1980 June 20

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

GEORGHIOS EFTHYMIOU GEORGHIOU,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 4129).

Criminal Law—Sentence—Driving motor vehicle without a circulation licence—C£200 *fine and binding over in the sum of* C£300—*Motor vehicle initially licensed as taxi—Taxi licence withdrawn—Withdrawal challenged by recourse under Article* 146 *of the Constitution but appellant continued using the vehicle in defiance of such withdrawal—Fact that recourse was pending does not render the sentence wrong in principle—Nothing wrong in imposing a fine which was equal to what appellant would have to pay for a circulation licence—Appeal dismissed.*

The appellant pleaded guilty to the offence of driving a motor vehicle without a circulation permit and was sentenced to pay a fine of C£200 and was bound over in the sum of C£300 for two years. He purchased an expensive car for the purpose of using it as a taxi and when it was later found out that it was not in fact being used as a taxi, but for private purposes of the appellant, the circulation licence enabling him to use it as a taxi was withdrawn. The appellant challenged the withdrawal of the licence by means of a recourse under Article 146 of the Constitution. Had the appellant stated to the appropriate authorities that he intended to use the car in question for private purposes he would have to pay import duty amounting approximately to C£2,500, which he avoided paying by stating that the car would be used as a taxi, he would also have to pay the difference in registration fees, between C£55 for a taxi and C£400 for a private vehicle, and he would have to pay as well C£200 for a circulation permit.

Upon appeal against sentence Counsel for the appellant contended that it was wrong in principle to impose the aforementioned sentence without giving sufficient weight to the fact that a recourse under Article 146 of the Constitution was pending in the matter and he referred to the case of *Theodossiou* v. *The Police*, (1974) 2 C.L.R. 1, where the fine to be paid by the appellant in that case was reduced on appeal because the appellant, who had been driving a motor vehicle without a public service licence, had pleaded in mitigation that he had applied for such a licence but for a very long time he had received no reply from the appropriate authority as regards the fate of his application.

The Court of Appeal distinguishing this case from the *Theodossiou* case (*supra*) because the appellant knew that the appropriate authority had deprived him of his circulation licence and yet, in defiance of this deprivation, he used his car without a circulation licence, in a presumptuous manner as if he was bound to succeed in his aforesaid recourse—

Held, that there is nothing really wrong in that the trial Judge, seeing that the appellant has benefited at the expense of the State to a very large extent, thought fit to impose a fine which was equal to what he would have to pay for a circulation permit after he would have regularized otherwise the use of the car for private purposes (see *Papaloannou* v. *The Police*, 1962 C.L.R. 232); that, in the light of the circumstances of this case, the sentence which was passed upon the appellant is not manifestly excessive and, in particular, there is no reason why he should worry about the binding over in the sum of C£300, unless he intends to keep on defying the law; accordingly the appeal must be dismissed.

Appeal dismissed.

Observations:

(1) If everyone who has a grievance against the Government for an administrative decision and who has challenged that decision by a recourse takes the law into his own hands and acts as if he has already been successful in his still pending recourse then the whole edifice of law and order would be seriously undermined. He has to await the outcome of the recourse, complying in the meantime with the complained of decision, unless the operation of such decision is suspended by a provisional order of this

Court; and if he is eventually successful in his recourse he will be entitled to be equitably compensated under Article 146.6 of the Constitution.

(2) That even if the appellant had been sentenced to an appropriate term of imprisonment this Court would not have considered that sentence as manifestly excessive; however, by saying this, it does not wish to lay down that imprisonment should be resorted to in every case of this nature as each individual case has to be dealt with on the basis of its own merits.

Cases referred to:

Theodossiou v. *The Police* (1974) 2 C.L.R. 1;

Papaloannou v. *The Police*, 1962 C.L.R. 232.

Appeal against sentence.

