1988 January 14

(TRIANTAFYLLIDES, P., SAVVIDES, STYLIANIDES, JJ.)

PANAYIOTIS ANDREA PARPAS,

Appellant,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 4808).

Constitutional Law — Right to liberty — Constitution, Arts. 11.2(c) and 11.3, 33.2, 34 and 35 of the Constitution — Obtaining handwriting specimens of a person under arrest — Purpose of obtaining such specimens completely alien to the reason of such person's arrest and detention — That part of the detention during which the specimens were taken was unconstitutional — Therefore, the specimens could not be used in evidence against such person.

Evidence — Admissibility — Evidence obtained during detention which was in contravention of Art. 11 of the Constitution — Inadmissible.

Appeal — New trial — Conviction based on inadmissible evidence — Whether new trial should be ordered — Principles applicable.

The appellant was arrested in virtue of a judicial warrant as a suspect for possessing explosive substances. During his detention the Police obtained handwriting specimens from him. Such specimens were adduced in evidence against the appellant in respect of charges concerning forgeries of various cheques.

The appellant, who was, eventually, found guilty on various counts concerning such cheques and was sentenced to concurrent terms of imprisonment, ranging from 9 months to 3 years, appealed.

Held, *allowing the appeal:* (1) This Court reached the conclusion that, in the circumstances of this case, the detention of the appellant as a suspect for possessing explosive substances, was resorted to in order to enable the police to obtain the specimens needed for the purpose of investigating the offences for which the appellant was convicted.

(2) In the circumstances of this case, the appellant's detention

during the time, when the police took the specimens from him, was contrary to Articles 11.2(c) and 3 of the Constitution.

(3) The handwriting specimens were not admissible in evidence, as they had been obtained in a manner contrary to the Constitution.

(4) As the appellant has, already, served some of the sentences and a substantial part of the sentence of 3 years' imprisonment (14 months), no new trial will be ordered. 5

Appeal allowed.

Cases referred to:

Merthodja v. The Police (1987) 2 C.L.R. 227; 10

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

Enotiades v. The Police (1986) 2 C.L.R. 64;

Psaras v. The Republic (1987) 2 C.L.R. 132;

Michaelides v. The Republic (1987) 2 C.L.R. 269.

Appeal against conviction and sentence. 15

Appeal against conviction and sentence by Panayiotis Andrea Parpas who was convicted on the 20th November, 1988 at the Assize Court of Nicosia (Criminal Case No. 7061/86) on four counts of the offence of forging of cheques contrary to sections 331, 333, 334 and 336 of the Criminal Code Cap. 154) on four 20 counts of the offence of personation contrary to sections 360 and 35 of the Criminal Code, on four counts of the offence of uttering a false document contrary to sections 331, 333, 334, 336 and 339 of the Criminal Code and on four counts of the offence of obtaining money by false pretences contrary to sections 297 and 25 298 of the Criminal Code and was sentenced by Artemides, P.D.C., Kronides S.D.J. and Soupashis, D.J. to concurrent terms of imprisonment ranging from three years to nine months.

E. Efstathiou with M. Tsangarides, A. Christoforou and C. Kamenos, for the appellant. 30

M. Kyprianou, Senior Counsel of the Republic, with A. Vassiliades, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. The appellant was on 20 November 1986 found guilty by 35 an Assize Court of Nicosia of four forgeries of cheques (on counts 1, 5, 9 and 13 in the information).

Also, in relation to the cheque involved in count 1 he was found guilty of the offences of personation, uttering a forged document and obtaining money by false pretences (on counts 2, 3 and 4) and in relation to each of the cheques involved in counts 9 and 13 he
5 was convicted of the offences of personation, uttering a false document and attempting to obtain money by false pretences (on counts 10, 11 and 12 and on counts 14, 15 and 16 respectively).

He was found not guilty of the offences of personation, uttering a forged document and obtaining money by false pretences in
10 relation to the cheque involved in count 5 (on counts 6, 7 and 8).

The appellant was sentenced to concurrent terms of imprisonment ranging from three years to nine months.

The appellant's convictions of the offences of forgery, and of the related thereto other already mentioned offences, were primarily
15 based on comparisons made by an expert witness, who was called by the prosecution, of the handwriting on the forged cheques with the handwriting of the specimens obtained from the appellant on 29 January 1986.

On that date the police searched on the strength of a judicial
20 warrant the premises of the appellant at Palechori village on the ground that the appellant possessed and was hiding there fire-arms. The search took place between 2.25 p.m. and 3.40 p.m.

