1985 February 13

[A. LOIZOU, DEMETRIADES, LORIS, JJ.]

CHRISTOFOROS NICOLAOU PIRIKKIS,

Appellant,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 4607)

Sentence—Accused charged with two or more offences—Power of Court to direct that sentences may run consecutively or concurrently—Principles applicable—Criminal Procedure—Plea of guilty—Mitigation inconsistent with the plea of guilty—In such a case Court should draw counsel's attention and if he insists, a plea of not guilty should be entered —Principles applicable and procedure to be followed in cases where the accused pleads guilty on a basis, which though still amounts to the commission of the relevant offence, is different from the facts relied upon by the prosecution.

The appellant, a young sergeant of the National Guard, doing his National Service, was convicted upon his own plea of guilty on five counts, namely on counts 1, 2, 4 and 5 for applying violence against a subordinate soldier contrary to section 81 of the Military Criminal Code and Procedure Law, 40/64 as amended and on count 3 for conduct incompatible with military discipline contrary to section 101 of the same law.

In accordance with the particulars of the offence in count 1 on the 25.7.84 the appellant hit his subordinate soldier Kaimi Michael on the chest about ten times with his hands, in accordance with the particulars of the offence in count 2 on the 30.7.84 he hit the same soldier on the chest with his hands about ten times, in accordance with the particulars of the offence in count 3 the appellant be-

tween the 30.7.84 and 4.8.84 subjected the same soldier to impermissible bodily suffering by compelling him to do "push ups", in accordance with the particulars of the offence in count 4 the appellant between the 30th and 31st July 1984 hit his subordinate soldier Kefala Costas with a chain on his chest, and in accordance with the particulars of the offence in count 5 the appellant between the 3rd and 4th August 1984 hit his subordinate soldier Latsia Costas with his fist on the chest.

In her address in mitigation the then counsel for the appellant said that she did not agree with the details of the offences given by the prosecution. She disputed the way alleged by the prosecution as to how the appellant came in possession of the chain, she disputed that the appellant hit one of the complainant "ten times" (but admitted that he hit him) and then went on to say that the complainants were provocative in their conduct and the appellant did what he did in an effort to impose discipline.

The Military Court sentenced the appellant to six months' imprisonment on each count and ordered the sentences to run consecutively on the ground that each offence was committed against a different person or at different dates. In passing sentence the Court stated that it took into consideration the seriousness of the offence, the excuse given for the conduct of the appellant, the fact that appellant had a clean criminal record and the fact that for his said conduct the appellant was punished by 20 days disciplinary imprisonment.

The appellant appealed both against conviction and sentence. The following are in short the grounds of appeal:

(1) The sentence is excessive and disproportionate to the offence;

(2) The Military Court wrongly based the sentence on the judgment of *Theofilou* v. *The Republic* (1984) 2 C.L.R. 144.

(3) The judgment that the sentences should not run concurrently is wrong and

(4) The address in mitigation was to a great extent inconsistent with the facts of the case.

Obviously ground 4 is the ground on which the appeal against conviction is based.

Held, dismissing the appeal against conviction: (1) If in the course of mitigation reference is made to facts inconsistent with the plea of guilty the Court should draw counsel's attention, and if counsel insists, the Court should enter a plea of not guilty. In the present case the mitigation was not inconsistent with a plea of guilty. It simply aimed at giving a more favourable version for the appellant as regards the circumstances of the offences, which still amounted to the offences to which he pleaded guilty.

(2) As regards the procedure to be followed in cases where an offender pleaded guilty, but on a basis which though still amounts to the offence differs from the facts relied on by the prosecution and without attempting to lay down any general principles of law or special rules of practice to be followed, the main alternatives, that can be discerned from the case law are among others that (a) the Judge is not bound to approach the matter on the basis put in mitigation (b) he is entitled to determine the matter on the information before him but he must resolve any doubt in favour of the accused (c) when the difference between the version of the accused and the version of the prosecution is great, it is desirable to enter a plea of not guilty (d) the defence may call evidence in support of the contentions of the accused, but the Judge is not bound to accept it, even if it goes unchallenged by the prosecution; the prosecution has also such a right to call evidence (e) The procedure of hearing evidence on some factual aspects can be considered as preferable to the one of entering a plea of not guilty and (f) the Judge should state explicitly the facts he accepts as the basis of his sentence.

