

Litigation - Cyprus

Supreme Court argues for rehabilitation and reform of offenders

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Facts Decision

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Argyrides v Police⁽¹⁾ concerned six appeals filed by six co-defendants against sentences imposed by the court of first instance in an indictment which contained a total of 20 charges of armed robbery.

The defendants had pleaded guilty to eight of the charges and the other charges had been withdrawn. The court of first instance had imposed prison sentences of 15 months on two of the defendants, 18 months on another two and 30 months on the final pair. The court rejected the defendants' application for the sentences to be suspended. The defendants therefore appealed on this point of law.

The defence argued that the court of first instance had been misguided when it examined the principles governing the suspension of a prison sentence. The court had made reference to Law 186 (I)/03, which amended the earlier 1972 law on the matter, and enlarges the court's discretion to suspend a prison sentence if this is justified by the facts of the case and the personal circumstances of the defendant.

The case of *Tziaouchari v Attorney General*⁽²⁾ established three factors that the court must take into account when exercising its discretionary power:

- the seriousness of the offence;
- the offender's criminal record; and
- his or her conduct from the time of the offence, including any expression of remorse on his or her part.

It was argued on the appellants' behalf that a suspension of the sentences was merited on account of:

- their youth (the oldest was only 20 years old);
- their previous good character (none had a criminal record or had displayed anti-social behaviour in the past); and
- the fact that all had been adversely affected by the time they had spent in prison.

The court of first instance had decided that despite the defendants' youth, their previous good record and the fact that they had expressed their remorse, an immediate prison sentence was appropriate since they had committed serious offences of armed robbery using knives and other weapons, with the aim of financial gain.

Decision

While accepting that the seriousness of the offence must be taken into account in determining whether a sentence should be suspended, the Supreme Court stated that this is not the overriding

factor, particularly since the seriousness of the offence defines the nature and quantum of the penalty. Instead, the court must consider whether the entire circumstances of the case justify a suspension of the sentence.

The Supreme Court first considered whether the sentences imposed by the court of first instance were within the parameters contained in the law. It found that they were within the average three-year limit of prison sentences for the offence, and therefore were not inappropriate. However, the Supreme Court decided that the court of first instance had conflated the preventative nature of the sentence with the suspension of the sentence. The court of first instance had also erroneously decided that the defendants' youth, their clean criminal record and their remorse could not influence the suspension of the sentence, but only the length of the term of imprisonment.

As the Supreme Court stated, although this was the case under the former law, the 2003 law requires that when a court decides whether to suspend a sentence, all factors must be taken into account, including the personal circumstances of the defendant.

The Supreme Court reiterated that a court's duty when imposing a sentence should not be limited to punishment, but should also aim to encourage the rehabilitation and reform of the offender. In the case at hand, the Supreme Court considered that this aim was achievable. It noted that the defendants had already served four months in prison and had received a taste of the justice system's punitive side.

Furthermore, the Supreme Court noted that the offences concerned were not organised crime, but opportunist robberies of kiosks and bakeries, with proceeds of only €2,500. The defendants were willing to compensate the victims and had already repaid some of the amount stolen.

The Supreme Court concluded its judgment by stating this was an appropriate case for the imposition of suspended prison sentences on all the appellants, based on the guiding principles set out above. The appeals were therefore allowed and the remaining prison sentences were suspended for three years from the date of the lower court's judgment.

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Endnotes

- (1) Criminal Appeals 64-69/2013.
- (2) (2005) 2 AAD 161.

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