1984 April 17

[HADJIANASTASSIOU, STYLIANIDES, PIKIS, JJ.]

1. EKDOTIKI ETERIA KOSMOS PRESS LIMITED,
2. MARIOS KYRIAKIDES,

Appellants,

v.

THE POLICE,

Respondents.

(*Criminal Appeals Nos.* 4360-61).

Findings of fact—Made by trial Court—Review of, by Court of Appeal—Principles applicable.

Criminal Procedure—Trial in criminal cases—Wrongful assessment of evidence of two prosecution witnesses and material misdirection as to effect of such evidence which was wrongly assessed as "incontrovertible, natural and convincing"—And failure to refer and evaluate important parts of the evidence—Verdict rendered unsafe and unsatisfactory—Conviction quashed.

New trial—Principles governing the discretion of Court of Appeal to order a new trial—No one should unnecessarily be put upon trial more than once for the commission of an offence—Just and proper that a verdict of acquittal should be entered whenever accused lost because of a misdirection or failure to sum up properly the evidence, the chance of an acquittal.

Appellants 1 the publishers and appellant 2 the person answerable under the Press Law for actions of the publishers, of the weekly newspaper "KYPROS" were convicted on a count of the offence of publishing false news or information contrary to section 50(1) of the Criminal Code, Cap. 154 (as amended by Law 70/65). The false news or information, was contained in an article on the subject of the abduction of Achilleas Kyprianou, the son of the President of the Republic, under the title* "The File of the Abduction, an eminently proper

* The offensive part of the publication is quoted at p. 125 post.

subject for a public enquiry"; and it was alleged therein that between the office of the Attorney-General and the Police there was a conspiracy to close the file of the case and impose a mantle of silence on the subject. Following the release of Achilleas Kyprianou, the President of the Republic made a statement in Public that he would extend forgiveness to the culprits in the interests of unity of the people, peace and in order to pacify passions; and this action of the President of the Republic met with the approval of the Minister of Interior who in a statement of the same day in effect endorsed the decision of the President of the Republic that no action be taken against the culprits. Notwithstanding the Ministerial statement and total inaction on the part of the Police towards arresting or questioning the suspects Theofanis Demetriou and Ioannis Adradjiotis, the principal prosecution witnesses in this case and the officers in charge of the investigation into the abduction, maintained that they carried out their investigations in ignorance of or disregard of the Ministerial statement or decision; and whereas the outward manifestations of their actions tallied with the proclaimed decision of the President of the Republic and that of the Minister of the Interior to extend forgiveness to the culprits and were compatible with that decision, they strove hard before the trial Court to deny it and claimed their actions were totally uninfluenced by the stand of the President and the Minister of the Interior on the matter. The Deputy Attorney-General, who advised that the culprits should not be prosecuted testified before the trial Court that he was uninfluenced by Presidential forgiveness in rendering his opinion.

In a statement*, however, which was made by the Office of the Attorney-General it was mentioned that in deciding on the criminal prosecution of the culprits the Attorney-General "should take seriously into consideration, among other factors, the promise that had been given on behalf of the State"; and the trial Judge failed to refer to this statement in his judgment. Proof of the falsity of the allegation of conspiracy was interwoven with and dependent upon acceptance of the testimony of the above two Police Officers and of the Deputy Attorney-General; and that the trial Judge concluded that the testimony of each one of them was "incontrovertible, natural and convincing"..

* The statement is quoted at p. 138 post.

Upon appeal against conviction:

(*After dealing with the principles governing review of the findings of a trial Court - vide pp. 130-131 post*)

Held. (1) that the texture of the facts of the case in itself makes the testimony of the two Police Officers, contrary to what the Judge held, controvertible: that the trial Judge found their evidence to be convincing without addressing himself to that part of the evidence that constituted, in the circumstances of this case a serious misdirection: that the summing up of the evidence bearing on the value of the testimony of the two police officers was most inadequate; that there is a misdirection, as well as lack of adequate direction on the evidence, on the part of the trial Judge; that, further, the absence of any reference to the statement of the Attorney-General on the same subject and appreciation of its implications, constituted a serious omission on the part of the trial Judge, that constituted, in the circumstances of the case, a non direction; that the wrongful assessment of the evidence of the two police officers and failure to evaluate it in the context of the evidence as a whole, make his findings on their credibility unsafe and unsatisfactory; that there was a material misdirection as to the effect of their evidence, wrongly assessed as "incontrovertible, natural and convincing", as well as failure by the trial Court to refer to a body of evidence in the case that cast a different complexion on the effect of their evidence compared to the one found by the trial Judge; that the misdirection in relation to the evidence of the two police officers and failure to refer and evaluate important parts of the evidence, render the verdict unsafe and unsatisfactory, because the verdict depended on a finding of falsity, inextricably connected with the finding of credibility of the two police officers and proper appreciation of the evidence as a whole; and that accordingly the conviction must be set aside.