Held, further, partly allowing the appeal against sentence:

(1) The Courts have power to direct that sentences may run concurrently or consecutively. As to what is appropriate a fundamental rule is that counsecutive sentences

should not be passed for offences arising out of the same transactions. Where, however, the maximum sentence on a count is insufficient for the protection of the public or the treatment of the offender, it is proper to pass consecutive sentences. Furthermore a multiplicity of short consecutive sentences adding up to a substantial term of imprisonment is not to be encouraged. Where the offences are a series of similar transactions it is the overall picture that counts. And even where the offences do not arise out of the same transaction or do not form part of a series of similar transactions the Court should consider whether the total length of the sentences to be imposed is not excessive in the circumstances.

(2) The approach of the Military Court in the present case was not wrong in principle. The appellant's offences were not committed in the course of a single transaction. Though the notion of a single transaction covers a sequence of offences involving repetition of the same conduct towards the same victim, it does not normally apply to a series of similar offences involving different victims even though the offences are of a similar character.

(3) The totality of the sentence imposed by the Military Court in this case is excessive. It is preferable to make the necessary adjustment by ordering the sentences to run concurrently rather than by reducing the length of individual sentences. In the circumstances the sentences on counts 2, 3 and 4 should run concurrently with the sentences on counts 1 and 5 which should remain consecutive.

Appeal against sentence allowed. Sentences varied.

Cases referred to:

Theofilou v. *The Republic*, (1984) 2 C.L.R. 114;

Efstathiou v. *The Police*, 22 C.L.R. 191;

The Attorney-General v. *Mahmout*, 1962 C.L.R. 152;

Klonarou v. *The District Officer* (1963) 1 C.L.R. 47;

Kefalos v. *The Police*, (1972) 2 C.L.R. 1;

Lytrides v. *The Municipality of Famagusta* (1973) 2 C.L.R. 119;

Polykarpou v. *The Police*, (1967) 2 C.L.R. 152;

Athlitiki Efimeris "Filathlos" and another v. *The Police* (1967) 2 C.L.R. 249;

Demosthenous v. *The Police* (1985) 2 C.L.R. 1;

R. v. *Kastercum* [1972] 56 Cr. App. Rep. 298;

R. v. *Cowburn* [1959] Cr. L.R. 509;

R. v. *Brown* [1970] 54 Cr. App. Rep. 176;

R. v. *Simpson* [1979] Cr. L.R. 383;

R. v. *Bocskei* [1970] 54 Cr. App. Rep. 519.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Christoforos Nicolaou Pirikkis who was convicted on the 18th December, 1984 by the Military Court sitting at Limassol (Case No. 614/84) on four counts of the offence of applying violence against a subordinate contrary to section 81 of the Military Criminal Code and Procedure Law, 1964 (Law No. 40/64 as amended) and on one count of the offence of conduct incompatible with military discipline contrary to section 101 of the above law and was sentenced to six months' imprisonment on each count, the sentences to run consecutively.

L. Papaphilippou, for the appellant.

P. Ioulianou, for the respondent.

Cur. adv. vult.

A. Loizou J. read the following judgment of the Court. The appellant a Sergeant in the National Guard, doing his national service was found by the Military Court guilty on his own plea of the following five counts:-

Count 1.

Applying violence against a subordinate contrary to section 81 of the Military Criminal Code and Procedure

Law 1964, (Law No. 40 of 1964) as amended.

Particulars of the Offence

The accused on the 25th day of July 1984, whilst a Sergeant at KEMK, applied violence against his subordinate soldier Kaimi Michael, that is he hit him on the chest with his hands about ten times.

Count 2.

Violence against a subordinate contrary to section 81 of the Military Criminal Code and Procedure Law 1964, etc.

Particulars of the Offence

The accused on the 30th July 1984, whilst a Seargent at KEMK applied violence against his subordinate Kaimi Michael, that is he hit him on the chest with his hands about ten times.

Count 3.

Conduct incompatible with military discipline contrary to section 101 of the Military Criminal Code and Procedure Law 1964, etc.

Particulars of the Offence

The accused between the 30th July, 1984, and the 4th August, whilst a Sergeant at KEMK behaved in a manner offending military discipline and the preservation of military order, that is he subjected to impermissible bodily suffering soldier Kaimis Michael by compelling him to do push-ups".

Count 4.

Applying violence against a subordinate contrary to section 81 of the Military Criminal Code and Procedure Law 1964, etc.

Particulars of the offence

The accused between the 30th and 31st July 1984, whilst a Sergeant at KEMK applied violence against his subordinate soldier Kefala Costas, that is he hit him with a chain on his chest.

