

ΕΠΑΡΧΙΑΚΟ ΔΙΚΑΣΤΗΡΙΟ ΛΑΡΝΑΚΑΣ

ΕΝΩΠΙΟΝ: Ν. Ταλαρίδου - Κοντοπούλου, Ε.Δ.

Αρ. Υπόθεσης: 935/14

Αστυνομικός Διευθυντής Λάρνακας

Κατηγορούσα Αρχή

- εναντίον -

1. [REDACTED]

2. [REDACTED]

Κατηγορούμενοι

Ημερομηνία: 28 Ιανουαρίου, 2014

Εμφανίσεις:

Για την Κατηγορούσα Αρχή: κα. Α. Γιάλλουρου με κ. Θ. Π' Νικολάου

Για τον Κατηγορούμενο 2: κ. Γ. Πολυχρόνης

Κατηγορούμενος 2 παρών

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ΕΝΔΙΑΜΕΣΗ ΑΠΟΦΑΣΗ

(EX-TEMPORE)

Η Κατηγορούσα Αρχή στηρίζει το αίτημα της εις το ότι υπάρχουν στοιχεία ότι ο κατηγορούμενος είναι επικίνδυνος για τον κόσμο αν αφεθεί ελεύθερος και το αίτημα της αστυνομίας βασίζεται σε πολλά στοιχεία που τεκμηριώνουν το εύρημα ότι υπάρχει πιθανότητα διάπραξης άλλων αδικημάτων εάν αφεθεί ελεύθερος.

Στις 29/3 καταδικάστηκε για αδικήματα κατά της περιουσίας δηλαδή ληστείες, κλοπές, απόπειρες κλοπών, εμπρησμού. Λήφθηκαν υπόψη και άλλες τρεις υποθέσεις η πιο σοβαρή από αυτές αφορούσε και την κλεπταποδοχή και την κακόβουλη ζημιά. Αυτό αφορούσε αδικήματα τα οποία διαπράχθηκαν από τον Οκτώβρη του 2011 μέχρι και τον Δεκέμβρη του 2012. Του επιβλήθηκε ποινή και λήφθηκε υπόψη το διάστημα της κράτησης ενώ ήταν υπόδικος για το αδίκημα.

Πρόσφατα ο κατηγορούμενος τέθηκε ενώπιον μου και για άλλη υπόθεση που αφορούσε αδίκημα που διαπράχθηκε στις 28, 29 Νοεμβρίου 2013. Είναι η υπόθεση 15661/13 που αφορά διάρρηξη, κλοπές, διάρρηξη εκκλησίας και τον άφησα ελεύθερο με τους ακόλουθους όρους όπως να εμφανίζεται σε αστυνομικό σταθμό, να υπογράψει εγγύηση με έναν αξιόχρεο εγγυητή κ.τ.λ. Αυτό το αδίκημα διαπράχθηκε σύμφωνα με τα στοιχεία της Κατηγορούσας Αρχής στις 28, 29 Νοεμβρίου 2013 και το αδίκημα που έχουμε σήμερα συνέβηκε περίπου ένα μήνα μετά και αφορά ακόμα μια διάρρηξη. Στοιχεία υπάρχουν στη κατοχή της Κατηγορούσας Αρχής ως μέρος του μαρτυρικού υλικού ότι τέτοια αδικήματα διαπράχθηκαν. Επίσης υπάρχει και η υπόθεση 9502/13 στην οποία καταδικάστηκε για το αδίκημα της κακόβουλης ζημιάς και παράνομη είσοδο σε περιουσία. Αφορούσε αδίκημα που διαπράχθηκε τον Ιούλιο του 2013 και εκεί τελούσε υπο κράτηση περίπου τέσσερις μήνες.

Ο κατηγορούμενος είναι ανήλικος, 16 χρόνων και τεσσάρων μηνών και μένει με την οικογένεια του. Έχω πληροφορηθεί από την Κατηγορούσα Αρχή ότι κρατείται στον αστυνομικό σταθμό Αραδίππου που είναι αστυνομικά κρατητήρια και κατά τη διάρκεια της ημέρας

