

1987 June 23

(TRIANAFYLLIDES, P , LORIS, STYLIANIDES, JJ)

GREGORIS SIMOU GREGORIOU AND OTHERS,

Appellants,

v

THE REPUBLIC,

Respondent

(Criminal Appeal Nos 4842, 4843, 4844)

Sentence — Abduction of prison warder and escape from lawful custody — Appellants fell into the hands of Turkish soldiers and were detained in the Turkish occupied part of Cyprus — Subjected to inhuman and degrading treatment — Nine months' imprisonment to run after expiration of the sentence, which each of the appellants was already serving — Such sentence is in the circumstances wrong in principle — Sentence set aside 5

The three appellants, who were serving at the time various sentences of imprisonment abducted a prison warder by locking him into a bathroom and escaped to the Turkish occupied area of the Republic, where they were subjected by Turkish soldiers and policeman to degrading and inhuman treatment repeatedly 10

These appeals are directed against the aforesaid sentences

Held, *allowing the appeals* (1) No matter how serious were the offences which the appellants committed, they were punished much more severely than it could ever be envisaged by the Criminal Code due to the inhuman and degrading manner in which they were treated by their captors in the Turkish occupied area of Cyprus The sentence is wrong in principle 15

(2) The exceptional course of setting the sentences aside is in the circumstances justified

Appeals allowed 20

Appeals against sentence.

Appeals against sentence by Gregoris Simon Gregoriou and Others who were convicted on the 28th January, 1987 at the Assize Court of Nicosia (Criminal Case No 570/87) on one count of the offence of abducting a prison warder contrary to sections 25

247, 250 and 20 of the Criminal Code, Cap. 154 and on one count of the offence of escaping from lawful custody contrary to section 128(a) of the Criminal Code, Cap. 154 and were sentenced by Nikitas, P.D.C., Laoutas, S.D.J. and Michaelides, D.J. to eighteen months' imprisonment on each count to run concurrently after the expiry of the prison sentences which were being served by the appellants at the time.

E. Efstathiou with Sp. Efstathiou, for the appellants.

10 *R. Gavrielides, Senior Counsel of the Republic with St. Ioannidou, for the respondent.*

15 TRIANTAFYLLIDES P. gave the following judgment of the Court. The three appellants were on 28 January 1987 convicted, on their own pleas of guilty, of the offences of abducting a prison warder and of escaping from lawful custody. They were sentenced to terms of eighteen months' imprisonment for each of the aforesaid offences to run concurrently and to be served after the expiry of prison sentences which were being served by the appellants at the time.

20 Actually on 28 January 1987 appellant Gregoris Gregoriou (appellant in criminal appeal No. 4842) was serving a sentence of nine months' imprisonment as from 5 June 1986, appellant Demetris Gavriel (appellant in criminal appeal No. 4843) was serving a sentence of four years' imprisonment as from 9 July, 1986, and appellant Nicos Solomou (appellant in Criminal Appeal 25 No. 4844) was serving a sentence of two years' imprisonment as from 7 July 1986.

30 On 30 July 1986 the abduction of the warder took place within the compound of the Central Prisons by removing him from where he was in one of the blocks of the prison and locking him into a bathroom; and his abduction was part of the plan of the appellants to effect their escape from the Central Prisons, which followed immediately afterwards on the same day.

35 As the Central Prisons are situated next to the line occupied by Turkish military forces, which have invaded Cyprus in 1974 and continue to occupy the northern part of our country, the three appellants fell into the hands of Turkish soldiers and were detained in the Turkish occupied part of Cyprus, from where appellant Gregoriou was released in August 1986 and appellants Gavriel and Solomou in November 1986.

All three appellants were brutally ill-treated by Turkish soldiers and policemen in the Turkish occupied part of Cyprus while they were detained there and were subject to degrading and inhuman treatment continuously and repeatedly.

Appellant Gregoriou was released from the Turkish occupied area earlier because, due to what he suffered there, he fell into a comatose condition and he was rushed by United Nations peacekeeping troops to Nicosia General Hospital where it took him seven whole days to regain his senses and his speech. 5

All the appellants are young persons eighteen, twenty-two and twenty years old respectively and, according to social investigation reports, ever since they have returned back to the Central Prisons, after their release from the Turkish occupied part of Cyprus, they are industrious, obedient and co-operative and, in general, their conduct in prison is very satisfactory. 10 15

We do not think that this is an ordinary case in which the sentences of imprisonment which were imposed on 28 January 1987 on the appellants, to be served after the expiry of the sentences which they were then serving in prison for other offences, are to be examined, in the normal course, by us an appellate tribunal in order to find whether they are manifestly excessive in the light of the seriousness of the offences for which the appellants have been punished by means of such sentences and in the light, too, of the mitigating circumstances regarding each one of the appellants. 20 25

We are of the opinion that it was wrong in principle to impose on these three young appellants sentences of imprisonment to be served after the expiry of the sentences which they were serving at the time, because no matter how serious were the offences which they committed they were punished much more severely than it could ever be envisaged by the Criminal Code due to the inhuman and degrading manner in which they were treated by their captors in the Turkish occupied area of Cyprus. 30

We have, therefore, decided in this really unprecedented case to take the exceptional course of setting aside the sentences passed on the appellants, so that they will be released after they will complete their prison sentences which they were serving at the time when they were sentenced by the trial Court. 35

Appeals allowed.