Count 5.

Applying violence against a subordinate contrary to section 81 of the Military Criminal Code and Procedure Law 1964, etc.

Particulars of the offence

The accused between the 3rd and 4th August 1984, whilst a Seargent at KEMK applied violence to his subordinate soldier Lantsia Costas, that is he hit him with his fist on the chest.

The Military Court after hearing the circumstances of the offences from the prosecuting officer, and a plea in mitigation made on behalf of the appellant by his then counsel who represented him at the trial and after perusing a social investigation report that had been prepared by the Social Welfare Services, sentenced the appellant to six months' imprisonment on each of the five counts and ordered the sentences to run consecutively on the ground, as it put it, that each count was committed against different complainants, or at different dates. As regards the said sentence the member of the Military Court, Captain Zavrou Alexandros dissented and said that he would have imposed himself a term of imprisonment of three months on each count, the sentences to run concurrently.

The appellant who was born in the year 1965, joined the National Guard on the 12th July 1983. In July 1984, he was serving as a Sergeant at the Training centre of Commando Units KEMK. On the 25th July, at the midday inspection of the unit, the appellant asked the first complainant to step forward and the appellant hit him on the chest, with his hands about ten times. On the 30th July, 1984, at about 16:30 hours the appellant who was in command of the said complainant asked him to go to the barrack of soldiers and there the appellant hit him on the chest with his hands about ten times and the ordered him to go back to the line. Also between the 30th July and the 4th August 1984, the appellant contrary to Standing Orders subjected the said complainant to impermissible bodily suffering by forcing him to make push-ups on the ground, outside the training period.

Between the 30th and the 31st July 1981, the appellant ordered the second complainant to step forward and after he got a chain with which he had been supplied earlier, he applied violence on the said complainant, that is hit him with the chain on the chest and ordered him to go back to his room. Finally between the 3rd and 4th August 1984, the appellant whilst in the camp of his unit, applied violence on the third complainant, that is he asked him to go to his room and he hit him once with his fist on the chest. The complainants reported the matter to superior officers. An investigation was carried out and the present proceedings were instituted against the appellant for the offences set out in this judgment, to which he pleaded guilty.

The appellant had been sentenced to ten days disciplinary imprisonment which was increased to twenty days by the appropriate Military authorities. He had certain other disciplinary punishments but he had no previous criminal convictions.

The then counsel for the appellant in her address in mitigation started by saying that the facts as explained by the prosecution did not find her absolutely in agreement. She said that she did not agree with the details which were given, for example it was mentioned that the appellant was supplied with a chain, whereas the appellant had on several occasions requested soldiers not to wear chains during their training, yet the three complainants and in particular complainant Lantsias continued to wear a chain. On the date in question after the appellant pulled the chain from the neck of the complainant told him in a manner that could be described as angry, that he did not permit the use of chains. It was, she said, in this way, that the appellant was found in possession of the chain. He was not equipped with it with the intention of using it.

She further said that the complainant was not hit about ten times and went on to say, "The accused admits that he hit him but not about ten times. With the physic of the accused if he hits somebody ten times, the least would be to take him to a clinic." We may remark here that the appellant is indeed a man of very strong physic. She then went on to say that the complainants were provocative with

their behaviour and that the appellant was trying to impose military discipline and as regards the push-ups the subject of the third count, she wondered as to when same were considered as applying violence. We may observe here, that that was a count charging conduct incompatible with military discipline, contrary to section 101 of the Code and not applying violence on a subordinate. It was also asserted on behalf of the appellant that instead of reporting them to their superiors he simply punished them in order to make them stop their provocative conduct and in particular the conduct of Kaimi. She said that the appellant "used his hands 'ehirodikise' because he was provoked. The mistake was that he did not report the matter, in which case he would have avoided these charges. 'He was provoked', it was stated by his counsel 'and he exceeded his authority'."

The Military Court in passing sentence referred to the personal circumstances of the appellant and to the circumstances of the offences. Among other things it stressed the seriousness of such offences and that it heard the facts from the prosecuting officer as well as the mitigating circumstances put forward by his counsel. They said that they took note of the excuse given for the conduct of the appellant in the sense that the complainants were disobedient and provocative towards him and told the appellant that he could report them but he had no right whatsoever to apply violence nor did he have a right as regards the third count to subject his subordinate to impermissible physical suffering by ordering them to do push-ups outside the training period, and they said:

> "It is possible that the application of violence which you committed against the complainants could not have been with such a force as to send them to the clinic as mentioned but you have forgotten human dignity. When you hit a subordinate he feels very degraded and he cannot hit you back because you are his superior. We shall be lenient with you as far as we can, taking into consideration that you were punished with 20 days disciplinary imprisonment that you had only certain disciplinary punishments during the period of your service and you have a clean criminal record.

