

1985 October 16

[A. LOIZOU, SAVVIDES, LORIS, STYLIANIDES, KOURRIS, JJ.]

IOANNIS TRIFTARIDES,

*Appellant-Applicant,*

v.

THE REPUBLIC,

*Respondent.*

*(Civil Appeal No. 6957).*

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*Constitutional Law—Article 53.4 of the Constitution—Remission of sentence.*

*The Prison (General) Regulations 1981 reg. 94 and reg. 93—  
The Prison Authorities correctly deducted from the sen-  
5 tence of imprisonment (ten years) the period of remission  
(two years) granted to the appellant, by the President of  
the Republic (along with all other convicts of a defined  
category) and then sought to apply reg. 94 so as to enable  
10 the appellant (if all the prerequisites for the application  
of such regulation are satisfied) to obtain another remission  
of 4 years, i.e. one half of the sentence that remained to be  
served after deducting the President's remission.*

The appellant was sentenced by an Assize Court to  
15 ten years' imprisonment as from 15.4.1982. On 1.3.1985  
the President of the Republic remitted one fifth of his  
sentence (Article 53(4) of the Constitution). Upon such  
remission the Prison Authorities deducted from the ten  
years' sentence this special remission of two years; there  
20 remained eight years in respect of which the provisions of  
regulation 94 of the Prison (General) Regulations 1981  
were to be applied. In this way the appellant would be  
entitled to another four years' remission, provided the  
other prerequisites for the application of regulation 94  
were satisfied. The appellant claimed that under regu-

lation 94 he was entitled to 5 years' remission, i.e. to remission equal to the one half of his sentence. He applied for a writ of Habeas Corpus ad subjiciendum. His application was dismissed. Hence the present appeal.

*Held, dismissing the appeal* (1) As it is clear from the wording of Article 53.4 of the Constitution the President of the Republic remitted the one fifth of the sentence passed by the Court and not one fifth of the sentence that would have been served in the light of regulation 94. 5

(2) Regulation 94 applies because the sentence imposed by the Court was ten years' imprisonment. Were it to be considered on account of the remission as a sentence of eight years, then regulation 93 would have been applicable with adverse results for the appellant. 10

(3) As good conduct is a necessary prerequisite for the remission under regulation 94, the said regulation cannot operate on the two years' remission granted by the President as it is not a period to be served and consequently there is no opportunity for the prisoner to exhibit good conduct and industry. 15  
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*Appeal dismissed.*

#### **Appeal.**

Appeal by applicant against the judgment of the President of the Supreme Court of Cyprus (Triantafyllides, P.) dated the 1st June, 1985 (Appl. No. 21/85) \* whereby his application for a writ of habeas corpus, on the ground that his detention in the Central Prisons after the 15th April, 1985 was illegal, was dismissed. 25

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

*Cl. Antoniadis*, Senior Counsel of the Republic, for him *Mr. M. Kyprianou*, Senior Counsel of the Republic, for the respondent. 30

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment of the Court. The appellant was sentenced by the Assize Court of Nicosia to ten years' imprisonment as from the 15th April 1982. On 35

\* Reported in (1985) 1 C.L.R. 514.

the 1st March, 1983, President Kyprianou on the occasion of his taking up the office of the President of the Republic exercised the powers vested in him by Article 53.4 of the Constitution and with the agreement of the Attorney-  
5 General of the Republic remitted his sentence, along with that of all other convicts falling within a defined category by one fifth, which in the case of the appellant was two years.

10 The Prison Authorities in implementing this decision of the President of the Republic deducted from the ten years' sentence of imprisonment imposed on the appellant this special remission of two years and there remained eight years in respect of which the provisions of Regulation 94 of the Prison (General) Regulations, 1981, were to be  
15 applied, which provides that "every prisoner serving a sentence of nine years or over may by good conduct and industry be allowed to earn one half of the sentence as a remission." In this way the appellant would be entitled to a remission amounting to four years, provided the other  
20 prerequisites of the said Regulation were satisfied, whereas the appellant claimed that if the five years of remission under regulation 94 were added to the one fifth of the sentence passed on him, i.e. two years, by which his sentence was remitted by the President of the Republic, in  
25 all seven years should be deducted out of the ten years of imprisonment passed on him by the Court, so there were left only three years of imprisonment to be served, which meant that he should have been released on the 15th April 1985 instead of the 15th April, 1986, if the mode of  
30 calculation by the Prisons Authorities was adopted.

On the 18th April 1985, the appellant applied for a writ of Habeas Corpus ad Subjiciendum on the ground that his detention after the 15th April 1985, was illegal. The learned President of this Court, who tried this application  
35 in the first instance, rejected the contentions of the appellant and upheld the approach of the Prison Authorities as correct and dismissed the application.

By the present appeal the appellant through his counsel pursued before us his arguments advanced at the trial and  
40 claimed that the mode of calculating the remission proposed by him was the correct one.

We are afraid we cannot accept this contention. Under Article 53.4 of the Constitution the President of the Republic remitted the sentence passed by the Court and not the sentence that would have been served in the light of regulation 94. This is clear from the wording of Article 53.4 which in so far as material on this point says that "The President... remits... any sentence passed by a Court in the Republic."

The sentence "passed by the Court" on the appellant was that of ten years and it was because it was a ten year sentence that regulation 94 was applicable in his case. Were it to be considered on account of the remission as a sentence of eight years' imprisonment then regulation 93 of the aforesaid Prison Regulations would have been applicable which provides "that every person serving a sentence of six years or over but less than nine years may by good conduct and industry be allowed to earn five-twelfths of the sentence as a remission. This would mean that the remission to which the appellant would have been entitled would be one month less per year and so he would have to serve four years and eight months instead of four years as calculated by the Prison authorities.

Needless to say that the benefit of regulation 94 cannot operate on the two years' remission granted by the President as it is not a period to be served and consequently there is no opportunity to exhibit good conduct and industry for this Regulation to apply. Hence the remission granted by the President on the ten years' imprisonment imposed by the Court should be deducted therefrom and the benefit under regulation 94 be invoked for the balance of eight years. This leaves four years to be served by the appellant provided the pre-requisites under the said Regulation are satisfied. Therefore his detention was not unlawful and the dismissal of his application correct in Law.

We take this opportunity to draw the attention of the appropriate Authority responsible for the preparation of the Prison Regulations to go through them so as to make them clearer where necessary and with less likelihood at arriving at odd situations for their easier application.

For all the above reasons this appeal is dismissed.

*Appeal dismissed.*