1987 November 20

[TRIANTAFYLLIDES P LORIS STYLIANIDES, JJ ]

KENAN MEHMET MERTHODJA,

*Appellant,*

v

THE POLICE,

*Respondent*

*(Criminal Appeal No 4909)*

*Evidence — Criminal evidence — Confessions and other incriminating statement made to the Police, whilst the maker was being detained contrary to Art 11 of the Constitution — Inadmissible in evidence in virtue of the principle that evidence secured in breach of any of the fundamental rights and liberties safeguarded by the Constitution cannot be received in evidence by any Court in the Republic — Moreover, the oral statements to the police are inadmissible also because they are consequential to the inadmissible confession*

The appellant, a Turkish Cypriot, was convicted of the offence of publishing information relating to defence works of the Republic, contrary to section 50A of the Criminal Code, Cap 154, and was sentenced to twelve months' imprisonment

During the period August, 1985 to January, 1986 the appellant remained in the free area of the territory of the Republic In January, 1986 he returned to the occupied part of Cyprus On 7 7 87 he escaped from such part, seeking the protection of the Government of the Republic He agreed to be placed in «protective custody» At some time before the 12 8 87 he asked to be released

On 12 8 87 the appellant gave a written statement to the Police On 18 8 87 he made further oral incriminating statements

Appellant's conviction for the offence aforesaid was based on such confession and statements

Held, *allowing the appeal* (1) From the moment the appellant asked to be released, he was being detained in a manner involving deprivation of his liberty contrary to Article 11 of the Constitution, and his detention could only be legalized if it could be justified for any one of the reasons set out in Article

11.2 of the Constitution and if a Court order had been made, in this respect, under Article 11.6 of the Constitution.

(2) Evidence secured in breach of anyone of the fundamental rights and liberties which are safeguarded by the constitution cannot be received in evidence by any Court of the Republic because, inter alia, of the imperative express provisions of Article 35 of the Constitution.

(3) The confession of the 12.8.87 is evidence secured by the Police through the unconstitutional, at the time, detention of the appellant.

(4) The oral statements should have been likewise excluded; they should have, also, been excluded because in any event they are consequential to the inadmissible confession of the 12.8.87.

*Appeal allowed.*

*Cases referred to:*

*The Police v. Georghiades* (1983) 2 C.L.R. 33;

*Enotiades v. Police* (1986) 2 C.L.R. 64;

*Psaras v. Republic* (1987) 2 C.L.R. 132;

*R. v. Phaedonos*, 22 C.L.R. 21.

**Appeal against conviction.**

Appeal against conviction by Kenan Mehmet Merthodja who was convicted on the 15th September, 1987 at the District Court of Nicosia (Criminal Case No. 29135/87) on one count of the offence of publishing information relating to defence works of the Republic contrary to section 50A of the Criminal Code Cap. 154 and was sentenced by Kallis, D.J. to twelve months' imprisonment.

*M. Georghiou with N. Yiapanas*, for the appellant.

*S. Matsas*, for the respondents.

TRIANTAFYLLIDES P. gave the following judgment of the Court. The appellant, who is a Turkish Cypriot, was convicted of the offence of publishing information relating to defence works of the Republic, contrary to section 50A of the Criminal Code, Cap. 154, and was sentenced to twelve months' imprisonment.

It is obvious from the judgment of the trial Court that the appellant would not have been convicted had there not been treated as admissible evidence against him a statement which the appellant gave to the Police on 12 August 1987, and which is, in effect, a confession that he committed the aforementioned offence, as well as, subsequent oral statements of the appellant to

the Police, which he made on 18 August 1987, and which were tantamount to confessions.

According to his own statement to the Police, which he made on 12 August 1987, the appellant had come from the Turkish occupied part of Cyprus to the free area of the territory of the Republic in August 1985 and he remained there until January 1986, when he returned to the Turkish occupied part of Cyprus.

According, also, to the said statement of the appellant, when he returned to the Turkish occupied part of Cyprus he was arrested and interrogated and it was, at that time, that he gave to his interrogators information about defence works of the Republic of Cyprus.

Then, the appellant escaped from the Turkish occupied part of Cyprus on 7 July 1987, and sought the protection of the Government of the Republic and was placed in, what has been described as, «protective custody», after he had signed on 8 July 1987 a declaration that he had just come to the Greek «sector», that he was applying for the protection of the Government of the Republic and that for his own safety he had no objection to remaining in protective police custody until the Cyprus Government would investigate into his problem and, he added, that he did not wish to return to the Turkish «sector».

We pause here in order to note that the wording of this declaration, which, apparently, was prepared by the Police authorities and was signed by the appellant, is most unfortunate because it refers to the Greek «sector» and the Turkish «sector» of Cyprus, whereas there exists only the territory of the Republic of Cyprus, part of which is temporarily occupied unlawfully by Turkish military forces ever since the Turkish invasion of Cyprus in 1974, and it is, therefore, not correct in law or in fact, to speak of the Greek «sector» and the Turkish «sector» of the territory of the Republic of Cyprus.

It appears clearly from the record before us that at some stage prior to 12 August 1987, when the appellant gave his written statement to the Police, he asked to be released from protective custody but the Police continued detaining him at a police station

until his case would be fully investigated into. In our opinion, as from that moment onwards the appellant was being detained in a manner involving deprivation of his liberty contrary to Article 11 of the Constitution, and his detention could only be legalized if it could be justified for any one of the reasons set out in Article 11.2 of the Constitution and if a Court order had been made, in this respect, under Article 11.6 of the Constitution.

It is common ground that the appellant was never taken to Court in order to be remanded in custody and, therefore, we have to conclude that, at the time when he gave his aforementioned statement to the Police on 12 August 1987, and, also, when he made oral statements to the Police on 18 August 1987, he was being illegally detained contrary to Article 11 of the Constitution.

It was laid down in *The Police v. Georghiades,* (1983) 2 C.L.R. 33, that evidence secured in breach of anyone of the fundamental rights and liberties which are safeguarded by the Constitution cannot be received in evidence by any Court of the Republic because, inter alia, of the imperative express provisions of Article 35 of the Constitution.

The *Georghiades* case, supra, was referred to with approval in *Enotiades v. The Police,* (1986) 2 C.L.R. 64 and *Psaras v. The Republic* (Criminal Appeals Nos. 4715, 4718, determined on 15 October 1987 and not reported yet)*.

In our opinion, the statement obtained from the appellant on 12 August 1987 is evidence secured by the Police through the unconstitutional, at the time, detention of the appellant and, therefore, it could not have been received in evidence and relied on by the trial Court in convicting the appellant; and, in this respect, we have noted with appreciation the fair attitude of counsel for the respondent who stated that if the detention of the appellant, at the time, was unconstitutional, this case could not be distinguished from the *Georghiades* case, supra.

Likewise, the oral incriminating statements made to the Police on 18 August 1987 should not have been received in evidence and relied on against him, and, in any event, they constitute evidence which should have been excluded as being consequential to the inadmissible written statement of the appellant on 12 August 1987 (see, inter alia, in this respect, *R v. Phaedonos,* 22 C.L.R. 21, 26).

* *Reported in (1987) 2 C.L.R. 132.*

Since, therefore, the statements of the appellant, on which his conviction was based, did not constitute admissible evidence against him, it follows that his conviction, and the sentence imposed on him as a result of it, have to be set aside and this appeal is allowed accordingly.

*Appeal allowed.*