Also we have taken into consideration that you are a young person and that you intend to study and you have shown both good conduct at school and in the community. We cannot, however, overlook that you applied violence against soldiers, against subordinates abusing your position against defenceless young soldiers who were under the commands of a strong Sergeant who imposed his will by the use of beating and punishment. You must realise that the application of violence and that means the slightest raising of the hand against somebody, is an offence."

The Military Court then referred to the case of *Theofilou* v. *The Republic* (1984) 2 C.L.R. 114 and what was said therein as regards human rights and human dignity and that for crimes committed in disregard to the human rights of soldiers, the maximum of the sentence provided by law, or a sentence near the maximum is the appropriate punishment and warned that the Courts of the land are duty bound to uphold human rights and condemn in an exemplary manner every act calculated to diminish human dignity.

Needless to say that we subscribe to the observation made therein that, "The mission of the National Cuard can only be accomplished in a climate of freedom and respect for human rights. Punishment is only justified as a measure of discipline; it can only be exercised in the name of the law and subject to its provision."

The appellant has appealed both against conviction and against sentence. The grounds relied upon as they appear in the relevant notice of appeal are the following:

(1) The sentence imposed is excessive and disproportionate to the offence.

(2) The Military Court wrongly based the sentence imposed on the judgment of *Theofilou* v. *The Republic* (1984), 2 C.L.R. p. 114, which is completely different from the facts of the present case.

(3) The judgment of the Court that the sentences should not run concurrently is wrong and or not justified and

(4) The address in mitigation of sentence was to a great extent inconsistent with the facts of the case.

We shall deal first with the last count which obviously is one upon which the appeal against sentence is based.

It is well established that if at any stage of the address in mitigation reference is made to facts inconsistent with the plea of the accused the proper course for the Court to follow is to draw counsel's attention to the discrepancy and if counsel insists on the accuracy of such facts and grounds then the Court should not accept the plea of guilty and should enter a plea of not guilty and proceed to hear the case. Moreover the Supreme Court will order the retrial of a case where facts presented to the trial Court tend to negative the presence of one or more of the ingredients of the offence.

The aforesaid proposition was expounded by this Court in a number of judgments (See inter alia *Efstathiou* v. *The Police*, 22 C.L.R. 191; *The Attorney-General of the Republic* v. *Mahmout*, 1962 C.L.R. 152; *Klonarou* v. *The District Officer* (1963) 1 C.L.R. 47; *Kefalos* v. *The Police* (1972) 2 C.L.R. 1; *Lytrides* v. *The Municipality of Famagusta* (1973) 2 C.L.R. p. 119; *Nicos Polykarpou* v. *The Police* (1967) 2 C.L.R. 152; and *Athlitiki Efimeris "Filathlos"* and *Another* v. *The Police* (1967) 2 C.L.R. 249; and quite recently *Demosthenous* v. *The Police* (1985) 2 C.L.R. 1. (See also Criminal Procedure in Cyprus by Loizou and Pikis, pp. 85-86.

We have gone through the record and in particular the plea in mitigation and we have not been able to trace statements that were inconsistent with a plea of guilty. On the contrary the passages from counsel's address establish on the whole an admission of the facts but not in absolute agreement with them. The defence did not agree with the details given and examples were given about those facts. In our view the plea in mitigation aimed at giving a more favourable version for the appellant as regards the circumstances of the offences but which still amounted in law to the offences to which he had pleaded guilty, and such address in mitigation could not be considered as incon-

sistent with his said pleas. In these circumstances therefore the appeal against conviction must fail as the circumstances of the case and the whole plea in mitigation do not bring the case within the principle earlier expounded in this judgment by reference to the decided cases.

The next question posed we have to answer in this appeal, is what is the proper procedure as regards sentencing an offender who has pleaded guilty but on a basis which differs from the facts relied upon by the prosecution.

In *Archbold Criminal Pleading Evidence and Practice* 41st Edition, the position is summed up in paragraph 4-475 pp. 472-473, as follows:

"Determination by Judge of circumstances of offence after plea of guilty.