At 3.45 p.m. the appellant was arrested on the strength of a judicial warrant at Palechori on the ground that he was suspected
25 of possessing firearms and was taken to a police station in Nicosia where between 4.35 p.m. and 5.30 p.m. there were obtained from him, with his consent admittedly, the aforesaid specimens of his handwriting.

At about 7.30 p.m. the appellant was released in so far as the
30 suspected possession of firearms by him was concerned and was arrested on the strength of a judicial warrant in relation to the offences of which he was eventually convicted.

It has been strenuously argued, inter alia, by counsel for the appellant that the aforementioned handwriting specimens of the
35 appellant, on the basis of which he was convicted, ought not to be treated as admissible evidence inasmuch as they were obtained at a time when the appellant was being detained at a police station in Nicosia in a manner contrary to Article 11 of the Constitution, which safeguards the right to liberty.

40 On the basis of all the material before us in this appeal we have

reached the conclusion that the arrest and detention of the appellant at Palechori and subsequently at a Nicosia police station on the ground that he was suspected of possessing explosive substances was resorted to in order to place the appellant in such a position of disadvantage as to make it easier for the police to obtain from him the handwriting specimens which were needed for the purpose of investigating into the offences in respect of which he was convicted and sentenced in the present case.

Even if we regard his arrest and detention on suspicion of possessing explosive substances as a limitation and restriction of his right to liberty which was lawfully made by virtue of paragraphs (2)(c) and (3) of Article 11 of the Constitution it must be borne in mind that Article 33(2) of the Constitution provides that the provisions in Part II of the Constitution relating to limitations or restrictions to which may be subjected the fundamental rights and liberties safeguarded by the said Part II shall not be applied for any purpose other than those for which they have been prescribed and Article 34 of the Constitution provides that nothing in Part II may be interpreted as implying for any person any right to engage in any activity or perform any act aimed at the limitation of the rights and liberties set forth in Part II of the Constitution to a greater extent than is provided in such Part II.

We think that on this particular occasion the way in which the appellant's right to liberty was interfered with, when he was arrested and detained on suspicion of possessing explosives, was incompatible with Articles 33(2) and 34 of the Constitution and, consequently, his detention at a Nicosia police station was rendered unconstitutional as being inconsistent with Article 11 of the Constitution in so far as is concerned that part of such detention during which the appellant has given handwriting specimens to the police for the purpose of the investigation into the present case, because the obtaining of such specimens was completely alien to the reason of his arrest and detention.

Of course, we would not like to make now a finding of general application and to hold that on each and every occasion on which a suspect is in lawful custody for one offence he may not be interrogated or asked anything in respect of another offence for which he has not yet been arrested; everything depends on the particular circumstances of each individual situation and in the present instance we have no hesitation in holding in this respect as we have already found in this judgment.

In *Merthodja v The Police* (1987) 2 C L R 227 it was reiterated that evidence secured by the police through the unconstitutional at the time detention of an appellant cannot be received in evidence or be relied on by a trial court in convicting the appellant
5 and reference was made on that occasion to previous case-law on this point such as *The Police v Georghiades*, (1983) 2 C L R 33 *Enotiades v The Police*, (1986) 2 C L R 64 and *Psaras v The Republic*, (1987) 2 C L R 132

We, consequently, hold that in view of the express and
10 mandatory provisions of Article 35 of the Constitution which provides, inter alia, that the judicial authorities of the Republic shall be bound to secure, within the limits of their respective competence, the efficient application of the provisions of Part II of the Constitution which safeguards fundamental rights and
15 liberties, the handwriting specimens which were obtained from the appellant, as aforesaid, when he was being detained at a Nicosia police station after his arrest and detention on the gound that he was suspected of possessing explosives were inadmissible evidence since they were obtained in manner inconsistent and
20 incompatible with the Constitution and could not be relied upon by the trial court in convicting him

We, therefore, set aside the conviction of the appellant in respect of all the offences in question

We have anxiously considered whether we should order in this
25 case, in the light of all relevant considerations a new trial The appellant was sent to prison on November 20 1986 and he has been in prison till now for approximately fourteen months and consequently, there can arise no question of ordering a new trial in respect of the offences for which he was sentenced to terms of
30 imprisonment ranging from nine months to one year He has, however, been sentenced to three years' imprisonment in respect of all the offences of forging and uttering forged documents and in respect of those offences, and bearing in mind the relevant principles of law as they have been expounded in the case-law to
35 which we have referred recently in the judgment we have given in *Michaelides v The Republic*, (1987) 2 C L R 269 we have decided not to order a new trial of the appellant because, as already stated, he has been in prison for fourteen months which is a considerable part of the three years' terms of imprisonment

40 In the result this appeal is allowed and the appellant is discharged

Appeal allowed