(2) *After dealing with the principles governing the discretion of the Court of Appeal to order a new trial - vide pp. 141-143 post;* That a cardinal principle in the administration of justice is that no one should unnecessarily be put upon trial more than once for the commission of an offence; that it is just and proper that a verdict of acquittal should be entered whenever the accused lost, because of a misdirection or failure to sum up properly the evidence, the chance of an acquittal; that if the Judge had con-

sidered the evidence in its proper perspective, it would be at least possible, if not probable, that he would regard the evidence of Theofanis Demetriou and Ioannis Adradjiotis as unconvincing; and that on account of that, acquit the appellants for lack of proof of the element of falsity in the charge: that the chance of an acquittal would certainly be enhanced if the Judge had properly drawn attention to the remaining aspects of the evidence pertaining to the non prosecution of the suspected culprits; that thus, the appellants did lose the chance to be acquitted by the trial Judge: and that that being the case, it is the duty of this Court to acquit and discharge them.

Appeal allowed

Cases referred to:

Police v. *Ekdotiki Eteria* (1982) 2 C.L.R. 83;

Papadopoulos v. *Stavrou* (1982) 1 C.L.R. 321;

Neophytou v. *The Police* (1981) 2 C.L.R. 195;

Zisimides v. *Republic* (1978) 2 C.L.R. 382;

Katsiamalis v. *Republic* (1980) 2 C.L.R. 107;

Republic v. *Sampson* (1977) 2 C.L.R. 1;

Isaias v. *Police* (1966) 2 C.L.R. 43;

Zannettos v. *Police* (1968) 2 C.L.R. 232;

Pierides v. *Republic* (1971) 2 C.L.R. 263;

Au Pui Kwen v. *Attorney-General of Hong Kong* [1979] 1 All E.R. 769;

Reid v. *The Queen* [1979] 2 All E.R. 904.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Ekdotiki Eteria Kosmos Press Ltd. and Another who were convicted on the 9th September, 1982 at the District Court of Nicosia (Criminal Case No. 11970/82) on one count of the offence of publishing false news or information contrary to section 50(1) of the Criminal Code, Cap. 154 (as amended by Law No. 70/65) and were sentenced by Ioannides, D.J. as follows: Accused 1 to pay £300.- fine and accused 2 to a suspended term of four months' imprisonment.

Gl. Talianos, for the appellants.

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

Cur. adv. vult.

HADJIANASTASSIOU J.: The judgment of the Court will be delivered by Mr. Justice Pikis.

PIKIS J.: "Ekdotiki Eteria Kosmos Press Ltd.", the publishers and, Marios Kyriakides, the person answerable under the Press Law for actions of the publishers, of weekly newspaper 'KYPROS', were charged before the District Court of Nicosia, on a count of accusing them of publishing false news or information in the edition of the newspaper of 5.7.82, in contravention of the provisions of s.50(1) of the Criminal Code, as amended by Law 70/65. The accused hotly contested their guilt. After a long trial, they were found guilty and sentenced, the publishers to a fine of £300.- and, Marios Kyriakides to a suspended term of four months' imprisonment. The false news or information, according to the particulars, was contained in an article on the subject of the abduction of Achilleas Kyprianou, the son of the President of the Republic, under the title "The File of the Abduction, an eminently proper subject for a public enquiry." The offensive part of the publication founding the charge, was the following (translated in English):

> "Police investigations (referring to investigations concerning the abduction of Achilleas Kyprianou), were directed from above and the police included in the file of the case such material as was considered expedient to be included by the government of Mr. Kyprianou. Between the Office of the Attorney-General (Γενικῆς Εἰσαγγελίας) and the police, there was a conspiracy to close the file of the case and impose a mantle of silence on the subject (παρασιώπιση τοῦ θέματος)".

The essence of the case for the prosecution, as defined and developed before the trial Court, may compendiously be put thus: The attribution of criminal conduct, namely conspiracy, to the two important law agencies of the State, the Office of the Attorney-General and the police, responsible for law enforcement, amounted, in the context of the article under consideration, to news or information. It was false because contrary to allegations made in the publication, both the police and the Office of the Attorney-General, acted, in relation to the investigation of the case of abduction, solely by reference to their duties under the law. Public confidence in the two law agencies of the State was apt to be impaired because of the false publication,

bringing the case within the four corners of the law, as analysed in *Police v. Ekdotiki Eteria* (1982) 2 C.L.R. 83.

Prosecution evidence was mainly directed towards establishing that the accusations levelled against the police and the Office of the Attorney-General, were unfounded, untrue and ill-motivated. Nothing they said or did justified the accusations. The principal witnesses for the prosecution were two police officers, namely, Mr. Theofanis Demetriou, Assistant Chief of the Police and, I. Adradjiotis, the officer-in-charge of the Nicosia C.I.D. and, Mr. L. Loucaides, Deputy Attorney-General. Mr. Demetriou assumed overall responsibility for the investigation of the case, from the moment the crime of abduction of Achilleas Kyprianou was reported to the police on 14.12.77. Mr. Adradjiotis was detailed as the investigating officer of the case.

The two police officers affirmed before the Court their investigation was inspired and directed by the letter and spirit of the Police Law. They were likewise inspired in recommending that no criminal proceedings should be instituted against anyone of the perpetrators and participants in the crime of abduction and other crimes committed in connection therewith during the unlawful detention of Achilleas Kyprianou. In the course of the investigations, it emerged indisputably that six persons collaborated in the abduction and aided in the detention of Achilleas Kyprianou over a period of days. The crime, apart from its severity and repercussions upon the victim of the crime, had wider political implications. It is no overstatement to say commission of the crime threatened peace and tranquillity in the country.