In *R.* v. *Gortat and Pirog* [1973] Crim., L.R. 648 (Cusack J.), pleas of 'Guilty' to a charge of conspiracy to rob were offered on the basis that the enterprise had been abandoned at some time prior to the arrest and that at that time the defendants were bound for home. Pleas on such a basis were refused by the prosecution. In order to determine the issue of abandonment Cusack J. allowed prosecution and defence evidence to be called before him and then 'summed up' in the sense of directing himself upon such matters as burden of proof and the necessity for corroboration of the accomplice called by the Crown. In the event the Judge found that although the defendants may have had misgivings about the enterprise prior to the time of their arrest they had not abandoned the enterprise. See also *R.* v. *Ribas* [1976] Crim. L. R. 520, C. A. and cases cited post, § 5-7.

Judges are not infrequently faced with the difficulty of sentencing an offender who has pleaded guilty, but on a basis which differs from the facts relied on by the prosecution. There are various methods of dealing with this problem. The Judge is not bound to approach the matter on the basis of what is put before him in mitigation. He is entitled to determine the matter on the information before him, but he must

resolve any doubt in the accused's favour. In some cases, where the difference between the prosecution's account and the stated basis of the plea is acute and of great importance in sentencing, its is desirable to direct that a plea of not guilty be entered in order that the evidence may be heard in the usual way: *R.* v. *Taggart* [1979] 1 Cr. App. R. (S) 144 (allegation: s.20 wounding with knife—plea of guilty on basis of wounding but no knife—sentenced, after trial and acquittal of co-defendant who did not implicate T, on basis he used knife. Sentence upheld on appeal). See also *R.* v. *Morgan* [1981] Crim L.R. 56. C.A. and commentary thereon, and *R.* v. *Depledge* [1979] Cr. App. R. (S) 183.

In *R.* v. *Kerr* [1980] 2 Cr. App. R. (S) 54, the defence called evidence following a plea of guilty to establish facts relating to the circumstances of the offence. On appeal against sentence the Court of Appeal held that the Court is not bound to accept such evidence even though it is not challenged by the prosecution. The Court may reach its own conclusion provided they are supported by evidence in the case."

Furthermore in the Second Cumulative Supplement to Archbold (supra) under the same heading as above, the following is stated:

"In *R.* v. *Michael's and Skoblo* [1981] Crim. L.R. 725, C.A., the trial Judge did not accept the factual basis upon which two doctors pleaded guilty to conspiracy to defraud. The doctors and other witnesses accordingly gave evidence before the Judge. On appeal, the sentences were reduced, as the Judge, in rejecting the evidence he had heard, had taken into consideration evidence he had heard in the trial of a third defendant who had pleaded not guilty. No criticism was made of the procedure adopted to determine the issue of fact. It is submitted that this course is preferable to the entering of a plea of not guilty and trial by jury because a verdict is not going to enable the Judge to decide between versions of facts (the Crown's and the defences') each of which is compatible with the

accuseds' guilt upon the charge in the indictment."

As regards the case of *Cortat and Pirog* (supra) the concluding remarks in the commentary to it in the Criminal Law Review, after the report at the bottom of p. 649, is the following:

> "Questions of fact which do not affect liability to conviction but only sentence are decided by the Judge, but usually in a more informal manner than apparently took place in the present case, where all the conditions of a jury trial seem to have been observed."

We have dealt at some length with the issue of the determination by Judges of the circumstances of offences relevant to sentence, as apparently present procedures do not provide satisfactory means for resolving the problems that can arise where there is a plea of guilty but a dispute over which, while not amounting to a defence, would go in favour to reduce sentence. Indeed a plea of guilty does not always determine the facts with sufficient detail for the purpose of the sentence.

We shall not attempt to lay down any general principles of law or special rules of practice in this respect. The main alternatives that can be discerned from the decided cases to which some reference has been made above, may be followed. We really wish to stress among others that, (a) the Judge is not bound to approach the matter on the basis of what is put before him in mitigation; (b) he is entitled to determine the matter on the information before him but he must resolve any doubt in favour of the accused; (c) where the difference between the version of the prosecution and the version contained in the plea in mitigation is great it is desirable to direct that a plea of not guilty be entered so that the evidence may be heard in the usual way; (d) the defence may call evidence in order to support its contentions on any issue relevant to sentence which remains in dispute, but the Judge is not bound to accept such evidence even though it is not challenged by the prosecution; needless to say that the prosecution has also such a right; he may reach his own conclusions provided they are supported by evidence in the case; (e) the procedure

to hear evidence regarding some factual aspects of the case can be considered as preferable to the one of entering a plea of not guilty; (f) the Judge should state explicitly the facts he accepts as the basis of his sentence.

