

1985 April 10

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF AN APPLICATION BY
ANDREAS KANARIS, OF PAPHOS, NOW AT THE
CENTRAL PRISONS, FOR AN ORDER OF HABEAS
CORPUS.

(Civil Application No. 1/85).

Remission of sentence—Person serving seven years' imprisonment—Sentence reduced by one fifth by President of the Republic under Article 53.4 of the Constitution—Remission of sentence for good conduct and industry—Regulation applicable is regulation 93, and not regulation 92, of the Prisons (General) Regulations, 1981—To hold otherwise it would amount to applying the relevant Regulations in a manner contrary to, and inconsistent with, the letter and spirit of Article 53.4—How can a prisoner enjoy the benefit of remission provided by regulation 93.

The applicant was sentenced on the 28th September 1981 to seven years' imprisonment. The said term of imprisonment was on the 1st March 1983 reduced by one fifth of it by the President of the Republic in the exercise of his power under Article 53.4 of the Constitution.

It was the contention of the applicant that under regulation 93 of the Prisons (General) Regulations, 1981 he was entitled to remission of his sentence by five twelfths of it and that, therefore, he should have been released from the Central Prisons on the 31st December 1984. Hence this application for an order of habeas corpus on the ground that his detention at the Central Prisons was unlawful.

Counsel for the respondent contended that after the reduction of the sentence of the applicant by the President of the Republic, as aforesaid, the regulation applicable to the case of the applicant was regulation 92 of the relevant Regulations, and not regulation 93, inasmuch as due to the reduction of his sentence by the President of

the Republic the applicant was serving a term of imprisonment of less than six years; and that, consequently, the applicant was eligible to be released only on the 22nd June 1985.

Held, that it is regulation 93, and not regulation 92, which continues to be applicable to the case of the applicant as a convict serving a sentence of more than six years and less than nine years' imprisonment, in spite of the fact that such sentence has, after it was passed upon the applicant on the 28th September 1981, been reduced by one fifth of it on the 1st March 1983 by the President of the Republic.

Held, further, (1) that it could not have been intended either by Article 53.4 of the Constitution or by the relevant Prisons Regulations that the reduction of a sentence of imprisonment by the President of the Republic, in the exercise of his powers under Article 53.4 of the Constitution, should be allowed to operate, in any way, to the detriment of the prisoner concerned as regards his entitlement to reduction of sentence for good conduct and industry under the said Regulations; and such detriment would actually be entailed if it were accepted as correct that in the present instance it is regulation 92, and not regulation 93, which is applicable.

(2) That a finding that regulation 93 is no longer applicable to the case of the applicant would result in nullifying, to a certain extent, the benefit derived by the applicant from the reduction of his sentence by the President of the Republic; and I am of the view that this would amount to applying the relevant Regulations in a manner contrary to, and inconsistent with, the letter and spirit of Article 53.4.

(3) That before the applicant can enjoy the benefit of the remission provided by regulation 93 he must be found to be eligible, under that regulation, to earn such remission for good conduct and industry; and this cannot be decided by this Court but only by the appropriate administrative organ; accordingly the application must fail.

Application dismissed.

Observations with regard to the strange result to which regulations 91 and 94 of the Prisons (General) Regulations, 1981 lead.

Application.

5 Application for an order of habeas corpus by Andreas Kanaris on the ground that his detention at the Central Prisons in Nicosia is unlawful.

L. N. Clerides with C. Clerides, for the applicant.

10 *E. Loizidou (Mrs.)*, for the respondent Director of Prisons.

Cur. adv. vult.

15 TRIANTAFYLIDIS P. read the following judgment. By means of the present application the applicant seeks an order of habeas corpus on the ground that his detention at the Central Prisons in Nicosia is unlawful.

The applicant was sentenced on the 28th September 1981 to seven years' imprisonment.

20 The said term of imprisonment was on the 1st March 1983 reduced by one fifth of it by the President of the Republic in the exercise of his powers under Article 53.4 of the Constitution.