Mr. Loucaides affirmed the decision to recommend the non prosecution of the offenders was taken in the exercise of his discretion in the public interest. No other considerations influenced or had any effect upon his decision. The gist of their decision and the reasons for it, were the following:

The police recommended and the Deputy Attorney-General agreed that, inasmuch as the inspirators and principal perpetrators of the abduction and crimes associated therewith had, subsequent to the commission of the offence, been convicted to long terms of imprisonment for other crimes committed in the course of an organised attempt to escape from the Central Prison,

it was not in the public interest to prosecute either the main culprits or anyone of the six collaborators. For that reason, the case was closed and was classified as "Investigated, otherwise disposed of", signifying thereby that no further action would be taken in the matter.

Mr. Talianos for the appellants submitted that none of the aforementioned three witnesses for the prosecution could be judged as either truthful or reliable. On a consideration of the evidence before the trial Court, he contended that the finding made by the trial Court that their testimony was natural and convincing, was ill founded. In support of his submission, he made extensive reference to many parts of the evidence, including the communiques issued by the authorities on the progress of the investigation, its course and outcome. Apart from the unreliability of witnesses for the prosecution, counsel argued, as he had earlier done before the trial Judge, the publication did not disclose either news or information but amounted to a commentary on a matter of public interest necessitating the holding of a public enquiry. In any event, the rejection of the defence of good faith by the trial Court, was erroneous and contrary to the evidence before the trial Court. The numberous announcements on the subject of the abduction made by the authorities of the Republic, left many loopholes apt to stir a public minded person to ask in good faith that the matter be investigated by an independent Commission.

Mr. Evangelou for the respondents supported the verdict as merited by the evidence before the trial Court, justified by the reasoning given in support thereof. In the words of Mr. Evangelou, the judgment of the trial Court was beyond reproach.

Before debating the force of the rival submissions, it is expedient to outline the salient aspects of the judgment in order to evaluate the submissions made in a proper perspective and, then, test them by reference to the printed record of the proceedings before us.

The Court first examined whether the accusation of conspiracy was, in the context of the article, a statement of fact, as submitted by the prosecution, or an expression of a suspicion or comment, as argued by the defence. It held that the existence of conspiracy was portrayed as a fact moving the Court to examination

of proof of its falsity, a vital ingredient of the offence. Proof of this aspect of the case, was interwoven with and dependent upon acceptance of the testimony of the three principal witnesses for the prosecution. As acknowledged, the prosecution had to prove falsity beyond reasonable doubt. After brief reference to the evidence of each witness, the trial Judge concluded that the testimony of each one of them was "incontrovertible (ἀναντίλεκτη), natural and convincing". He noted the witnesses stood their ground in cross-examination and observed that nothing heard or produced in evidence shook their credit.

He proceeded to examine next the implications of the publication in order to determine whether it had the tendency or consequences envisaged by the law, namely, impairment of confidence in the State and its organs, another ingredient of the offence. He made reference without discussing to the decision of the Full Bench in *Police v. Ekdotiki Eteria* supra, for guidance on the subject. In the above case, the Supreme Court held that s.50(1) of Cap.354, postulates impairment of confidence in an institution of the State, as opposed to impairment of confidence in the persons holding office in that institution. The trial Judge concluded the publication had the tendency attributed to it by the charge because it disparaged two important institutions of the State, the principal agencies for law enforcement. Thus, the prosecution was found to have proven its case unless the accused could avail themselves of the defence of good faith created by the proviso to s.50(1); and proceeded to examine the defence of good faith.

It is a defence to a charge under s.50(1) to prove, the burden being cast on the accused, that the publication was made in good faith and was founded on facts justifying it. Good faith is defined by reference to the provisions of s.201 of the Criminal Code, a statutory provision designed to define the limits of a defence of qualified privilege in the context of the law of criminal defamation.

Numerous government press releases were produced in order to demonstrate contradictions in the case for the prosecution, undermining the credibility of prosecution witnesses, on the one hand and, arousing concern on the part of the accused, on the

other, as to the course of the investigations justifying the commissioning of a public inquiry on the matter.

In rejecting the defence of good faith, the trial Court had, apart from the publication in question, regard to another publication in the same newspaper of March 1982, on the same subject. The Court doubted the bona fides of the accused and rejected the defence of good faith. In the two articles, some doubts were cast on the correctness of the official version as to the circumstances preceeding and accompanying the abduction of Achilleas Kyprianou notwithstanding the decision of the Larnaca Assize Court in Criminal Case No. 1783/78 on 27.9.1978 (exhibit 8). In evidence before the Court, Marios Kyriakides did not doubt the circumstances of the abduction but this did not, as he maintained, minimise his interest in the proper investigation of the case by the authorities and the prosecution of the perpetrators of the crime. Omission to prosecute the offenders was a matter of great concern to the public that should not go unnoticed.

In arguing the appeal before us, counsel repeated on behalf of his clients, that they did not doubt the commission of the offence of abduction and crimes associated therewith. But as public spirited members of the press, they had a keen interest in the investigation of the case and the failure of the authorities to bring to Court the culprits.