The next point for consideration turns on the order of the Military Court that the sentences imposed on the appellant should run consecutively on the ground that the offences were committed against different complainants or on different dates.

It is correct that when a person is charged with two or more counts for distinct offences he may upon conviction be sentenced to imprisonment for consecutive terms one in respect of each count, although the total of the punishments may exceed the punishment allowed by law for one offence, there being a general rule that Courts have power to direct that sentences may run consecutively or concurrently. As to what is appropriate a fundamental rule is that consecutive sentences should not be passed for offences arising out of the same transaction and the reason for this, as pointed out in the case of *R.* v. *Kastercum* [1972] 56 Cr. Appeal Rep. 298, is that the total sentence may usually prove to be too great. Needless to say, however, that where the maximum sentence on a count is insufficient for the protection of the public and the treatment of the offender, it is proper to pass consecutive sentences, as stated in *R.* v. *Cowburn* [1959] Cr. L.R. 590 C.A. Furthermore a multiplicity of short consecutive sentences adding up to a substantial term of imprisonment is not to be encouraged. As pointed out in *R.* v. *Brown* [1970] 54 Cr. Ap. Rep. 176 followed in *R.* v. *Simpson* [1972] Cr. L.R. 383 C.A. where the offences are a series of similar transactions, it is the overall picture that matters.

For the purposes of this case we need not go any further into the matter, we would like, however, to quote from Archbold Criminal Pleading Evidence and Practice (supra) paragraphs 5 - 23 at p. 498 where under the heading "Totality principle" the following are stated:

"(a) Even where the offences do not arise out of

the same transaction, or form part of a series of similar transactions, e.g. where the defendant has to be sentenced on different indictments, before passing consecutive offences individually appropriate to the offences the sentencer must consider whether the total length of imprisonment is not excessive having regard to all the circumstances. If the total is wholly out of proportion to the gravity of the individual offences, or represents a 'crushing sentence' on the offender (see *R.* v. *Raybould,* C.A. unrep., June 1, 1970), the aggregate should be reduced to a figure which is "just and appropriate'; see *R.* v. *Smith* [1972] Crim. L.R. 172, C.A. It is usually preferable to make such a reduction by ordering sentences which might otherwise be consecutive to be concurrent, rather than by reducing the length of the individual component sentences and leaving them consecutive. The latter course leaves the impression on the offender's record of a series of minor offences."

On the basis of the aforesaid principles we find that there was nothing wrong in principle in the approach of the trial Court. The sentences were imposed in respect of different offences and in respect of three of them against different persons. Moreover it cannot be said to have been committed in the course of a single transaction. This notion of a single transaction can be considered as covering also a sequence of offences involving a repetition of the same behaviour towards the same victim, but it will not normally apply to a series of similar offences involving different victims even though the offences are of a similar character. As pointed out by D.A. Thomas on The Principles of Sentencing at p. 56, "The effect of the totality principle is to require a sentencer who has passed a series of sentences, each properly calculated in relation to the offence for which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate is 'just and appropriate'. The principle has been stated many times in various forms: 'when a number of offences are being dealt with and specific punishments in respect of them are be-

ing totted up to make a total, it is always necessary for the Court to take a last look at the total just to see whether it looks wrong; when.... cases of multiplicity of offences come before the Court, the Court must not content itself by doing the arithmetic and passing the sentence which the arithmetic produces. It must look at the totality of the criminal behaviour and ask itself what is the appropriate sentence for all the offences."

In the present case the totality of the sentences does appear to be excessive and in our view an adjustment is necessary. In such a case it has been considered as preferable to make the adjustment by ordering sentences to run concurrently rather than by reducing the length of individual sentences and allowing them to remain consecutive. In the case of *Bocskei* [1970] 54 Cr. Rep. 519, however, it was stated that "a series of short consecutive sentences adding up to a substantial total is generally inappropriate. It is better to pass an appropriate sentence on each count and make those sentences run concurrently."

Bearing all the above in mind and considering the circumstances of the offences as well as those of the person of the offender, we have come to the conclusion that the sentences on counts 2, 3 and 4, should run concurrently with the sentences of imprisonment imposed on counts 1 and 5 which should remain consecutive.

In the circumstances the appeal is allowed partly and to the extent just stated. Appeal allowed sentences varied.

Appeal partly allowed.