κρατείται σε αστυνομικό κελί και βγαίνει έξω από αυτό το κελί που αφορά αστυνομικά κρατητήρια για περιορισμένο χρόνο κατά τη διάρκεια της ημέρας. Δεν υπάρχει άλλος τρόπος κράτησης του υπόπτου πλην αυτού ή να μετακινηθεί στις Κεντρικές Φυλακές. Έχω ζητήσει ίσως κάποιο περιορισμό στο σπίτι όμως αυτό φαίνεται δεν είναι εφικτό. Έχει εισηγηθεί ο δικηγόρος του να ενταχθεί σε κάποια Ψυχιατρική Κλινική γιατί φαίνεται ότι είναι ναρκομανής και αυτός είναι ο λόγος που έχει μία ροπή στη διάπραξη τέτοιων αδικημάτων. Ούτε αυτό είναι εφικτό διότι η αστυνομία αδυνατεί να τον φρουρεί όπως μου έχει λεχθεί. Αυτή η υπόθεση τέθηκε χθες ενώπιον μου από άλλο Δικαστήριο και είναι υπό κράτηση από τις 20 του μηνός. Αν επρόκειτο για ενήλικα και ενόψει της διαπίστωσης μου ότι πρόκειται για πρόσωπο για το οποίο υπάρχει πιθανότητα διάπραξης άλλων αδικημάτων και κινδυνεύει το κοινό από το να είναι ελεύθερος δεν θα δίσταζα να τον αφήνα υπό κράτηση. Όμως, φαίνεται ότι η Πολιτεία έχει αποτύχει να λάβει υπόψη της ότι υπάρχει ανήλικα πρόσωπα που διαπράττουν αδικήματα «juveniles offenders» και δεν έχει κάνει για δεκαετίες τίποτε ώστε να παρέχει συνθήκες κράτησης που αρμόζουν σ' αυτούς τους παραβάτες.

Παλαιά υπήρχε αυτή η δυνατότητα και ο Δικαστής Γιώργος Πικής, στη 2^η έκδοση του βιβλίου του «Sentencing in Cyprus», στη σελίδα 44 και νομίζω επαναλαμβάνει τα ίδια στην 1^η έκδοση του ίδιου βιβλίου (είναι αντιληπτό πόσο χρονίζει το πρόβλημα διότι παλαιά με βάσει το Juvenile Offender Act υπήρχε αναμορφωτήριο «reform school» με σπουδαία αποτελέσματα). Σημείωσε στη σελίδα 44 του βιβλίου του ότι αυτό το σχολείο είχε σπουδαία αποτελέσματα

και ότι όφειλε η Πολιτεία το συντομότερο να κάνει διευθετήσεις για να δημιουργηθεί κάτι το ανάλογο. Συγκεκριμένα αναφέρει τα εξής:

«A reform school was established, pursuant to regulations made under the Juvenile Offenders Law, at Lambousa, Lapithos. Experience has shown that excellent work was done at this school and the results were most satisfactory. Unfortunately, owing to the tragic events of 1974, the school has ceased to function and no arrangements have been made so far for the re-housing of the school elsewhere. It is a vacuum that must be filled the earliest possible, particularly in view of the provisions of s.12(2) of the Juvenile Offenders Law, Cap.157, where it is provided that no person between the ages of 14 and 16 should be sent to prison except where the court finds that such young person cannot be suitably dealt with under the provisions of the Probation of Offenders Law, by the making of a "fit person order", by sending him to a reform school or by ordering him to pay a fine».

Συνομιλώντας με τους εκπροσώπους της Κατηγορούσας Αρχής προκύπτει ότι δεν υπάρχει λύση στο πρόβλημα αυτό. Έχουν ψάξει το ζήτημα και ότι πλην τα αστυνομικά κρατητήρια για ενήλικους και Κεντρικές Φυλακές δεν υπάρχει άλλη δυνατότητα κράτησης του δεκαεξάχρονου υπόδικου.

Το Δικαστήριο των Ανθρωπίνων Δικαιωμάτων έχει αναφέρει σε αρκετές αποφάσεις της ότι είναι παράβαση του άρθρου 5.1 της σύμβασης να κρατούνται ανήλικοι ως υπόδικοι κάτω από συνθήκες που κρατούνται ενήλικες. Και παραπέμπω στην υπόθεση **BLOKHIN**

v. RUSSIA εκδόθηκε 14/11/2013, αίτηση αριθμός 47152/06. Σε εκείνη την περίπτωση ο νεαρός που ήταν ανήλικος είχε σταλεί στο λεγόμενο «juvenile detention center» δηλαδή σε χώρο κράτησης ανηλίκων. Εδώ οι συνθήκες κράτησης ανηλίκων είναι χειρότερες διότι αφορούν αστυνομικά κρατητήρια που κρατούνται οι ενήλικοι. Σε εκείνη την περίπτωση ανήλικος υπόδικος κρατήθηκε σε χώρο ειδικά διαμορφωμένο για ανήλικους. Παρόλο τούτο, το Δικαστήριο Ανθρωπίνων Δικαιωμάτων τόνισε ότι υπήρχε παραβίαση των δικαιωμάτων του ανήλικου υποδίκου. Κατά αρχήν παρέπεμψε στους Κανονισμούς των Ηνωμένων Εθνών όπου αναφέρονται τα εξής:

1. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by General Assembly resolution 45/113 of 14 December 1990, provide as follows:

“I. Fundamental perspectives

...2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release ...

II. Scope and application of the rules

...12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would

serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society ...

IV. The management of juvenile facilities

... B. Admission, registration, movement and transfer

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

...(e) Details of known physical and mental health problems, including drug and alcohol abuse ...

C. Classification and placement

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different

categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being ...

D. Physical environment and accommodation

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities ...

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, while bearing in mind local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected ...

E. Education, vocational training and work

38. *Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty ...*

41. *Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.*

42. *Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.*

43. *With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform ...*

F. Recreation

47. *Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it ...*

H. Medical care

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release ...

J. Contacts with the wider community

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their family and to receive special permission to leave the detention facility for educational, vocational or other important reasons ...

K. Limitations of physical restraint and the use of force

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

L. Disciplinary procedures

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care,

namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited ... ”

Μεταξύ άλλων λοιπόν, με βάση αυτές τις κατευθυντήριες γραμμές που αναφέρονται στην απόφαση υπάρχουν εισηγήσεις του Committee of Ministers to Member States of the Council of Europe και αυτές οι εισηγήσεις είναι ως εξής:

2. The recommendation of the Committee of Ministers concerning new ways of dealing with juvenile delinquency and the role of juvenile justice (Rec (2003)20), adopted on 24 September 2003 at the 853rd meeting of the Ministers' Deputies, in so far as relevant, reads as follows:

“15. Where juveniles are detained in police custody, account should be taken of their status as a minor, their age and their vulnerability and level of maturity. They should be promptly informed of their rights and safeguards in a manner that ensures their full understanding. While being questioned by the police they should, in principle, be accompanied by their parent/legal guardian or other appropriate adult. They should also have the right of access to a lawyer and a doctor ...”

3. Recommendation No. CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures, adopted by the Committee of Ministers on 5 November 2008, states as follows:

“Part I – Basic principles, scope and definitions

...2. The sanctions or measures that may be imposed on juveniles, as well as the manner of their implementation, shall be specified by law and based on the principles of social integration and education and of the prevention of re-offending ...

4. The minimum age for the imposition of sanctions or measures as a result of the commission of an offence shall not be too low and shall be determined by law.

5. The imposition and implementation of sanctions or measures shall be based on the best interests of the juvenile offenders, limited by the gravity of the offences committed (principle of proportionality) and take account of their age, physical and mental well-being, development, capacities and personal circumstances (principle of individualisation) as ascertained when necessary by psychological, psychiatric or social inquiry reports ...

7. Sanctions or measures shall not humiliate or degrade the juveniles subject to them.

8. Sanctions or measures shall not be implemented in a manner that aggravates their afflictive character or poses an undue risk of physical or mental harm ...

10. Deprivation of liberty of a juvenile shall be a measure of last resort and imposed and implemented for the shortest period possible. Special efforts must be undertaken to avoid pre-trial detention ...

12. Mediation or other restorative measures shall be encouraged at all stages of dealing with juveniles.

13. Any justice system dealing with juveniles shall ensure their effective participation in the proceedings concerning the imposition as well as the implementation of sanctions or measures. Juveniles shall not have fewer legal rights and safeguards than those provided to adult offenders by the general rules of criminal procedure.

14. Any justice system dealing with juveniles shall take due account of the rights and responsibilities of the parents and legal guardians and shall as far as possible involve them in the proceedings and the execution of sanctions or measures, except if this is not in the best interests of the juvenile ...