Although the appellants disputed the construction placed by the trial Judge on the meaning of the publication, contending it was nothing other than a comment or, at most, an expression of suspicion, the greatest part of their argument was devoted towards challenging the findings of the trial Court with regard to the credibility and quality of evidence of the three main witnesses for the prosecution. The complaint here, respecting the evidence of the three main witnesses, is essentially threefold: Firstly, neither of the three ought to have been believed on a view of their evidence in its entirety, examined in the context of the evidence adduced as a whole. The contention is that their evidence was self contradictory, undeserving of belief by any Court. Secondly, assessment of their evidence as "incontrovertible, natural and convincing", was a gross misdirection. No Court could, in the submission of appellants, so appreciate their evidence on a review of the evidence as a

whole. Thirdly, the summing up of the evidence was one-sided and patently inadequate, to the extent of rendering the verdict liable to be set aside for non direction with regard to material parts of the evidence. Submissions on the credibility and treatment of evidence of principal witnesses, and findings made in connection therewith, are relevant to the finding of falsity of the publication, an important ingredient of the offence under s.50(1)—Cap. 154. Only if the news or information published is false, can a charge under s.50(1) be made out. Although one might argue that as a matter of logical order, we should first examine the appeal against the finding that the publication contained news or information, we consider it practical and necessary, in the circumstances of the case, to examine the question of falsity, not least because of the importance attached to this issue by the appellants. We shall, therefore, first deal with that part of the appeal directed against the findings made with regard to credibility of the three prosecution witnesses.

Earlier, we referred to the rival submissions, on the value and worth of the evidence of the principal witnesses for the prosecution, as they emerged on a consideration of the record as a whole. In reviewing the findings of a trial Court on appeal, there are two principles to bear in mind. The first is that the trial Court is, par excellence, the forum for the elucidation of the evidence and ascertainment of the facts. As we stressed in *Papadopoulos* v. *Stavrou* (1982) 1 C.L.R. 321, "in reviewing the findings and ultimate judgment of the trial Court, an appellate Court must never overlook that the trial Court, living through the drama of a case and following the unfolding of the rival contentions before it, is in a unique position to evaluate the evidence in its proper perspective. The live atmosphere of the trial Court is pre-eminently the forum for the elucidation of the evidence and the assessment of its impact". That was said in a civil appeal but applies with equal force to the review of the findings of a criminal Court as well. On the other hand, there is greater freedom to interfere with inferences drawn from primary facts; the same is true respecting the objective implications of the evidence, as a guide to its natural effect. The other principle to bear in mind, is that the furnishing of proper reasoning by the trial Court is mandatory under Article 30.2 of the Constitution and a fundamental attribute of the judicial process. As we noted in *Neophytou* v. *The Police* (1981) 2

C.L.R. 195, "In the longer run, faith in the judiciary of the State, and its mission, depends, to a very large extent, on the persuasiveness of the reasons given by the Courts in support of their decisions. Any laxity in this area would inevitably undermine faith in the premises of justice". There are differences between a review of the verdict of a jury and that of a Judge sitting without a jury reasoning his verdict by reference to the evidence. The verdict can be tested by reference to the evidence as well as the reasons given in support—See, *Zisimides* v. *Republic* (1978) 2 C.L.R. 382. After such review, if the Court of Appeal holds the view that certain findings were not reasonably open to the trial Court, it is dutybound to intervene notwithstanding the fact that the trial Court was impressed by the demeanour of the witnesses, as decided in *Katsiamalis* v. *Republic* (1980) 2 C.L.R. 107. Guided by these principles, we shall proceed to examine first the submission made with regard to the credibility and value of the testimony of the two police officers, namely, Theofanis Demetriou and Ioannis Adradjiotis and then, consider the submissions made with regard to the testimony of Mr. Loucaides.

THE EVIDENCE OF TH. DEMETRIOU AND I. ADRADJIOTIS:

Theofanis Demetriou and Ioannis Adradjiotis were concerned with the investigation of the crime of abduction from the moment the crime was reported to the police authorities. The crime was committed on the night of 14th to 15th December, 1977. To appreciate the conflicting submission on the effect and value of the evidence of these witnesses, it is instructive to recount certain indisputable facts that emerge from consideration of the evidence as a whole. This is a necessary exercise for, a principal submission of the appellants is that there is a chasm between the natural implications that arise from such indisputable facts, on the one hand and, the evidence of the two police officers, on the other, to an extent diminishing the effect and value of their evidence.

The abduction and subsequent detention of Achilleas Kyprianou rocked the country and threatened social tranquillity on account of the identity of the victim, being the son of the President of the Cyprus Republic and, the demands of the perpetrators for the release of their captive, that threatened consti-

tutional order. Certainly, the gravity of the crime was compounded by the demands of the captors for the release of a number of prisoners as a condition for the release of their victim (see, inter alia, exhibit 9). Eventually, the calprits released Achilleas Kyprianou on 18th December without their demands having been satisfied. Following the release of Achilleas Kyprianou, the President of the Republic made a statement in public, that he would extend forgiveness to the culprits, in the interests of unity of the people, peace and in order to pacify passions (see exhibit 18, P.I.O. press release of a statement made by the President of the Republic, on 18th December, 1977). He also named one of the culprits, presumably the ringleader. The action of the President to extend forgiveness to the culprits met with the approval of the Minister of the Interior, Mr. Veniamin. In a separate statement of the same day, the Minister stated he was cognizant with Presidential action and added significantly that forgiveness was a matter for the President and, secondly, that he applauded the decision of the President (see, exhibit 16). Under the Police Law, s.3(A) in particular, the Minister is entrusted with the enforcement of the Police Law and is assigned supervision of the Force. He is authorised to issue instructions necessary for carrying out the functions of the force, judged expedient in the interests of the Republic. In effect, the Minister endorsed the decision that no action be taken against the culprits. And none was taken. Notwithstanding the Ministerial statement and total inaction on the part of the police towards arresting or questioning the suspects, Theofanis Demetriou and Ioannis Adradjiotis maintained they carried out their investigations in ignorance of or disregard of the Ministerial statement or decision. That the culprits were known to the authorities, is made abundantly clear in the statement of the Minister and that of the Head of the Intelligence Service of the Police, Mr. Mourouzides (see, exhibit 17).

