

1986 January 30

[TRIANTAFYLIDIS, P., PIKIS, KOURRIS, JJ.]

1. HARIS ENOTIADES,
2. HARIS ENOTIADES M.E. & B. Ltd.,

Appellants,

v.

THE POLICE.

Respondents.

(Criminal Appeals Nos. 4620 - 4621).

*Constitutional Law—Constitution, Articles 15.1, 15.2 and 25.2
 —Right to privacy protected by Article 15.1—Ambit of
 protection—The Drugs (Control of Quality, Supplies and
 Prices) Law 6/67, s. 30 (b)—Said section compatible with
 the Constitution.*

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*The Drugs (Control of Quality, Supplies and Prices) Law 6/67
 —Sections 31 (d), 30 (a) and 30 (b).*

The appellants, who are trading in pharmaceutical products, were convicted on a count founded on the provisions of s. 31 (d) of the Drugs (Control of Quality, Supplies and Prices) Law 6/67 for refusal to produce for inspection books and records at the request of an Inspector of Health (nominated under s. 30 (a)) made under s. 30(b) of the said law.

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The nub of the appeals is that the authority given under s. 30 (b) to probe the conduct of traders and manufacturers of drugs is invidious to the right of privacy, guaranteed by Article 15.1 of the Constitution and irreconcilable with its provisions.

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The judgment of the Court was delivered by Pikis, J.

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Triantafyllides, P. delivered a separate judgment based on somewhat different reasoning.

Held, dismissing the appeals A) Per Pikis, J., Kourris, J., concurring: (1) It is unnecessary to debate American Law on the subject because such law is founded on the provisions of the fourth and fifth amendments that have no direct parallel in our Constitution.

(2) Article 15.1 of the Constitution was authoritatively interpreted by the Full Bench of this Court in *Police v. Georghiades* (1983) 2 C.L.R. 33, wherefrom the following propositions emerge: (a) The right to privacy is confined to inherently private aspects of personal and family life. (b) An objective test is applied to determine what is a private, personal matter in the sense of Article 15.1 and (c) the need to ensure unfettered development of the personality of the individual, a universal aspiration of mankind and ethical standards at anyone time, are relevant in determining whether particular aspects of conduct are private, personal matters.

(3) The right to privacy as framed by Article 15.1 is confined to personal and family matters, which are those immediately connected with the person, necessary for the preservation of his individuality. If his actions affect others, he cannot claim the protection of Article 15.1, unless the relationship between them is confidential, in the sense explained in the case of *Georghiades*, supra.

(4) Trading and business activities are not of their nature personal matters. The relationship between trader and customer is commercial, not confidential.

(5) The regulatory power of the State can be extended to the carrying on of a trade or business in the interest, inter alia, of public health (Article 25.2 of the Constitution), provided formalities, conditions or restrictions imposed thereby are sanctioned by Law. Law 6/67 is such a law.

B) Per Triantafyllides, P., dismissing the appeals for different reasons: (1) In *Georghiades'* case supra there did not appear to exist a definite majority as regards the authoritative interpretation of Article 15.1 of the Con-

stitution in relation to the right of privacy and therefore, the *Georghiades*' case is not binding precedent.

(2) Article 15.1 of the Constitution corresponds closely to Article 8 of the European Convention on Human Rights of the Council of Europe, which after its ratification by Cyprus, is part of our law. Consequently, some of the relevant case-law of the European Commission of Human Rights may be usefully referred to. 5

(3) The statutory provision requiring the appellants to produce books and records kept by them does result in infringement of the right to privacy protected by Article 15.1, but such interference is justifiable under Article 15.2 of the Constitution as being necessary in the interests, inter alia, of public health and, also for the protection of the rights and liberties guaranteed by the Constitution to other persons. 10 15

Appeals dismissed.

Cases referred to:

Police v. Georghiades (1983) 2 C.L.R. 33;

The Board for Registration of Architects and Civil Engineers v. Kvriakides (1966) 3 C.L.R. 640; 20

Decisions of the European Commission of Human Rights:

X. v. The United Kingdom (Application 9702/82, 30 D. R. 239);

X. v. Belgium (Application 9804/82, 31 D.R. 231); 25

Decision of the European Court of Human Rights;

Dudgeon (Judgment delivered on 22.10.81).

American Cases cited in argument:

Boyd v. United States (1885) 29 L.Ed. 746;

Camara v. Municipal Court of San Francisco, 18 L. Ed. 2d 930. 30

See v. City of Seattle (1967) 18 L. Ed. 2d 943;

Marshall v. Barlow's Inc. (1978) 56 L. Ed. 2d 305;

State of Michigan v. Tyler (1978) 56 L. Ed. 2d 486;

Donovan v. Dewey (1981) 69 L. Ed. 2d 262;

Michigan v. Clifford (1983) 78 L. Ed. 2d 477;

5 *Katz v. United States* (1967) 19 L. Ed. 2d 576;

Federal Trade Commission v. American Tobacco Co. (1923)
68 L. Ed. 696;

Davis v. United States (1946) 90 L. Ed. 1453.