21. For the purpose of these rules:

...21.4. "community sanctions or measures" means any sanction or measure other than a detention measure which maintains juveniles in the community and involves some restrictions of their liberty through the imposition of conditions and/or obligations, and which is implemented by bodies designated by law for that purpose. The term designates any sanction imposed by a judicial or administrative authority and any measure taken before or instead of a decision on a sanction, as well as ways of enforcing a sentence of imprisonment outside a prison establishment;

21.5. "deprivation of liberty" means any form of placement in an institution by decision of a judicial or administrative authority, from which the juvenile is not permitted to leave at will ...

Part II – Community sanctions and measures

...23.1. A wide range of community sanctions and measures, adjusted to the different stages of development of juveniles, shall be provided at all stages of the process.

23.2. Priority shall be given to sanctions and measures that may have an educational impact as well as constituting a restorative response to the offences committed by juveniles ...

Part III – Deprivation of liberty

...49.1. Deprivation of liberty shall be implemented only for the purpose for which it is imposed and in a manner that does not aggravate the suffering inherent to it ...

50.1. Juveniles deprived of their liberty shall be guaranteed a variety of meaningful activities and interventions according to an individual overall plan that aims at progression through less restrictive regimes and preparation for release and reintegration into society. These activities and interventions shall foster their physical and mental health, self-respect and sense of responsibility and develop attitudes and skills that will prevent them from re-offending.

50.2. Juveniles shall be encouraged to take part in such activities and interventions ...

53.2. Such institutions shall provide conditions with the least restrictive security and control arrangements necessary to protect juveniles from harming themselves, staff, others or the wider community.

53.3. Life in an institution shall approximate as closely as possible the positive aspects of life in the community.

53.4. The number of juveniles in an institution shall be small enough to enable individualised care. Institutions shall be organised into small living units ...

56. Juveniles deprived of liberty shall be sent to institutions with the least restrictive level of security to hold them safely.

57. Juveniles who are suffering from mental illness and who are to be deprived of their liberty shall be held in mental health institutions ...

62.2. At admission, the following details shall be recorded immediately concerning each juvenile:

...g. subject to the requirements of medical confidentiality, any information about the juvenile's risk of self-harm or a health condition that is relevant to the physical and mental well-being of the juvenile or to that of others ...

62.5. As soon as possible after admission, the juvenile shall be medically examined, a medical record shall be opened and treatment of any illness or injury shall be initiated.

62.6. As soon as possible after admission:

a. the juvenile shall be interviewed and a first psychological, educational and social report identifying any factors relevant to the specific type and level of care and intervention shall be made;

b. the appropriate level of security for the juvenile shall be established and if necessary alterations shall be made to the initial placement;

c. save in the case of very short periods of deprivation of liberty, an overall plan of educational and training programmes in accordance with the individual characteristics of the juvenile

shall be developed and the implementation of such programmes shall begin; and

d. the views of the juvenile shall be taken into account when developing such programmes ...

63.2. Juveniles shall normally be accommodated during the night in individual bedrooms, except where it is preferable for them to share sleeping accommodation. Accommodation shall only be shared if it is appropriate for this purpose and shall be occupied by juveniles suitable to associate with each other. Juveniles shall be consulted before being required to share sleeping accommodation and may indicate with whom they would wish to share ...

65.1. All parts of every institution shall be properly maintained and kept clean at all times.

65.2. Juveniles shall have ready access to sanitary facilities that are hygienic and respect privacy ...

69.2. The health of juveniles deprived of their liberty shall be safeguarded according to recognised medical standards applicable to juveniles in the wider community ...

73. Particular attention shall be paid to the needs of

d. juveniles with physical and mental health problems ...

77. Regime activities shall aim at education, personal and social development, vocational training, rehabilitation and preparation for release. These may include:

- a. schooling;*
- b. vocational training;*
- c. work and occupational therapy;*
- d. citizenship training;*
- e. social skills and competence training;*
- f. aggression-management;*
- g. addiction therapy;*
- h. individual and group therapy;*
- i. physical education and sport;*
- j. tertiary or further education;*

k. debt regulation;

l. programmes of restorative justice and making reparation for the offence;

m. creative leisure time activities and hobbies;

n. activities outside the institution in the community, day leave and other forms of leave; and

o. preparation for release and aftercare.

78.1. Schooling and vocational training, and where appropriate treatment interventions, shall be given priority over work.

78.2. As far as possible arrangements shall be made for juveniles to attend local schools and training centres and other activities in the community.

78.3. Where it is not possible for juveniles to attend local schools or training centres outside the institution, education and training shall take place within the institution, but under the auspices of external educational and vocational training agencies ...

