

1984 March 29

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

COSMOS PRESS LTD., AND ANOTHER,

Appellants,

v.

THE POLICE,

Respondents.

(Criminal Appeals Nos. 4165, 4166).

Criminal Law—Interfering with judicial proceedings—Section 122(b) of Cap. 154 as amended by section 3 of Law 41/64—As it is a provision relating to human rights, restricting the right of expression, it must be applied in each particular case in a manner as favourable as possible for the freedom of the press.

Constitutional Law—Article 19 of the Constitution.

European Convention of Human Rights—Article 10.

Words and Phrases: “Judiciary” and “Maintaining the authority and impartiality of the Judiciary” in the sense of Article 19.3 of the Constitution and Article 10.2 of the European Convention of Human Rights.

The appellants were convicted by the District Court of Nicosia of two offences of interfering with judicial proceedings, contrary to section 122(b) of the Criminal Code, Cap. 154 as amended by section 3 of the Criminal Code (Amendment) Law 41/64.

The appellants had published on the 16th of June 1980 in the newspaper KYPROS a news item which, in accordance with the particulars to the first offence, was calculated to obstruct or influence the proceedings in criminal case 10346/80 in the District Court of Nicosia and, in accordance with the particulars to the second offence, was cal-

culated or was likely to obstruct or to influence the inquiry which was being carried on by a Commission of Inquiry, appointed by the Council of Ministers under the Commission of Inquiry Law, Cap. 44, to inquire into certain matters relating to the Co-operative movement in Cyprus. 5

Appellants appealed against conviction. Appellant 1 filed Appeal 4165 and appellant 2 Appeal 4166. In view of their related nature the two Appeals were heard together.

One of the issues raised was the issue of the constitutionality of section 122(b) of the Criminal Code, as it stood at the time of the appellants' conviction, i.e. whether or not the said section was contrary to or inconsistent with Article 19 of the Constitution, safeguarding the right to freedom of speech and expression. 10 15

Held, allowing the appeal (1) That in the light of the modern trend in interpreting and applying provisions relating to human rights, such as Article 19 of the Constitution and the corresponding Article 10 of the European Convention of Human Rights, which forms part of the law of Cyprus, and in the light also, of judicial weighty dicta, section 122(b) of the Criminal Code, which is a restriction of the right of expressions, must be applied in each particular case in a manner as favourable as possible to the freedom of the press. 20 25

(2) That bearing in mind all the facts and circumstances of this case, and applying to them in the aforesaid manner the said section 122(b) of Cap. 154, it was not safe to hold beyond any reasonable doubt that the news item, in relation to which the appellants were convicted, was calculated or was likely to obstruct or to influence either the proceedings in the District Court or before the Commission of Inquiry. 30

(3) That, therefore, it is not necessary to decide whether the Commission of Inquiry set up under Cap. 44 is part of the "Judiciary" in the sense in which that term is used in paragraph 3 of Article 19 of the Constitution. 35

(4) That it was not disputed and it could not, indeed, be possibly disputed that section 122(b) is a legislative

provision which is constitutionally valid as a restriction necessary for maintaining the authority and impartiality, in the sense of Article 19.3 of the Constitution, of the District Court of Nicosia, which as part of the Judiciary was trying Criminal Case No. 10346/80.

Appeals allowed.

Convictions set aside.

Cases referred to:

10 *"The Sunday Times Case," European Court of Human Rights* (Judgment No. 30 in Series A).

Appeal against conviction.

15 Appeal against conviction by Cosmos Press Ltd. and Another who were convicted on the 20th September, 1980 at the District Court of Nicosia (Criminal Case No. 11317/80) on two counts of the offence of interfering with judicial proceedings contrary to section 122(b) of the Criminal Code, Cap. 154 (as amended by section 3 of Law No. 41/64) and were sentenced by Papadopoulos, S.D.J. to pay £100.- fine each on the first count with no sentence
20 being passed on the second count.

Gl. Talianos, for the appellants.

Gl. Hadji Petrou, for the respondents.

Cur. adv. vult.

25 **TRIANAFYLLIDES P.** read the following judgment of the Court. By means of the present appeals the appellants have challenged their convictions, by the District Court of Nicosia, of two offences of interference with judicial proceedings, contrary to section 122(b) of the Criminal Code, Cap. 154, as amended by section 3 of the Criminal Code (Amendment) Law, 1964 (Law 41/64).
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Appellant 1 has filed Appeal No. 4165 and appellant 2 Appeal No. 4166 and the two appeals have been heard together in view of their related nature.

