

1982 November 20

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF SOTERIS DEMETRIADES,  
AND  
IN THE MATTER OF AN APPLICATION FOR  
AN ORDER OF HABEAS CORPUS.

(Application No. 16/82).

5 *Sentence of imprisonment—Computation—Period of detention prior to the passing of the sentence—Taken into account for the purpose of reducing period of sentence and not in order to give to such sentence retrospective effect—Section 117 of the Criminal Procedure Law, Cap. 155 (as amended by Law 2/75)—Reduction of sentence under s.117 to be computed when prisoner was remanded in custody under section 24 of Cap. 155.*

*Remission of sentence by President of the Republic—Article 53.4 of the Constitution.*

10 The applicant, a convicted prisoner, applied for an order of habeas corpus on the ground that he was illegally detained. Counsel for applicant submitted that by virtue of section 117 of the Criminal Procedure Law, Cap. 155, as amended by the  
15 Criminal Procedure (Amendment) Law, 1975 (Law 2/75), the sentence of imprisonment of the applicant should be computed as running from the date of his arrest, which was, as has been alleged by him, the 17th August, 1977; and that, therefore, he was entitled to benefit from the remission of sentence granted by the President of the Republic on that date.

20 *Held*, that on a correct construction of section 117 of Cap. 155 a sentence of imprisonment should be regarded as running as from the date on which it was passed and any period of detention of the convict concerned prior to that date is only taken into account for the purpose of reducing the period of his sentence  
25 of imprisonment and not in order to give to such sentence retrospective effect; and that, therefore, the applicant is not

entitled to an order of habeas corpus, even if it is assumed in his favour - without so deciding - that he was actually arrested on August 17, 1977.

*Held*, further, (1) that the reduction of the sentence under s.117 of Cap. 155 should be computed from the date when applicant was remanded in custody under s.24 of Cap. 155. 5

(2) That the remission of sentence granted by the President of the Republic on the 17th August, 1977, was intended to apply only to those who were already serving, at the time when it was granted, sentences of imprisonment and not, also, to those who were at the time either under arrest or remanded in custody and might subsequently be convicted and imprisoned (see, also, Article 53.4 of the Constitution). 10

*Application refused.* 15

#### **Application.**

Application by a convict for an order of habeas corpus on the contention that he is being illegally detained in prison as a convict.

*A. Eftychiou* with *G. Yiallourous*, for the applicant. 20

*A. Evangelou*, Senior Counsel of the Republic, for the Republic.

TRIANTAFYLIDIS P. gave the following judgment. The applicant in applying for an order of habeas corpus relies on the contention that he is being illegally detained in prison as a convict. 25

He alleges that the period of a sentence of imprisonment which was passed upon him on 6th October 1977 has expired on 16th August 1982; and in support of this allegation his counsel has argued that the applicant, having earned remission for good conduct and, also, having benefited from a partial remission of sentence which was granted by the President of the Republic on 28th February 1978, is entitled to benefit from another partial remission of sentence which was granted by the President of the Republic on 17th August 1977, with the result that he ought to have been released on 16th August 1982. 30 35

Counsel for the Republic has argued that the applicant is not entitled to the benefit of the remission granted on 17th August 1977.

It is alleged by the applicant that he was arrested, by virtue of a judicial warrant, on 17th August 1977; on the other hand, counsel for the Republic has insisted that though the warrant for the arrest of the applicant was issued on 17th August 1977  
5 it was executed only on 18th August 1977. It is, however, common ground that on 18th August 1977 the applicant was remanded in custody pending police investigations.

Counsel for the applicant submitted that, by virtue of section 117 of the Criminal Procedure Law, Cap. 155, as amended by  
10 the Criminal Procedure (Amendment) Law, 1975 (Law 2/75), the sentence of imprisonment of the applicant should be computed as running from the date of his arrest, which is, as has been alleged by him, the 17th August 1977; and that, therefore, he is entitled to benefit from the remission of sentence granted, as  
15 aforesaid, by the President of the Republic on that date.

I do not agree that the applicant in this case is entitled to an order of habeas corpus, even if it is assumed in his favour - without so deciding - that he was actually arrested on 17th August 1977. My reasons for this view are as follows:

20 On a correct construction of section 117 of Cap. 155 a sentence of imprisonment should be regarded as running as from the date on which it was passed and any period of detention of the convict concerned prior to that date is only taken into account for the purpose of reducing the period of his sentence of  
25 imprisonment and not in order to give to such sentence retrospective effect.

Any how, it was only on 18th August 1977 that the applicant was remanded in custody under section 24 of Cap. 155 and, so, it is only from that date that the reduction of the period of his  
30 sentence under section 117, above, could be computed and not as from the 17th August 1977 when, according to his disputed allegation, the applicant was arrested.

In any event, in my view, the remission of sentence granted by the President of the Republic on 17th August 1977 is patently  
35 inapplicable to the applicant. It is absolutely clear from a fair reading of the relevant text, which is before me, that such remission was intended to apply only to those who were already

serving, at the time when it was granted, sentences of imprisonment and not, also, to those who were at the time either under arrest or remanded in custody and might subsequently be convicted and imprisoned.

A contrary understanding of the effect of the remission of sentence which was granted by the President of the Republic on 17th August 1977 would, also, be, in my opinion, incompatible with Article 53.4 of the Constitution, which empowers the President of the Republic to, inter alia, grant remission of a sentence already passed by a court and not of a sentence to be passed in future upon a person who has been arrested or has been remanded in custody. 5 10

On the basis of all the foregoing this application fails and it should be dismissed.

*Application dismissed.* 15