Counsel for the appellants forcefully argued that on any objective view of the stream of evidence before the trial Court, the evidence of the two police officers emerges as unreliable, contradictory and an exercise in self justification, disclosing a concerted effort to hide the true reasons for inaction on their part. Moreover, the summing up of the evidence was so inadequate as to lead the Court to a misappreciation of its effect because, contrary to what the trial Judge held, it was controversial and

appeared to be unnatural, as well as unconvincing. Mr. Evangelou expressed the view, the summing up was, on the whole, adequate and invited us to sustain the findings of the trial Court

What clearly emerges from examination of the evidence of the two police officers, is that their investigation of the case was less than vigorous and certainly spasmodic. Its tempo matched and objectively appeared to be in accordance with official directions to quicken or slacken its pace. No statement was taken from the victim of the crime for some seven months. In fact, investigations hardly got off the ground at all, until the Minister of the Interior directed the activation of the inquiry, on 22nd July, 1978, a fact announced by the Public Information Office (see, exhibit 10). The intense activity that followed this statement reveals how receptive Theofanis Demetriou and Ioannis Adradjiotis were to the directions of the Minister. Clearly, these directions propelled them to a spree of investigatory activitiy. Not only a statement was obtained from the victim, as noticed above, but an identification parade was held on 4.8.78 to establish or verify the identity of the culprits.

The inescapable inference apt to be drawn by an objective analyst of the course of the investigation between December 1977 and August 1978, is that the pace of the investigation followed strictly Ministerial intentions. Nevertheless, Mr. Demetriou persisted in his evidence that his actions were solely inspired and directed by his duties under the Police Law. He dismissed the suggestion that his actions were modelled on directions of his superiors. Thus, he maintained that the promise of the President for forgiveness and its endorsement by the Minister responsible for the police force, had no effect or impact upon his actions. He claimed, the only notice he took of it was through the press and then it was of no effect to him. That he refrained from arresting the culprits, although known, was not, he maintained, a response to the promise of the President or directions of the Minister, but his own choice in furtherance of what he described as a discrete plan for a follow-up of the culprits. No Court, I believe, properly directed on the facts of the case, could attach any weight to this aspect of the evidence of Mr. Demetriou. And the same can be said of the actions of Mr. Adradjiotis. How could they hope to implement their "discrete" plan when Pavlides. believed to be the principal

culprit, and his associates, were free to leave the country? In fact, the name of Pavlides was removed from the stop-list, to make possible his departure at any time he wanted.

At last, when the investigation moved forward, following Ministerial directions of 22.7.78 and, evidence was collected and processed, instructions were issued by Mr. Demetriou on the day following the identification parade, that is, on 5.8.78, to suspend the investigations. Mr. Demetriou was hard-pressed at the trial to explain these directions, irreconcilable with the need to complete the investigations and proclaimed desire of Mr. Demetriou to conclude them as soon as possible. His explanation was that need arose for the suspension of the investigation because of the assassination of a foreign dignitary, namely Mr. Sebai, at the Hilton Hotel, necessitating diversion of police attention to another case. Mr. Adradjiotis does not support the version of his superior on this point. In evidence, as well as in his report (exhibit 11), he stated the instructions to suspend the investigation were unconditional. Nor did Mr. Demetriou issue directions to Mr. Adradjiotis at any subsequent stage to resume and complete investigations. Hard as it is to beleive, Mr. Demetriou asserted before the trial Court the decision to suspend the investigations was his own, an initiative totally uninfluenced either by the promise of the President to forgive the culprits or endorsement of that promise by the Minister of the Interior.

The Report of Mr. Adradjiotis (exhibit 11):

Long after the suspension of the investigations, on 22.3.79, Mr. Adradjiotis submitted a report aimed at giving a summary of the progress of the investigation. He did not stop at that but offered advice as well on to the course to be followed with regard to the prosecution of the suspects. The report was submitted with the approval of Mr. Demetriou. Mr. Evangelou submitted it is not unusual for the investigating officer to conclude his report with advice about prosecution or non prosecution of persons incriminated by evidence in the hands of the police.

The report came under severe criticism by Mr. Talianos on several counts. Counsel contended the report was prepared as if it related to an ordinary crime, entirely stripped of its political undertones and the threat posed to constitutional order and

social tranquillity. Secondly, Mr. Talianos doubted the reasons given for the suggestion not to prosecute any of the offenders. The reasons given in the report, for the non prosecution of the offenders, are the following: The three principal culprits were convicted and sentenced to long terms of imprisonment in connection with what was described as "the Central Prison case"; that is in relation to crimes committed subsequent to the abduction of Achilleas Kyprianou. What is truly hard to comprehend, is their advice that the remaining three culprits who allegedly took a secondary part in the commission of the offences should not be prosecuted in the public interest. At the trial, Mr. Demetriou and Mr. Adradjiotis owned this as their honest belief. Here again, their action and advice appear, from an objective angle, perfectly consistent with the promise of the President for forgiveness and, the stand of the Minister of the Interior on the matter.