78.5. Juveniles in detention shall be integrated into the educational and vocational training system of the country so that after their release they may continue their education and vocational training without difficulty.

79.1. An individual plan shall be drawn up based on the activities in Rule 77 listing those in which the juvenile shall participate.

79.2. The objective of this plan shall be to enable juveniles from the outset of their detention to make the best use of their time and to develop skills and competences that enable them to reintegrate into society ...

81. All juveniles deprived of their liberty shall be allowed to exercise regularly for at least two hours every day, of which at least one hour shall be in the open air, if the weather permits ...

90.1. Staff shall not use force against juveniles except, as a last resort, in self-defence or in cases of attempted escape, physical resistance to a lawful order, direct risk of self-harm, harm to others or serious damage to property ...

94.1. Disciplinary procedures shall be mechanisms of last resort. Restorative conflict resolution and educational interaction

with the aim of norm validation shall be given priority over formal disciplinary hearings and punishments.

94.2. Only conduct likely to constitute a threat to good order, safety or security may be defined as a disciplinary offence ...

95.1. Disciplinary punishments shall be selected, as far as possible, for their educational impact. They shall not be heavier than justified by the seriousness of the offence.

95.2. Collective punishment, corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman and degrading punishment shall be prohibited ...

Part IV -- Legal advice and assistance

120.1. Juveniles and their parents or legal guardians are entitled to legal advice and assistance in all matters related to the imposition and implementation of sanctions or measures.

120.2. The competent authorities shall provide juveniles with reasonable facilities for gaining effective and confidential access to such advice and assistance, including unrestricted and unsupervised visits by legal advisors.

120.3. The state shall provide free legal aid to juveniles, their parents or legal guardians when the interests of justice so require ..."

4. Guidelines of the Committee of Ministers of the Council of Europe on the child friendly justice, adopted by the Committee of Ministers on 17 November 2010, provide as follows:

"II. Definitions

For the purposes of these guidelines on child friendly justice (hereafter "the guidelines"):

...c. 'Child-friendly justice' refers to justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the child's level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in

and to understand the proceedings, to respect for private and family life and to integrity and dignity...

III. Fundamental principles

...E. Rule of law

1. The rule of law principle should apply fully to children as it does to adults.

2. Elements of due process such as the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right to access to courts and the right to appeal, should be guaranteed for children as they are for adults and should not be minimised or denied under the pretext of the child's best interests. This applies to all judicial and non-judicial and administrative proceedings ...

IV. Child-friendly justice before, during and after judicial proceedings

6. Deprivation of liberty

19. Any form of deprivation of liberty of children should be a measure of last resort and be for the shortest appropriate period of time ...

21. Given the vulnerability of children deprived of liberty, the importance of family ties and promoting the reintegration into society, competent authorities should ensure respect and actively support the fulfilment of the rights of the child as set out in universal and European instruments. In addition to other rights, children in particular should have the right to:

...

b. receive appropriate education, vocational guidance and training, medical care, and enjoy freedom of thought, conscience and religion and access to leisure, including physical education and sport;

c. access programmes that prepare children in advance for their return to their communities, with full attention given to them in respect of their emotional and physical needs, their family relationships, housing, schooling and employment possibilities and socio-economic status ...

B. Child-friendly justice before judicial proceedings

...24. Alternatives to judicial proceedings such as mediation, diversion (of judicial mechanisms) and alternative dispute resolution should be encouraged whenever these may best serve the child's best interests. The preliminary use of such alternatives should not be used as an obstacle to the child's access to justice

...

26. Alternatives to court proceedings should guarantee an equivalent level of legal safeguards. Respect for children's rights as described in these guidelines and in all relevant legal instruments on the rights of the child should be guaranteed to the same extent in both in-court and out-of-court proceedings.

C. Children and the police

27. Police should respect the personal rights and dignity of all children and have regard to their vulnerability, i.e. take account of their age and maturity and any special needs of those who may be under a physical or mental disability or have communication difficulties.

28. Whenever a child is apprehended by the police, the child should be informed in a manner and in language that is appropriate to his or her age and level of understanding of the reason for which he or she has been taken into custody. Children should be provided with access to a lawyer and be given the opportunity to contact their parents or a person whom they trust.

29. Save in exceptional circumstances, the parent(s) should be informed of the child's presence in the police station, given details of the reason why the child has been taken into custody and be asked to come to the station.