35 According to the particulars relating to the first offence in respect of which the appellants were convicted they have

published on the 16th June 1980 in the newspaper "Kypros" a news item which was calculated or was likely to obstruct or influence the proceedings in criminal case No. 10346/80 in the District Court of Nicosia, which was filed on the 6th June 1980 and was fixed for hearing on the 14th July 1980.

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According to the particulars relating to the second offence in respect of which the appellants were convicted they have published the aforementioned news item which was calculated or was likely to obstruct or to influence the inquiry which was being carried on by a Commission of Inquiry which was appointed by the Council of Ministers, under the Commissions of Inquiry Law, Cap. 44, to inquire into certain matters relating to the Co-Operative Movement in Cyprus.

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Having been found guilty of both aforesaid offences each one of the appellants was sentenced to pay a fine of C£100 in respect of the first offence; and no punishment was imposed on them in respect of the second offence as it was based on the same facts as the first one. The appellants have not appealed against the sentences imposed on them.

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Section 122(b) of Cap. 154, as amended by Law 41/64, makes it an offence to do any act which is calculated or is likely to obstruct or in any way to influence any judicial proceedings or any police investigation conducted for the purpose of instituting judicial proceedings or any inquiry carried on under the provisions of any Law.

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The first issue on which we were asked to pronounce in determining these appeals was whether or not section 122(b) of Cap. 154, as it stood at the time when the appellants were convicted, was contrary to or inconsistent with Article 19 of the Constitution. The relevant parts of Article 19 are paragraphs 1, 2 and 3, which read as follows:

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"1. Every person has the right to freedom of speech and expression of any form.

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2. This right includes freedom to hold opinions and receive and impart information and ideas without in-

interference by any public authority and regardless of frontiers.

3. The exercise of the rights provided in paragraphs 1 and 2 of this Article may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the reputation or rights of others or for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.”

The corresponding provision of the European Convention on Human Rights, which has been ratified by the European Convention on Human Rights (Ratification) Law, 1962 (Law 39/62), is Article 10 of such Convention which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

As regards the phrase “for maintaining the authority and impartiality of the judiciary”, which is to be found both in paragraph 3 of Article 19 of our Constitution and in paragraph 2 of Article 10 of the European Convention

on Human Rights, the European Court of Human Rights stated the following (see paras. 55-56) in its judgment in "The Sunday Times case", on the 26th April 1979 (Judgment No. 30 in Series A):

"55. The Court first emphasises that the expression 'authority and impartiality of the judiciary' has to be understood 'within the meaning of the convention' (see *mutatis mutandis*, the Köning judgment of 28 June 1978, Series A no. 27, pp. 29-30, § 88), For this purpose, account must be taken of the central position occupied in this context by Article 6 which reflects the fundamental principle of the rule of law (see, for example, the Golder judgment of 21 February 1975, Series A no. 18, p. 17, § 34).

The term 'judiciary' ('*pouvoir judiciaire*') comprises the machinery of justice or the judicial branch of government as well as the Judges in their official capacity. The phrase 'authority of the judiciary' includes, in particular, the notion that the courts are, and are accepted by the public at large as being, the proper forum for the ascertainment of legal rights and obligations and the settlement of disputes relative thereto; further, that the public at large have respect for and confidence in the courts' capacity to fulfil that function.

It suffices, in this context, to adopt the description of the general purpose of the Law of contempt given by the Phillimore report. As can be seen from paragraph 18 above, the majority of the categories of conduct covered by the Law of contempt relate either to the position of the Judges or to the functioning of the courts and of the machinery of justice: 'maintaining the authority and impartiality of the judiciary' is therefore one purpose of that Law.

56. In the present case, the Court shares the view of the majority of the Commission that, insofar as the law of contempt may serve to protect the rights of litigants, this purpose is already included in the phrase 'maintaining the authority and impartiality of the judiciary': the rights so protected are the rights of

5 individuals in their capacity as litigants, that is as persons involved in the machinery of justice, and the authority of that machinery will not be maintained unless protection is afforded to all those involved in or having recourse to it. It is therefore not necessary to consider as a separate issue whether the Law of contempt has the further purpose of safeguarding 'the rights of others'."