Mr. Adradjiotis insisted, as Mr. Demetriou did, that his actions were solely inspired and directed by his duties as a police officer. His actions were in no way influenced by the promise of the President to forgive the culprits. There is a significant contradiction between the evidence of Mr. Adradjiotis before the trial Court, on the one hand and, his evidence on the same subject in Criminal Case No. 10353/81 before the District Court of Nicosia. As the record of the case reveals, in giving evidence before the Court, he acknowledged that Pavlides had not been arrested because the President had made a statement to the effect that he had forgiven the culprits (see p.124 of exhibit 35). It is a significant contradiction, making a dent on the credibility of Mr. Adradjiotis, that went totally unnoticed by the trial Judge.

In the light of the above, we are persuaded it was a serious misdirection on the part of the trial Judge to assess their evidence as "incontrovertible, natural and convincing". On a review of the sequence of events, the testimony of the two police officers was unnatural. Their professed aims were contradicted by their action or, more appropriately, their inaction. Whereas the outward manifestations of their actions tallied with the proclaimed decision of the President of the Republic and that of the Minister of the Interior to extend forgiveness to the culprits and, are compatible with that decision, they strove hard to deny it and claimed their actions were totally uninfluenced by the

stand of the President and the Minister of the Interior on the matter. The texture of the facts of the case in itself makes their testimony, contrary to what the Judge held, controvertible. The Judge found their evidence to be convincing without addressing himself to that part of the evidence to which we have drawn attention that constituted, in the circumstances of this case, a serious misdirection. The summing up of the evidence bearing on the value of the testimony of the two police officers, was most inadequate. We are confronted with a misdirection, as well as lack of adequate direction on the evidence, on the part of the trial Judge.

THE EVIDENCE OF MR. LOUCAIDES:

Mr. Loucaides was criticised by counsel for the appellants, as the two police officers had been criticised, for lack of candour, in refusing to acknowledge that he streamlined his advice on Presidential forgiveness. He refused to advise, Mr. Talianos suggested, on the subject he had been requested by the Chief of the Police, namely, to give directions as to further course of action to be followed (see, minute 196—exhibit 15, read in translation):

> "The docket is transmitted. Please let me have your opinion as to the further handling of the case (τον περαιτέρω χειρισμόν της υποθέσεως)".

Instead, he chose to agree, counsel added, in a laconic way, with the suggestion of Mr. Adradjiotis, for the non prosecution of anyone of the culprits. The opinion of Mr. Loucaides reads:

> "Chief of the Police: I agree with your suggestion—L. Loucaides, Deputy Attorney-General"—(Minute 197—Exhibit 15).

The Chief of the Police, in requesting the opinion of the Attorney-General noted, in paragraph 3, that he agreed with the suggestion of Mr. Adradjiotis that further advancement of the investigation would serve no useful purpose considering that the abductors of Achilleas Kyprianou had been sentenced to long terms of imprisonment for the known affair at the Central Prisons.

Mr. Loucaides testified before the trial Court that he was

uninfluenced by Presidential forgiveness in rendering his opinion. Presidential forgiveness played no part in the advice given by the Office of the Attorney-General. He made detailed reference to the discretionary powers vested in the Attorney-General under our system of law, to refrain from prosecuting an offender despite incriminating evidence in the hands of the police and the gravity of the crime. His perception of the discretionary powers vested in the Attorney-General and the breadth of the discretion, were discussed in a book of Mr. Loucaides, written on the subject of the powers of the Office of the Attorney-General, years before he was required to advise in connection with this case. Mr. Talianos did not doubt the discretionary powers of the Attorney-General in this connection. But doubted the motives for the advice given in this case. As Mr. Loucaides explained before the trial Court, he considered it in the public interest, as the police authorities did, that the three principal culprits of the abduction and associated crimes, should not be put on trial because they were undergoing long sentences of imprisonment in connection with the commission of subsequent crimes (the Central Prison case). Also, no prosecution was warranted, in the public interest, of the remaining three participants in the crime of abduction and related crimes who played a less active role in the crimes. In the case of the latter three, the result of the advice was that they should go unpunished for serious crimes. In the opinion of Mr. Loucaides, as may be discerned from his agreement with the advice of the police authorities, it would serve no useful purpose to put the three secondary parties on trial. That the Attorney-General has a discretion, as well as those advising on his behalf, on the matter of prosecution, is certainly a fact. The argument of Mr. Talianos is that notwithstanding the existence of such discretion, the advice given is only explicable by reference to the forgiveness given by the President.