25 It is the contention of the applicant that under regulation 93 of the Prisons (General) Regulations, 1981 (No. 18, Third Supplement, Part I, to the Official Gazette of 30 January 1981) he is entitled to remission of his sentence by five twelfths of it and that, therefore, he should have been released from the Central Prisons on the 31st December 1984.

30 It is, on the other hand, the contention of the respondent that after the reduction of the sentence of the applicant by the President of the Republic, as aforesaid, the regulation applicable to the case of the applicant is regulation 92 of the relevant Regulations, and not regulation 93, inasmuch as due to the reduction of his sentence by the President
35 of the Republic the applicant is now serving a term of imprisonment of less than six years; and that, consequ-

ently, the applicant is eligible to be released only on the 22nd June, 1985.

I have reached the conclusion, in the light of the arguments put forward by counsel for the parties, that it is regulation 93, and not regulation 92, which continues to be applicable to the case of the applicant as a convict serving a sentence of more than six years and less than nine years' imprisonment, in spite of the fact that such sentence has, after it was passed upon the applicant on the 28th September 1981, been reduced by one fifth of it on the 1st March 1983 by the President of the Republic.

Surely, it could not have been intended either by Article 53.4 of the Constitution or by the relevant Prisons Regulations that the reduction of a sentence of imprisonment by the President of the Republic, in the exercise of his powers under Article 53.4 of the Constitution, should be allowed to operate, in any way, to the detriment of the prisoner concerned as regards his entitlement to reduction of sentence for good conduct and industry under the said Regulations; and such detriment would actually be entailed if I would accept as correct that in the present instance it is regulation 92, and not regulation 93, which is applicable.

Moreover, a finding that regulation 93 is no longer applicable to the case of the applicant would result in nullifying, to a certain extent, the benefit derived by the applicant from the reduction of his sentence by the President of the Republic; and I am of the view that this would amount to applying the relevant Regulations in a manner contrary to, and inconsistent with, the letter and spirit of Article 53.4.

My above opinion that it is regulation 93 which is applicable to the case of the applicant, cannot, however, lead me to finding that the detention of the applicant is illegal, so as to entitle him to the making by me of the applied for in this case order of habeas corpus, because before the applicant can enjoy the benefit of the remission provided for by regulation 93 he must be found to be eligible, under that regulation, to earn such remission for good conduct and industry; and this cannot be decided

by me but only by the appropriate administrative organ.

Consequently, the present application has to be dismissed even though the applicant has succeeded as regards the issue of the applicability to his case of the said regulation 93.

Before concluding I would like to stress that I have noted that counsel for the respondent has agreed with a submission of counsel for the applicant that regulations 91 to 94 of the relevant Regulations do not seem, as framed, to envisage progressive remissions and that each one of them is to be applied independently of the others. Even though this view appears to be warranted by the way in which such regulations have been drafted—in a manner different from the corresponding provisions of the previously in force Prison Regulations, 1950 (No. 203, Subsidiary Legislation of 1950)—I must observe that it leads to rather strange and unjust results, because, for example, a prisoner who is serving a sentence of five and a half years is entitled to remission, under regulation 92, of one third of his sentence with the result that he may be released after staying in prison for three years and eight months, whereas a prisoner serving a sentence of six years may, under regulation 93, earn remission equal to five twelfths of his sentence with the result that he may be released after staying in prison for three years and six months in prison; likewise, a prisoner sentenced to eight years' imprisonment may earn, under regulation 93, remission equal to five twelfths of his sentence and be released after staying in prison for four years and eight months, whereas a prisoner serving a sentence of nine years' imprisonment may, under regulation 94, earn remission equal to one half of his sentence and be released after staying only for four years and six months in prison.

I, therefore, draw the attention of the competent organs of the Republic to this situation for any future remedial action that they may deem necessary.

In the light of all the foregoing this application is formally dismissed; and without any order as to its costs.

Application dismissed.
No order as to costs.