Appeals against conviction and sentence.

- 10 Appeals against conviction and sentence by Haris Eno-
tiades and Another who were convicted on the 20th Febru-
ary, 1985 at the District Court of Nicosia (Criminal Case
No. 20015/84 on one count of the offence of failing to
produce for inspection books and records at the request of
15 an Inspector of Health contrary to section 31 (d) of the
Drugs (Control of Quality, Supplies and Prices) Law, 1967
(Law No. 6/67) and were sentenced by Kronides, S.D.J.
to pay £150.- fine each and accused No. 1 was further or-
dered to enter into a recognizance of £300.- for one year
20 to keep the law.

K. Talarides, for the appellant.

Gl. Hadjipetrou, for the respondents.

TRIANAFYLLIDES P.: The judgment of the Court will be
given by Pikis, J., but I will add some remarks of my own.

- 25 PIKIS J.: The appellants trade in pharmaceutical pro-
ducts. They were convicted on a count founded on the
provisions of s. 31 (d) of the Drugs (Control of Quality,
Supplies and Prices) Law 1967 (6/67), hereinafter "the
law", for refusal to produce for inspection books and records
30 at the request of an Inspector of Health (nominated under
s. 30 (a)) made under s. 30 (b) of the law. They were
sentenced to pay a fine; appellant 1 was additionally or-
dered to enter into a recognizance to keep the law. They
owned up their persistent refusal to produce the documents

in question as a deliberate exercise of the right vested them under Article 15.1 of the Constitution, entitling them to keep secret to themselves dealings with customers. The request to produce them and the law authorising a statutory claim to production, were unconstitutional for conflict with the provisions of the rights safeguarded by paragraph 1 of Article 15 to the provisions on which they were repugnant. Further, the relevant provisions of the law and the impugned act on sanctioned thereby, were inconsistent, as they argued before the trial Court, with aspects of Article 11 of the Constitution safeguarding the right to liberty and security of person

The trial Court found the relevant provisions of the law to be compatible with both articles of the Constitution and dismissed submissions of unconstitutionality. On appeal, submission of unconstitutionality was confined to Article 15.1. The nub of the appeal is that the authority given under s. 30 (b) to probe the conduct of traders and manufacturers of drugs is invidious to the right of privacy, guaranteed by Article 15.1 and irreconcilable with its provisions. The submission is that trading or business activity is by its nature a personal matter meriting protection under Article 15.1. Put in another way the submission is that the right to privacy inheres in every trade and business activity, shielding its conduct or exercise from public or State scrutiny. The proposition was mainly supported by reference to American caselaw¹ on the interpretation and application of the fourth and fifth amendments to the U.S.A. Constitution, protecting the individual, respectively, from unreasonable searches and seizures and self-crimination. Reference to American precedent was made because the right to privacy is interwoven with the protection given by the two amendments, and facets of it are directly protected thereby. None of the cases cited supports the sweeping proposition that business activity is, per se, a personal matter be-

¹ Boyd v United States (1885) 29 LEd 746, Camara v Municipal Court of San Francisco, 18 LEd 2d 930, See v City of Seattle (1967) 18 LEd 2d 943, Marshall v Barlow's Inc (1978) 56 LEd 2d 305, State of Michigan v Tyler (1978) 56 LEd 2d 480, Donovan v Dewey (1981) 69 LEd 2d 262, Michigan v Clifford (1983) 78 LEd 2d 477, Katz v United States (1967) 19 LEd 2d 576, Federal Trade Commission v American Tobacco Co (1923) 68 LEd 696, Davis v United States (1946) 90 LEd 1453

yond the regulation or scrutiny of the State. On the contrary, one of the decisions cited, namely, *Donovan* supports the proposition that hazardous business activity may be the subject of control and regulation, including inspection without a judicial warrant. In that situation, it was observed, the subject can have no reasonable expectation, to keep his activity private to himself, free from periodic inspections.

We consider it unnecessary to debate American law founded on the provisions of the fourth and fifth amendments that have no direct parallel in our Constitution. In Cyprus, the content and context of the right to privacy is the subject of a specific provision of the Constitution—Article 15.1—modelled on the provisions of Article 8 of the European Convention on Human Rights. As indeed it is the case with Article 8 1, the application of Article 15.1 is confined to matters of personal and family life. Article 15.1 was authoritatively interpreted by the Full Bench of the Supreme Court in *Police v. Georghiades*², wherefrom the following propositions emerge:-

- 20 (a) The right to privacy is confined to inherently private aspects of personal and family life.
- (b) An objective test is applied to **determine what is a private, personal matter** in the sense of Article 15.1, and
- 25 (c) the need to ensure unfettered development of the personality of the individual, a universal aspiration of mankind and, technical standards at anyone time, are relevant in determining whether particular aspects of conduct are private, personal matters.
- 30 Trading and business activities are not of their nature private personal matters. They involve impersonal conduct with the public. The relationship between trader and customer is commercial not confidential. That a trader may deal on different terms with different customers does not
- 35 make the relationship confidential.