In evaluating the evidence of Mr. Loucaides in order to ascertain the stand of the Office of the Attorney-General in the matter of non prosecution of any of the three suspected culprits, the trial Judge overlooked a material piece of evidence before him—a statement of the Attorney-General released through the Public Information Office on 23.3.1981 on the subject of publications in the press on the abduction of Achilleas Kyprianou (exhibit 31). In that statement, the Attorney-

General expresses agreement with the advice of Mr. Loucaides as to the non institution of criminal proceedings. However, in a subsequent paragraph, he makes a statement that reveals a contradictory attitude on the part of the Office of the Attorney-General as to the non prosecution of the suspected culprits. We consider it appropriate to reproduce this part of the statement of the Attorney-General:

> "Τὸ ὅτι ὁ Πρόεδρος τῆς Δημοκρατίας, ὡς Ἀρχηγὸς τοῦ κράτους, ὑποσχέθηκε νὰ μὴ ληφθοῦν μέτρα γιὰ τὴν ἀπαγωγὴ σὲ ἀντάλλαγμα τῆς ἀπελευθέρωσης τοῦ ἀπαχθέντος κ. Ἀχιλλέα Κυπριανοῦ, βέβαια ἀπὸ νομικῆς ἀπόψεως δὲν ἀποτελεῖ οὔτε ἀμνηστία οὔτε δημιουργεῖ κώλυμα γιὰ ποινικὴ δίωξη. Ἀλλὰ ὁ Γενικὸς Εἰσαγγελέας τῆς Δημοκρατίας, ποὺ θὰ εἶχε νὰ ἀποφασίσει ἂν θὰ ἔπρεπε νὰ ἀσκηθεῖ ἢ ὄχι ποινικὴ δίωξη ὑπὸ τὶς περιστάσεις θὰ ἔπρεπε νὰ λάβει, μεταξὺ ἄλλων παραγόντων, σοβαρὰ ὑπόψη καὶ τὴν ὑπόσχεση ποὺ δόθηκε ἐκ μέρους τοῦ κράτους. Δὲν θὰ ἦταν σύμφωνα μὲ τὴ διατήρηση τῆς ἀξιοπρέπειας καὶ ἀξιοπιστίας ἑνὸς κράτους ἂν ἐπίσημες ὑποσχέσεις ποὺ δίνονται γιὰ τὴ διάσωση ἀνθρώπινης ζωῆς δὲν τηροῦνται".

(English translation)

> "That the President of the Republic, as the Head of the State, promised that no measures should be taken for the abduction against the culprits in exchange of the release of the person abducted, Mr. Achilleas Kyprianou, certainly does not amount to a pardon in law nor does it create an obstacle to their criminal prosecution. But the Attorney-General of the Republic, who would have to decide on their criminal prosecution, should take seriously into consideration, among other factors, the promise that had been given on behalf of the State. It would not be consistent with the sustainance of dignity and credibility of a State if official promises given to save human lives were not observed".

The statement of the Attorney-General is categorical that it was legitimate to take into account the promise given by the President and implies that the Office of the Attorney-General —here we are impersonally referring to that Office—did pay due regard to the promise of the President in not sanctioning a prosecution.

We agree it was legitimate, for those concerned to advise on the prosecution of the suspected culprits, to heed and seriously take into consideration the promise of the President in the exercise of their discretionary powers. The fact that the promise did not give rise to a pardon in law*, was not the end of the matter. Disregard of the Presidential promise for forgiveness, in the circumstances in which it was given, as noted by the Attorney-General, would undermine the credibility of the Head of the State and the State in the conduct of its affairs.

The question before us in not whether we agree with the opinion of Mr. Loucaides or the views of the Attorney-General on the matter, but whether the two views come in conflict and, if so, the extent to which such contradiction casts doubts as to the circumstances under which non prosecution of suspected culprits was directed.

The assessment of the credibility and evaluation of the evidence of Mr. Loucaides was a matter for the trial Court. It is not a matter for us to decide. However, absence of any reference to the statement of the Attorney-General on the same subject and appreciation of its implications, constituted a serious omission on the part of the trial Judge, that constituted, in the circumstances of the case, a non direction. What his judgment would have been if he had properly directed himself to that part of the evidence as well, we cannot predict.

CONCLUSION: The wrongful assessment of the evidence of the two police officers and failure to evaluate it in the context of the evidence as a whole, make his findings on their credibility unsafe and unsatisfactory. There was a material misdirection as to the effect of their evidence, wrongly assessed as "incontrovertible, natural and convincing", as well as failure by the trial Court to refer to a body of evidence in the case that cast a different complexion on the effect of their evidence compared to the one found by the trial Judge. To that one must add the failure of the Judge to refer to the statement of the Attorney-General and examine its implications in relation to the assessment of the evidence of Mr. Loucaides and, generally, in relation to the decision of the Office of the Attorney-

* See, *Republic* v. *Nicos Sampson* (1977) 2 C.L.R. 1.

General not to prosecute the suspected abductors of Achilleas Kyprianou. The misdirection in relation to the evidence of the two police officers and failure to refer and evaluate important parts of the evidence, render the verdict unsafe and unsatisfactory, because the verdict depended on a finding of falsity, inextricably connected with the finding of credibility of the two police officers and proper appreciation of the evidence as a whole. There remains to decide what order we should make upon setting aside the conviction of the appellants. Before so doing, it is only proper we should refer, albeit briefly, to the remaining aspects of the appeal, especially—

(a) The appeal against the finding that the publication contained news or information and

(b) the defence of good faith.

As to the first, having gone through the record, we hold the view that the trial Judge properly directed himself in law on what constitutes news or information, in contradistinction to comment or suspicion and, we find there is no room to interfere with his finding that the publication contained news or information.

