the absence of a master and servant relationship. Moreover, by the terms of reg. 38, the object for which one is engaged in another's service, is irrelevant. So long as it can be objectively said that an alien is engaged in one's service, the offence is committed upon failure of the person engaging him to notify the Immigration Authorities of the fact. Any other interpretation would defeat the intention of the legislator to ensure strict control of the engagement in one's service of an alien, under any guise, in Cyprus. Bearing in mind the strict nature of the offence, it is only proper to mitigate its rigour by conditioning its enforcement on the de minimis rule.

On a proper appreciation of the facts before us, what emerges is that appellant engaged the services of an alien who was actually seen working at his workshop. Of this engagement he failed to give due notice to the Immigration Authorities, committing thereby an offence.

The appeal is dismissed. Order accordingly.

Appeal dismissed.