10 It has been submitted by counsel for the appellants that the aforesaid Commission of Inquiry is not part of the "judiciary" and that, therefore, the said section 122(b) of Cap. 154 could not in so far as such Commission was concerned be regarded as a restriction prescribed by Law and necessary for maintaining the authority and impartiality of the
15 judiciary in the sense of paragraph 3 of Article 19.

On the other hand, it was not disputed, and it could not, indeed, be possibly disputed, that the aforementioned section 122(b) is a legislative provision which is constitutionally valid as a restriction necessary for maintaining the
20 authority and impartiality, in the sense of paragraph 3 of Article 19 of the Constitution, of the District Court of Nicosia, which, as part of the Judiciary of Cyprus, was trying criminal case No. 10346/80.

We have not found it necessary in this case to go so
25 far as to decide whether the Commission of Inquiry set up under Cap. 44 is part of the "judiciary" in the sense in which such term is used in paragraph 3 of Article 19 because we have reached the conclusion that, even assuming that section 122(b) of Cap. 154 imposes a constitutionally
30 valid restriction, in the manner envisaged by paragraph 3 of Article 19, on the exercise of the rights safeguarded by paragraphs 1 and 2 of the said Article 19, it could not have been held beyond reasonable doubt that the news item in respect of which the appellants were charged and
35 convicted was one which, in the particular circumstances of the present case, amounted to an offence contrary to section 122(b) of Cap. 154, either in so far as the District Court of Nicosia was concerned or in so far as the Commission of Inquiry might be concerned.

40 In this connection we have borne particularly in mind

the following passages from the judgment of the European Court of Human Rights in "The Sunday Times case", supra:

"65..... As the Court remarked in its Handyside judgment, freedom of expression constitutes one of the essential foundations of a democratic society; subject to paragraph 2 of Article 10, it is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population (p. 23, § 49).

These principles are of particular importance as far as the press is concerned. They are equally applicable to the field of the administration of justice, which serves the interests of the community at large and requires the co-operation of an enlightened public. There is general recognition of the fact that the Courts cannot operate in a vacuum. Whilst they are the forum for the settlement of disputes, this does not mean that there can be no prior discussion of disputes elsewhere, be it in specialized journals, in the general press or amongst the public at large. Furthermore, whilst the mass media must not overstep the bounds imposed in the interests of the proper administration of justice, it is incumbent on them to impart information and ideas concerning matters that come before the Courts just as in other areas of public interest. Not only do the media have the task of imparting such information and ideas: the public also has a right to receive them (see, mutatis mutandis, the Kjeldsen, Busk Madsen and Pedersen, judgment of 7 December 1976, Series A no. 23, p. 26, § 52)

..... The Court is faced not with a choice between two conflicting principles but with a principle of freedom of expression that is subject to a number of exceptions which must be narrowly interpreted (see, mutatis mutandis, the Klass and others judgment of 6 September 1978, Series A no. 28, p. 21, § 42)

..... It is not sufficient that the interference involved belongs to that class of the exceptions listed in Article 10 § 2 which has been invoked; neither is

it sufficient that the interference was imposed because its subject-matter fell within a particular category or was caught by a legal rule formulated in general or absolute terms: the Court has to be satisfied that the
5 interference was necessary having regard to the facts and circumstances prevailing in the specific case before it.”

In the light of the modern trend in interpreting and applying provisions relating to human rights, such as Article
10 19 of our Constitution and the corresponding Article 10 of the European Convention on Human Rights, which forms part of our own Law as well, and in the light, also, of weighty dicta such as those of the European Court of Human Rights in the judgment of “The Sunday Times case”,
15 some of which we have quoted in the present judgment, section 122(b) of Cap. 154, which is a restriction of the right of expression, must be applied in each particular case in a manner as favourable as possible for the freedom of the press.

20 Bearing, therefore, in mind all the facts and circumstances of this particular case, and applying to them in the aforesaid manner the said section 122(b), we have reached, as already indicated, the conclusion that it was not safe to hold beyond reasonable doubt that the news
25 item in relation to which the appellants were convicted was calculated or was likely to obstruct or to influence either the proceedings in the District Court or before the Commission of Inquiry.

30 In the result, for all the foregoing reasons, these appeals have to be allowed and the convictions of the appellants are set aside, together with the sentences imposed on them.

Appeals allowed.