

1987 July 22

(A LOIZOU, STYLIANIDES, PIKIS, JJ)

ANASTASIS POLITIS,

Appellant,

v

THE REPUBLIC,

Respondent

(Criminal Appeal No 4881)

Constitutional Law — Sentence — Constitution, Art 12 3 and Art 7 2 — Ambit of each of the aforesaid Articles — Whether the legislature entitled to impose a mandatory sentence for any of the crimes specified in Art 7 2 — As the legislature is vested with competence to impose, as a mandatory sentence for such crimes, the death penalty, it is by necessary implication entitled to impose any other fixed sentence — It follows that the mandatory sentence of life imprisonment for premeditated murder is not unconstitutional 5

The sole question in this appeal is whether sections 202(2) and 29 of the Criminal Code, as amended, are, to the extent they provide a mandatory sentence (life imprisonment) for the crime of premeditated murder, unconstitutional for breach of Art 12 3 of the Constitution 10

Held, dismissing the appeal (1) A series of decisions establish that the provisions of Art 12 3 make the judiciary the sole arbiters of the measure of punishment for breach of the provisions of a penal law The pertinent question is whether Art 7 2 of the Constitution introduces an exception to the rule laid down by Art 12 3 15

(2) The first objective of Art 7 3 is to sanction the death penalty for the limited class of grave crimes specified therein The second is to rest competence in the legislature to fix the death penalty as mandatory for such crimes The expression «a law may provide» imports legislative discretion whether to ordain the death penalty or not By necessary implication the legislature may ordain for the aforesaid crimes any other fixed measure of punishment, including life imprisonment 20

Appeal dismissed
No order as to costs 25

*Cases referred to**Distnt Officer Nicosia v HjiYannis, 1 R S C C 79,**Distnt Officer Famagusta v Antoni, 1 R S C C 84;**Supenntentent of Gendarmene, Lefka v HjiYanni, 2 R S C C 21,***5** *Morphou Gendarmene v Englezos, 3 R S C C 7,**Distnt Officer Nicosia v Themistochi and Another, 3 R S C C 47,**Distnt Officer Nicosia v Palis, 3 R S C C 27,**Police v Ahmet, 3 R S C C 50,**Distnt Office Kyrenia v Salth, 3 R S C.C 69,***10** *Milots v Police (1975) 7 J S C 933***Appeal against sentence.**

Appeal against sentence by Anastasis Politis who was convicted on the 23rd January, 1987 at the Assize Court of Nicosia (Criminal Case No. 537/87) on one count of the offence of premeditated murder contrary to sections 203 and 204 of the Crminal Code, Cap. 154 and was sentenced by Nikitas, P.D.C., Laoutas, S.D.J. and Michaelides, D.J. to life imprisonment.

15*N. Clerides, for the appellant*

R Gavrielides, Senior Counsel of the Republic, for the respondents.

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A LOIZOU J. The judgment of the Court will be delivered by Pikiis, J.

PIKIS J: Anastasis Politis was convicted on a charge of premeditated murder and was sentenced by the Assize Court of Nicosia to Life imprisonment. The Court felt bound to impose a sentence of life imprisonment as a matter of statutory obligation deriving from the provisions of sections 29 and 203(2) of the Crminal Code (as amended by the provisions of sections 2 and 3 of Law 86/83). They dismissed a submission of the defence that the provisions of the law were unconstitutional for inconsistency with those of Art. 12.3. They ruled that Art. 7.2 of the Constitution made it competent for the legislature to provide a mandatory sentence for the grave crime of premeditated murder. Their power was not confined, as stated in the judgment, to providing a sentence of death that was abolished by Law 86/83 for the crime of premeditated murder.

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Counsel argued, as earlier before the trial Court, that sections 202(2) and 29 of the Criminal Code, as amended, are unconstitutional for breach of Art. 12.3 to the extent that they ordain a mandatory sentence for the crime of premeditated murder. Art. 12.3 reads: «No law shall provide for a punishment which is disproportionate to the gravity of the offence». A series of decisions establish that the provisions of Art. 12.3 make the judiciary the sole arbiters of the measure of punishment for breach of the penal provisions of the law*. Art. 12.3 of the Constitution conforms, it must be said, to the strict separation between the powers of the State that underlines the division of state power under the Constitution of Cyprus. Punishment for infraction of the penal laws is, on proper classification of the nature of the power, a judicial function. The decision of the Supreme Constitutional Court in *Nicosia Police v. Djemal Ahmet*** establishes that an extended interpretation must be accorded to the expression «the gravity of the offence» encountered in Art. 12.3 wide enough to include the personal circumstances of the offender as a determinant of the gravity of the offence. An approach compatible with modern principles of sentencing that punishment should fit not only the crime but the offender as well.

The pertinent question is whether Art. 7.2 of the Constitution introduces an exception to the rule laid down in Art. 12.3. Art. 7.2 reads:

«No person shall be deprived of his life except in the execution of a sentence of a competent court following his conviction of an offence for which this penalty is provided by law. A law may provide for such penalty only in cases of premeditated murder, high treason, piracy jure gentium and capital offences under military law.»

The first objective of Art 7.2 is to sanction the death penalty for the limited class of grave crimes specified therein. The second, to vest competence in the legislature to fix such measure of punishment as mandatory in exercise of its legislative power. What

* See, *inter alia*, *District Officer of Nicosia v Hadji Yannis*, 1 R S C C 79, *The District Officer Famagusta v Demetra Panayiotou Antoni*, 1 R S C C 84, *Superintendent of Gendarmerie, Lefka v Chnstodoulos Antoni Hadji Yianni* 2 R S C C 21, *Morphou Gendarmerie and Andreas Demetri Englezos*, 3 R S C C 7, *District Officer, Nicosia and Michael Kton Palis*, 3 R S C C. 27, *The District Officer, Famagusta v 1) Michael Themistocli and 2) Angelou Michael*, 3 R S C C 47, *Nicosia Police v Djemal Ahmet*, 3 R S C C 50, *The District Officer, Kyrenia and Adem Sahih* 3 R S.C.C. 69, *Milots v. The Police* (1975) 7 J S C 933

** 3 R S C C 50

we must determine is whether legislative competence is limited to the sanctioning of the death penalty as a fixed measure of punishment for premeditated murder. The expression «a law may provide» in the second part of Art. 7.2 imports discretion leaving it to the legislature to ordain the death penalty for premeditated murder as a matter of legislative policy. They are not bound but may do so if they deem it appropriate. By necessary implication they may ordain any other fixed measure of punishment including, no doubt, a sentence of life imprisonment. Any other interpretation of Art. 7.2 would lead to absurdity, because while the legislature would be free to sanction the death penalty, the severest of punishments, they would be fettered from fixing any other measure of punishment.

Obviously the constitutional legislation singled out the crimes listed in Art. 7.2 for exceptional treatment in view of their gravity and their repercussions on the well being of society. In the case of premeditated murder what marks the gravity of the offence is the element of premeditation that necessarily renders the crime particularly heinous. In agreement with the Assize Court, we rule that sections 29 and 203(2) of the criminal code are not unconstitutional and as such make a sentence of life imprisonment obligatory upon conviction for premeditated murder.

The appeal is dismissed.

Appeal dismissed