Need to examine the defence of good faith could only arise if the case for the prosecution was otherwise regarded as proven. Therefore, it is not strictly necessary, whatever the outcome may be, to debate this aspect of the case. However, in the interests of completeness of the survey of the principal grounds pressed on appeal, we shall make brief reference to it together with certain observations that we regard as warranted in the circumstances of the case. In brief, the case for the appellants before the trial Court, was that their sole interest was the holding of an inquiry into the subject of non prosecution of the suspected culprits of a most serious crime. However, scrutiny of the content of the article as a whole, judged together with the article that preceeded it on the subject of the abduction, of 23.3.1981, make it doubtful whether this was the only object of the appellants. In the article of 23.3.1981, in particular, they appear to doubt the official version given of the abduction and go so far as to raise question marks about what really had happened. Notwithstanding the fact that during the trial appellant Kyriakides testified that he did not doubt that

Achilleas Kyprianou was the victim of an abduction and that serious crimes had been committed, a stand repeated by counsel before us during the presentation of their case on appeal, the omission to refer to a judicial pronouncement on the subject of the circumstances of the abduction and related matters, tends to contradict the assertion that they were solely interested in the elucidation of the circumstances of failure to prosecute the suspected culprits. And that, certainly raises serious question marks about their good faith.

The circumstances of the abduction of Achilleas Kyprianou were inquired into by the Assize Court of Larnaca, in Criminal Case No. 6160/78*, as a necessary incident for the determination of the punishment, to be meted out to a self-confessed participant in the abduction of Achilleas Kyprianou, in connection with another crime. In a judgment given on 27.9.1978, the Assize Court dismissed allegations made by accused and Pavlides, another self-confessed participant, that the abduction was faked, as ill founded and malicious, designed to serve sinister purposes. It was an attempt to add insult to injury. The Court found that Achilleas Kyprianou was the victim of a grave crime of abduction in the circumstances that he described, that coincided with the official version of events. Omission on the part of the appellants, in the aforementioned articles, to refer to this judgment of the Court that became public knowledge and appreciation of its implications, is not easily reconcilable with the good faith claimed by appellants. It may be noticed that subsequent to the publications of 23.3.1981, another Court of the Republic, this time the District Court of Nicosia, came to similar conclusions as the Assize Court of Larnaca, in Criminal Case No. 10353/81 (see, exhibits 35 and 35(a)).

We shall not probe the matter further, in view of the outcome of the appeal on account of failure to prove falsity, for the reasons given earlier in this judgment.

OUR ORDER:

We have to decide whether to acquit the appellants or order a new trial. Under the provisions of s.25(3) of the Courts of Justice Law, as well as those of s.145(1)(d) of the Criminal

* See exhibit 8 – the file of the case

Procedure Law—Cap. 155, there is discretion to order a new trial where the verdict is found to be unsatisfactory because of misdirections and failure to sum up the evidence properly. The principles upon which this discretion is exercised, were the subject of discussion in a number of decisions of the Supreme Court. The dominant consideration is the interests of justice (see, inter alia, *Isaias* v. *The Police* (1966) 2 C.L.R. 43; *Zannettos* v. *The Police* (1968) 2 C.L.R. 232). The leading authority is that of *Pierides* v. *The Republic* (1971) 2 C.L.R. 263. Two considerations must be balanced: The interests of justice and those of the accused. Also, reference may usefully be made to two decisions of the Privy Council, identifying the nature of the power to order a new trial and the principles bearing on its exercise. The first is that of *Au Pui Kwen* v. *The Attorney-General of Hong Kong* [1979] 1 All E.R. 769. It was indicated that it is not necessary, in order to direct a new trial, that the conviction of the accused should appear to be probable. It was explained that at common law there existed no power to order a retrial. Statutory power to do so, was first conferred by the Indian Code of Criminal Procedure, about a hundred years ago.

The second case is that of *Reid* v. *The Queen* [1979] 2 All E.R. 904. It was stressed that a new trial should not be a means of affording the prosecution a second chance to prove its case. Some of the criteria that should govern the exercise of the Court's discretion were indicated. They include:-

(a) Seriousness of the offence.

(b) The prevalence of the offence.

(c) Its complexity and

(d) The strength of the case for the prosecution.

A cardinal principle in the administration of justice is that no one should unnecessarily be put upon trial more than once for the commission of an offence. It is just and proper that a verdict of acquittal should be entered whenever the accused lost, because of a misdirection or failure to sum up properly the evidence, the chance of an acquittal. Therefore, the question we ask ourselves is whether the appellants did lose such a chance in the present case, because of the misdirections and failure

of an adequate summing up and assessment of the evidence, noted in this judgment. If the Judge had considered the evidence in its proper perspective, as indicated in this judgment it would be at least possible, if not probable, that he would regard the evidence of Theofanis Demetriou and Ioannis Adradjiotis as unconvincing. And on account of that, acquit the appellants for lack of proof of the element of falsity in the charge. The chance of an acquittal would certainly be enhanced if the Judge had properly drawn attention to the remaining aspects of the evidence pertaining to the non prosecution of the suspected culprits. Thus, we can say the appellants did lose the chance to be acquitted by the trial. That being the case, our duty is to acquit and discharge them. And we so direct.

Appeal allowed.