¹ Fawcett—Application of the European Convention on Human Rights, 1969, p. 185 et seq.

² (1983) 3 C.L.R. 33.

The right of privacy as framed in Article 15.1, is confined to personal and family matters. Personal matters in this sense are those immediately connected with the person, necessary for the preservation of his individuality. They encompass every activity he should, as an individual entity, be free to undertake or express without intrusion from outside: the private preserve of every individual where his actions are of concern to him only. If his actions affect others, he cannot claim the protection of Article 15.1 unless the relationship between them is confidential, in the sense explained in the case of *Georghiades*, supra. In that area, neither the State nor anyone else has a right to pry in his affairs. Not only the State has a right but often a social duty, too, to protect the public from dealings that may, in the absence of Regulations, be harmful to it.

If the submissions of appellants were upheld in this case, not only the law here under consideration but every piece of legislation conferring power on State authorities to subject to scrutiny business dealings by requiring production of business records, would have to be expunged as unconstitutional; for example, income tax legislation¹.

The regulatory power of the State can, on constitutional authority,² be extended to the carrying on of a trade or business in the interest, inter alia, of public health provided formalities, conditions or restrictions imposed thereby are sanctioned by law. *The Drugs (Control of Quality, Supplies and Prices) Law 1967*, is such a law, designed to protect the public by appropriate restrictions from exposure to the uncontrolled production and sale of drugs and medicine. The law is not only compatible with the Constitution but a piece of legislation absolutely necessary in the interest of the wellbeing of citizens of the country.

The appeals are dismissed. There will be no order as to costs.

TRIANTAFYLLIDES P.: Though I agree with the outcome of these appeals as stated in the judgment just delivered by

¹ See, Income Tax Law 58/61 (as amended), and The Assessment and Collection of Taxes Law 4/78 (as amended).

² Article 25.2—*The Board for Registration of Architects & Civil Engineers v. Christodoulos Kyriakides* (1966) 3 C.L.R. 640.

my brother Judge Pikis J., I have found it necessary to add some remarks of my own because my reasoning is somewhat different from his.

5 In his own judgment Pikis J. has, as regards the right to respect for private life, followed the approach to the interpretation of Article 15(1) of our Constitution which is to be found in his judgment in the case of *Police v. Georghiad*
10 *ades*, (1983) 2 C.L.R. 33, with which Hadjianastassiou J. and Loris J. agreed. A rather different approach to such interpretation was adopted in that case by me, with which Malachtos J. and, to a certain extent, Stylianides J. agreed. Thus, in the *Georghiad*
15 *ades* case there did not appear to exist a definite majority as regards the authoritative interpretation of Article 15(1) of the Constitution in relation to the right of privacy and, therefore, the *Georghiad*
ades case is not binding precedent.

The appellants in the present case have invoked the protection, by means of Article 15.1 of the Constitution, of their right to respect for their private lives.

20 Article 15.1 of our Constitution corresponds closely to Article 8 of the European Convention on Human Rights of the Council of Europe, which after its ratification by Cyprus, is part of the law of Cyprus.

25 Consequently, some of the relevant case-law of the European Commission of Human Rights may be usefully referred to:

30 In the case of *X v. The United Kingdom* (Application No. 9702/82, 30 D.R. p. 239) it was held that though the obligation of a householder to complete a census form is an interference with his right to respect for private and family life such interference was justified in the interests of the economic well-being of the country, on the basis of the provisions of Article 8(2) of the Convention.

35 In *X v. Belgium* (Application No. 9804/82, 31 D.R. 231) the applicant, after he had sold various properties, was requested by the tax authorities to give information as to how he had used the money he had obtained. The applicant explained that the money had been partly invested in his

own firm and that the remainder was to be invested elsewhere. The tax authorities having found such information insufficient asked the applicant for detailed explanations about his private investments and, being dissatisfied with the further explanations which were then given by the applicant, they decided to impose tax on the income which they assumed that the applicant had earned from the remainder of the money which had not been invested in his firm. It was held by the European Commission of Human Rights that the fact that a tax authority is entitled to require the applicant to produce a statement of his private expenditures constituted an interference with his private life; but the Commission went on to find that such interference was justified under Article 8 (2) of the Convention inasmuch as it was necessary in a democratic society for the economic well-being of the country.

The European Court of Human Rights has, in cases such as that of *Dudgeon* (in which judgment was given on the 22nd October 1981), also dealt with the right to privacy, which is protected by Article 8 of the European Convention on Human Rights.

In the present instance I am of the view that the statutory provision requiring the appellants to produce for inspection books and records kept by them does result in an infringement of the right to privacy of the appellants which is protected by Article 15.1 of our Constitution, but such interference is justifiable under Article 15.2 of the Constitution as being necessary in the interests, inter alia, of public health and, also, for the protection of the rights and liberties guaranteed by our Constitution to other persons.

Therefore, these appeals have to fail as it cannot be found that the convictions of the appellants were based on a statutory provision which was unconstitutional.

Appeals dismissed.