

1983 November 14

[TRIANTAFYLLIDES, P., STYLIANIDES, AND PIKIS, JJ.]

CHARALAMBOS A. THEMISTOCLEOUS,

Appellant.

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4454).

Criminal Law—Sentence—It has to be provided by Law—Court has no power to impose any sentence beyond the one envisaged by the law creating the offence—Maxim “nulla poena sine lege”.

Firearms Law, 1974 (Law 38/74)—Sentence for contravention of—No power under the Law to impose sentence of “disqualification from holding or obtaining a gaming licence”—Sections 7(6) and 28 of the Law.

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The sole issue in this appeal was whether upon a conviction of the appellant of the offence of possession of a firearm without being the holder of a certificate of registration and a firearm licence, contrary to sections 7(1)(6)(a)(c) and 28 of the Firearms Law, 1974 (Law 38/74) the Court was empowered to “disqualify him from holding or obtaining a gaming licence for a period of six months”.

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The punishments provided for the offences in question are governed by s.7(6) and consist of imprisonment or fine or both. Moreover s.28 empowers the Court, in addition to any other sanction, to disqualify an accused person from possessing or using any firearm for any period the Court may determine.

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Held, that criminal sanctions have to be provided by law and the Court has no power to impose any sentence beyond the one envisaged by the law that creates the offence; that the orders issued in respect of disqualification and deprivation of the accused of the right of holding or obtaining a gaming licence for six months are properly part of the punishment. (See

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Gendarmerie v. Antonakis Georghiou Yiallouros of Varosha,
2 R.S.C.C. 28); that this sentence is contrary to law and was
beyond the power of the trial Court to impose it; and that,
consequently, that part of the sentence referring to the
5 gaming licence must be set aside.

Appeal allowed.

Cases referred to:

Gendarmerie v. Yiallouros, 2 R.S.C.C. 28;

Mirachis v. Police (1965) 2 C.L.R. 28;

10 *Drakos v. Police* (1969) 2 C.L.R. 16;

Lazarou v. Police (1970) 2 C.L.R. 18.

Appeal against sentence.

Appeal against sentence by Charalambos A. Themistocleous
who was convicted on the 26th July, 1983 at the District Court
15 of Nicosia (Criminal Case No. 6649/83) on two counts of the
offences of possessing a firearm without being the holder of a
certificate of registration and a firearm licence contrary to
sections 7(1)(6)(a) and 7(1)(a)(6)(c) and 28 of the Firearms Law
1974 (Law No. 38/74) and section 20 of the Criminal Code,
20 Cap. 154 and was sentenced by Kronides, S.D.J. to pay £40.-
fine on count 1, £20.- fine on count 2 and was disqualified from
holding or obtaining a gaming licence for six months.

C. Loizou, for the appellant.

A. Vladimirov, for the respondents.

25 TRIANTAFYLIDIS, P.: The judgment of the Court will be
delivered by Mr. Justice Stylianides.

STYLIANIDES, J.: This is an appeal against the sentence
imposed by Kronides, S.D.J., disqualifying the appellant from
holding or obtaining a gaming licence for six months. This
30 punishment was imposed in respect of conviction, after plea
of guilty by the appellant, of possession of a firearm without
being the holder of a certificate of registration and a firearms
licence in breach of the provisions of s.7(1)(6)(a) and 7(1)(a)
(6)(c) and 28 of the Firearms Law No. 38/74 and s.20 of the
35 Criminal Code, Cap. 154.

The Court sentenced the accused to £40.- on the first count
and £20.- on the second count and further "disqualified him

from holding or obtaining a gaming licence for a period of six months”.

The accused was the owner of the firearm in respect of which the offence was committed. He was the holder of a certificate of registration and a firearms licence. His complicity in the offence was indirect; he allowed his three co-accused at the trial to carry it, contrary to Law; hence he was joined as co-accused in virtue of s.20 of Cap. 154.

The appellant took this appeal against sentence only. Counsel for the appellant argued before us that the sentence was manifestly excessive and further that the order with regard to the gaming licence was not a punishment provided by the law creating the offence. And this was the only ground eventually argued before us.

The offences for which the accused was found guilty are statutory ones. It is axiomatic under our system that there can be no punishment without law. Criminal sanctions have to be provided by law and the Court has no power to impose any sentence beyond the one envisaged by the law that creates the offence. The maxim “nulla poena sine lege” is for centuries entrenched in the system of the administration of criminal justice. It has to be adhered to and given effect by the Courts.

The punishment provided for the offences in question is set out in s.7(6) of Law No. 38 of 1974. Section 28 further empowers the Court, in addition to any other sanction, to disqualify an accused person from possessing or using any firearm for any period of time the Court may determine. The orders issued in respect of disqualification and deprivation of the accused of the right of holding or obtaining a gaming licence for six months are properly part of the punishment. (*Gendarmerie v. Antonakis Georghiou Yiallouros, of Varosha*, 2 R.S.C.C. 28; *Panayiotis Efsthathiou Mirachis v. The Police*, (1965) 2 C.L.R. 28; *Drakos v. The Police*, (1969) 2 C.L.R. 16; *Savvas Lazarou v. The Police*, (1970) 2 C.L.R. 18).

This part of the sentence is contrary to law and was beyond the power of the trial Court to impose it. Consequently, that part of the sentence referring to the gaming licence must be set aside. So, we order.

Appeal allowed.