Appeal against sentence by Georghios Efthymiou Georghiou who was convicted on the 29th February, 1980 at the District Court of Famagusta (Criminal Case No. 2835/79) on one count of the offence of driving a motor vehicle without a circulation permit contrary to regulations 16(1) and 71 of the Motor Vehicles and Road Traffic Regulations, 1973 and section 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72) and was sentenced by Michaelides, D.J. to pay C£200.—fine and was bound over in the sum of C£300.—for two years to be of good behaviour.

A. Andreou, for the appellant.

S. Nicolaides, Senior Counsel for the Republic, for the respondents.

TRIANTAFYLLIDES P. read the following judgment of the Court. The appellant has been sentenced to pay a fine of C£200 and was bound over in the sum of C£300 for two years to be of good behaviour when he pleaded guilty to the offence of driving on September 18, 1979, a motor vehicle without a circulation permit.

It appears, from the material before us, that this is a case in which an expensive car was purchased by the appellant for the purpose of using it as a taxi and when it was later found out that it was not in fact being used as a taxi, but for private purposes of the appellant, the circulation licence enabling him

to use it as a taxi was withdrawn by the appropriate authority on May 1979, with, apparently, retrospective effect as from the beginning of 1979.

The appellant filed a recourse to the Supreme Court, which is still pending, against the withdrawal of the licence enabling him to use the car as a taxi.

It has been submitted by counsel for the appellant that it was wrong in principle to impose the aforementioned sentence without giving sufficient weight to the fact that a recourse under Article 146 of the Constitution was pending in the matter; and we have been referred to the case of *Theodossiou* v. *The Police*, (1974) 2 C.L.R. 1, where the fine to be paid by the appellant in that case was reduced on appeal because the appellant, who had been driving a motor vehicle without a public service licence, had pleaded in mitigation that he had applied for such a licence but for a very long time he had received no reply from the appropriate authority as regards the fate of his application.

In the present case, however, the position is different: The appellant knew that the appropriate authority had deprived him of his circulation licence and yet, in defiance of this deprivation, he used his car without a circulation licence, in a presumptuous manner as if he was bound to succeed in his aforesaid recourse. If everyone who has a grievance against the Government for an administrative decision and who has challenged that decision by a recourse takes the law into his own hands and acts as if he has already been successful in his still pending recourse then the whole edifice of law and order would be seriously undermined. He has to await the outcome of the recourse, complying in the meantime with the complained of decision, unless the operation of such decision is suspended by a provisional order of this Court; and if he is eventually successful in his recourse he will be entitled to be equitably compensated under Article 146.6 of the Constitution.

In the present case if the appellant had stated to the appropriate authorities that he intended to use the car in question for private purposes he would have to pay import duty amounting approximately to C£2,500, which he avoided paying by stating that the car would be used as a taxi, he would also have to pay the difference in registration fees, between C£55

for a taxi and C£400 for a private vehicle, and he would have to pay as well C£200 for a circulation permit.

We find nothing really wrong in that the trial Judge, seeing that the appellant has benefited at the expense of the State to a very large extent, thought fit to impose a fine which was equal to what he would have to pay for a circulation permit after he would have regularized otherwise the use of the car for private purposes; and, in this respect, we find guidance in *Papaloannou* v. *The Police*, 1962 C.L.R. 232, where it was held that the Supreme Court will not allow an appellant to take advantage of his failure to pay fees which he is bound by law to pay.

In the light of the circumstances of this case we do not think that the sentence which was passed upon the appellant is manifestly excessive and, in particular, we see no reason why he should worry about the binding over in the sum of C£300, unless he intends to keep on defying the law.

We would conclude by observing that even if the appellant had been sentenced to an appropriate term of imprisonment we would not have considered that sentence as manifestly excessive; however, by saying this, we do not wish to lay down that imprisonment should be resorted to in every case of this nature as each individual case has to be dealt with on the basis of its own merits.

For all the foregoing reasons this appeal is dismissed.

Appeal dismissed.