

1985 June 1

[TRIANTAFYLIDES, P.]

IN THE MATTER OF AN APPLICATION BY
IOANNIS TRIFTARIDES, OF NICOSIA NOW
AT THE CENTRAL PRISONS, FOR AN ORDER
OF HABEAS CORPUS.

(Application No. 21/85).

Remission of sentence—Applicant serving ten years' imprisonment—Sentence reduced by one fifth by President of the Republic under Article 53.4 of the Constitution—Regulation 94 of the Prisons (General) Regulations, 1981—Remission of sentence under said Regulation for good conduct and industry—Said Regulation cannot be applied in a manner magnifying the benefit derived by the applicant from the said remission by the President. 5

The applicant was sentenced to ten years' imprisonment as from the 15.4.1982 for the offence of homicide. The applicant's contention is that he has to serve only three years' imprisonment because by virtue of regulation 94 of the Prisons (General) Regulations, 1981 he is entitled to remission for good conduct and industry amounting to one half of his sentence, i.e. 5 years, and, furthermore, because the President of the Republic reduced his sentence by one fifth, i.e. two years, under Article 53.4 of the Constitution. 10 15

The respondent's contention is that the provisions of the said Regulation have to be applied only in relation to the eight years that remain after the deduction of the two years' special remission. with the result that the applicant would be entitled to a further remission of only four years. 20

Held, dismissing the application:

In the present instance the application of the relevant Prisons Regulations and, particularly, of reg. 94 should not be allowed to operate in a manner magnifying to any extent the benefit derived by the applicant from the remission of the one fifth of his sentence by the President 25

of the Republic; and this would be the result, if applicant's contention is accepted, because then the special two years' remission would be magnified into three years by "earning" under reg. 94 an extra year of remission. The approach of the respondent to the sub judice matter is correct. The detention of the applicant is not illegal as, in the light of the above, he cannot become entitled to be released before the 15.4.1986. (*In re Kanaris* (1985) 1 C.L.R. 173 explained).

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Application dismissed.

Cases referred to:

In re Kanaris (1985) 1 C.L.R. 173.**Application.**

Application for an order of habeas corpus by Ioannis Triftarides, now at the Central Prisons on the ground that his detention there is illegal.

L. N. Clerides with *C. Clerides*, for the applicant.*Cl. Antoniaides*, Senior Counsel of the Republic, for the respondent.

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Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment. The applicant seeks an order of habeas corpus on the ground that his detention at the Central Prisons, in Nicosia, is illegal.

He was sentenced to ten years' imprisonment as from the 15th April 1982, by an Assize Court in Nicosia, for the offence of homicide.

The applicant contends that he had to serve only three out of the ten years of the term of his imprisonment because by virtue of regulation 94 of the Prisons (General) Regulations, 1981 (No. 18, Third Supplement, Part 1, to the Official Gazette of the 30th January 1981) he is entitled to remission for good conduct and industry amounting to one half of his sentence, that is five years, and, furthermore, because the President of the Republic reduced

on the 1st March 1983 his sentence by one fifth, under Article 53.4 of the Constitution, that is by two years.

Applicant's counsel has argued that when the five years of remission, under regulation 94, above, are added to the one fifth of the sentence of the applicant by which his sentence was reduced by the President of the Republic, as aforesaid, there have to be deducted seven years out of the ten years' sentence of the applicant, thus leaving only three years of imprisonment to be served by him, which expired on the 15th April 1985.

Counsel for the respondent Director of Prisons has argued that after the deduction from the ten years' sentence of the applicant of the two years' special remission which was granted to him by the President there remain eight years and that the provisions of regulation 94 have to be applied only in relation to the said eight years, with the result that the applicant would be entitled to remission amounting to four years, and that, thus, he would have to serve four out of the ten years of the term of his imprisonment; consequently, assuming that he will be found to be of good conduct, he is not due to be released until the 15th April 1986.

In the case of *In re Kanaris*, (1985) 1 C.L.R. 173, I pointed out that due to the manner in which regulations 91 to 94 of the aforementioned Prisons Regulations have been framed their application may lead, sometimes, to rather strange and unjust results, as, for example, in the present case when a person who has been sentenced to ten years' imprisonment earns in respect of the whole of his sentence the maximum rate of remission under the said Regulations, which is six months for every year of his sentence.

I cannot accept the contention of counsel for the applicant that his client is entitled to have deducted from the ten years of his sentence of imprisonment first the two years' special remission granted to him by the President of the Republic and, then, from the remaining eight years the five years' remission to which he would be entitled under regulation 94.

In the *In re Kanaris* case, supra, I held that the relevant

Prisons Regulations, and, in particular, regulations 92 and 93 which were involved in that case, should not be allowed to operate in a manner nullifying, to a certain extent, the benefit derived by the applicant from the remission of his sentence which was granted to him by the President of the Republic under Article 53.4 of the Constitution.

In the present instance, however, I am of the view that the application of the relevant Prisons Regulations, and, particularly, of regulation 94, should not be allowed to operate in a manner magnifying to any extent the benefit derived by the applicant from the reduction of his sentence, as aforesaid, by the President of the Republic; and this would be the result if I accepted as correct the applicant's argument because then the two years' special remission of his sentence which was granted to him by the President of the Republic would be magnified into a period of three years by "earning" under regulation 94, above, an extra year of remission.

I, consequently, have reached the conclusion that the approach of the respondent to the sub judice matter is correct and that the applicant can only become entitled to remission, under regulation 94, to the extent of four years, that is for half of the remainder of his sentence after deducting therefrom two years' remission granted to him by the President of the Republic; therefore, his detention at present is not illegal as he cannot become entitled to be released before the 15th April 1986.

I would like to conclude by pointing out that, as it would become immediately obvious from a simple calculation, in the *In re Kanaris* case, supra, the applicant in that case sought, and was found to be entitled to, remission under regulation 93 of the relevant Prisons Regulations of the remainder of his sentence after there had been deducted from it the special remission granted to him by the President of the Republic under Article 53.4 of the Constitution.

In the light of all the above this application fails and is dismissed accordingly.

Application dismissed.