

1984 June 18

[TRIANTAFYLIDIS, P., LORIS AND PIKIS, JJ.]

COSTAS EVGENIOU,

*Appellant.*

v.

THE POLICE.

*Respondents.*

*(Criminal Appeal No. 4545).*

*Juvenile Offenders Law, Cap. 157—Child—Remand in custody pending trial—Disallowed by section 12(2) of the Law—Section 7(1) of the Law no longer confers power to order detention of a child once Law 12/75 equates in effect pre-trial detention with imprisonment.*

5

Following the committal of the appellant for trial by the Assize Court on a charge of homicide the appellant was remanded in custody at Ayios Dhometios Police Station. At the time of his committal the appellant was under 14 years of age and in consequence ranked as a child for the purposes of the Juvenile Offenders Law, Cap. 157; and the trial Judge, relying on s.7(1)\* of the Law, held that he was empowered to remand him in custody.

10

Upon an appeal against the above remand order counsel for the appellant submitted that the order should be discharged in view of the provisions of section 12(2)\*\* of Cap. 157 prohibiting the imprisonment of a child under 14.

15

\* Section 7(1) runs as follows:

“A Court on remanding or committing for trial a child or young person who is not released on bail, shall, where practicable, instead of committing him to prison commit him to custody in a police station to be there detained for the period for which he is remanded or until he is thence delivered in due course of law”.

\*\* Section 12(2) runs as follows:

“No child shall in any case be sentenced to imprisonment and no young person shall be sentenced to imprisonment if he can be suitably dealt with in any other way as set out in paragraph (b), (c), (d) or (f) of subsection (1) of this section”.

*Held*, that the prohibition to curtailment of freedom under Article 11.2 of the Constitution and exceptions thereto, are specifically referable to detention; that consequently, authorisation for detention must be expressly spelt out in the statute; that considering the impact of an order of remand in custody and its implications on the freedom of the person, it is fair to construe s.12(2) as disallowing the detention of a person under 14; (see s.7(2) of Cap. 157) that moreover, by Law 12/75 enacted subsequent to the Constitution, the legislature clearly evinced that pre-trial detention is a species of imprisonment; and that, therefore, the legislature intended to provide against the detention of a minor under 14 by any form of imprisonment; and that accordingly the remand order must be set aside and the appellant be released. 5 10

*Held*, further, that section 7(1) of Cap. 157 draws a distinction between remand in custody at a police station and detention at a prison; that, however, once Law 12/75 equates in effect pre-trial detention with imprisonment and given that s.12(2) of Cap. 157 absolutely prohibits imprisonment of a child under 14, it can be concluded that s.7(1)—Cap. 157, no longer confers power to order the detention of a child under 14, before trial, at a police station. 15 20

*Appeal allowed.*

Cases referred to:

*Vester v. G.* [1981] 2 All E.R. 304. 25

**Appeal against remand order.**

Appeal by Costas Evgeniou against the order of the District Court of Nicosia (Kallis, Ag. D.J.) made on the 26th May, 1984 whereby appellant was remanded in custody following his committal for trial on a charge of homicide before the Assize Court of Nicosia. 30

*L. Clerides* with *C. Clerides*, for the appellant.

*M. Kyprianou*, Senior Counsel of the Republic, for the respondent.

TRIANTAFYLIDIS P.: The judgment of the Court will be delivered by Mr. Justice Pikiis. 35

PIKIS J.: The appellant was remanded in custody at Ayios Dhometios Police Station following his committal for trial on a charge of homicide before the Assize Court of Nicosia. At the time of his committal he was under 14 years of age and in consequence ranked as a child for the purposes of the Junevile Offenders Law, Cap. 157.

Counsel for the appellant submitted the order should be discharged in view of the provision of s.12(2) Cap. 157 prohibiting the imprisonment of a child under 14. In his argument remand in custody, irrespective of the place of detention, is in effect an order of imprisonment and as such prohibited by the provisions of s.12(2) of the Juvenile Offenders Law. By way of reinforcement of this view he referred us to s.2 of Law 12/75 laying down that pre-trial detention should be regarded, after conviction as part of the sentence of imprisonment imposed unless the Court otherwise directs. The submission here is that the law itself regards remand in custody as a species of imprisonment. Consequently, s.12(2) Cap. 157 should be construed as prohibiting imprisonment, under any guise, of of a child under 14.

Counsel for the Republic supported the submission of appellant that there is no warrant in law for the detention of a minor under 14 and joined in the application for the discharge of the remand order. He added, the order of detention is unsupported from the view point of the exercise of discretionary power either, assuming discretion vested in the judge.

We are in agreement that imprisonment of a minor under 14 is not authorised by the law. Under Article 11 of the Constitution, detention is not permitted except for the purposes enumerated in Article 11.2 and then only if expressly sanctioned by law. Article 11.1 entrenches freedom and security of person as a fundamental right. Freedom is the inborn right to liberty of person, the right to move unfettered. Derogation from this right is only permitted in the circumstances envisaged and subject to the conditions laid down in Article 11.2. Paragraph (d) of Article 11.2 allows the detention of minors for the purpose of bringing them before a competent legal authority provided always provision for such detention is made in the law. Evidently, paragraph (d) above is not in itself authority for detention; a law must provide for it. Inasmuch as we are of

opinion that the Juvenile Offenders Law, Cap. 157, prohibits detention of a minor as a punitive measure, we need not examine. in this case, the ambit of the power vested by paragraph (d) of Article 11.2 in the legislature to provide for the detention of minors.

5

Section 12(2) — Cap. 157, expressly provides that no person under 14 can be sentenced to imprisonment. What must be resolved is whether this prohibition applies only to a formal order of imprisonment or to any order entailing the detention of a minor. The prohibition to curtailment of freedom under Article 11.2 and exceptions thereto, are specifically referable to detention. Consequently, authorisation for detention must be expressly spelt out in the statute. Considering the impact of an order of remand in custody and its implications on the freedom of the person, it is fair to construe s.12(2) as disallowing the detention of a person under 14. This view is strengthened on consideration of the provisions of s.7(2) of Cap. 157, demonstrating that a person under 14 should not be imprisoned. Moreover, by Law 12/75 enacted subsequent to the Constitution, the legislature clearly evinced that pre-trial detention is a species of imprisonment.

10

15

20

We can, therefore, competently predicate that the legislature intended to provide against the detention of a minor under 14 by any form of imprisonment.

The learned Judge who remanded the accused in custody at the police station found support for his decision in the provisions of s.7(1) Cap. 157. Section 7(1) draws a distinction between remand in custody at a police station and detention at a prison. However, once Law 12/75 equates in effect pre-trial detention with imprisonment and given that s.12(2) of Cap. 157 absolutely prohibits imprisonment of a child under 14, it can be concluded that s.7(1) —Cap. 157, no longer confers power to order the detention of a child under 14, before trial, at a police station.

25

30

The case of *Vester v. G.* [1981] 2 All E.R. 304 (D.C.), suggests that where imprisonment of a young person is disallowed by law, it cannot be secured by any indirect means.

35

In view of what has been said hereinabove, the remand order is hereby set aside and appellant will be released.

The appellant is directed to enter into a recognizance in the sum of £2,000.—with his father as a surety to attend his trial at the Assize Court. It is hoped his parents will exercise proper parental control over him throughout the intervening period.

5

*Appeal allowed.*