30. A child who has been taken into custody should not be questioned in respect of criminal behaviour, or asked to make or sign a statement concerning such involvement, except in the presence of a lawyer or one of the child's parents or, if no parent is available, another person whom the child trusts ...

32. Authorities should ensure that children in police custody are kept in conditions that are safe and appropriate to their needs ...

E. Child-friendly justice after judicial proceedings

...82. Measures and sanctions for children in conflict with the law should always be constructive and individualised responses

to the committed acts, bearing in mind the principle of proportionality, the child's age, physical and mental well-being and development and the circumstances of the case. The right to education, vocational training, employment, rehabilitation and reintegration should be guaranteed ..."

Η φυλάκιση για ένα ανήλικο πρόσωπο πρέπει πάντοτε να είναι το τελευταίο ύστατο μέτρο όταν όλα τα άλλα μέτρα πρόληψης και εκπαίδευσης του ανηλίκου έχουν αποτύχει. Το κράτος σε τέτοιες περιπτώσεις οφείλει να έχει θέσει σε ισχύ εναλλακτικούς τρόπους πρόληψης και εκπαίδευσης των ανηλίκων πλην της φυλάκισης τους. Στην περίπτωση που η φυλάκιση είναι αναπόφευκτη το κράτος οφείλει να έχει ένα χώρο κράτησης ειδικά διαμορφωμένο για ανήλικους που σκοπός αυτού του ιδρύματος είναι να πετύχει την αναμόρφωση του ανηλίκου την πρόληψη του εγκλήματος και την εκπαίδευση του ανηλίκου αλλά και να παρέχει όλες εκείνες τις υπηρεσίες διευκόλυνσης όπως εκπαίδευση και ιατρική περίθαλψη δια να εξασφαλίζεται η σωματική και ψυχική ευημερία του ανηλίκου. Σε διαφορετική περίπτωση, η όποια κράτηση του ανηλίκου ως υπόδικος κάτω από άλλες συνθήκες ή από συνθήκες κράτησης που ομοιάζουν με συνθήκες κράτησης ενηλίκων προσώπων παραβιάζει το άρθρο 5.1 της Σύμβασης.

Αναφορικά με την παραβίαση του άρθρου 5.1 που αφορά το δικαίωμα κράτησης υποδίκων αναφέρονται τα εξής στη σελίδα 30 και 31 της απόφασης όπου αναφέρει τα εξής για ανήλικους υπόδικους:

(a) Article 5 § 1 (d)

5. According to the Government, the applicant's deprivation of liberty fell within the ambit of Article 5 § 1 (d). It is clear that the applicant was not placed in the temporary detention centre for minor offenders for the purpose of bringing him before a competent authority within the meaning of that subparagraph. The applicant was indeed arrested on 3 January 2005 for the purposes of his appearance "before the competent legal authority", but he made no complaint about that arrest or about the brief loss of liberty, amounting to a few hours, which his arrest entailed. He complained only of his detention from 21 February to 23 March 2005 in the temporary detention centre for minor offenders, which was ordered by the court at the end of the proceedings against him.

6. The Government justify the applicant's placement in the temporary detention centre for minor offenders on the grounds of "educational supervision". The Court reiterates that in the context of the detention of minors, the words "educational supervision" must not be equated rigidly with notions of classroom teaching; in the context of a young person in local authority care, educational supervision must embrace many aspects of the exercise, by the local authority, of parental rights for the benefit and protection of the person concerned (see *Koniarska v. the United Kingdom*, (dec.), no. 33670/96, 12 October 2000; *D.G. v. Ireland*, no. 39474/98, § 80, ECHR 2002-III; and *P. and S. v. Poland*, no. 57375/08, § 147, 30 October 2012).

7. Further, detention for educational supervision pursuant to Article 5 § 1 (d) must take place in an appropriate facility with the resources to meet the necessary educational objectives and demands of security. However, the placement in such a facility does not necessarily have to be an immediate one. Sub-paragraph (d) does not preclude an interim custody measure being used as a preliminary to a regime of supervised education, without itself involving any supervised education. In such circumstances, however, the interim custody measure must be speedily followed by actual application of a regime of educational supervision in a setting (open or closed) designed and with sufficient resources for the purpose (see *Bouamar v. Belgium*, 29 February 1988, §§ 50 and 52, Series A no. 129, and *D.G.*, cited above, § 78).

Αναφέρω ότι στη συγκεκριμένη περίπτωση ο λόγος που ζητήθηκε η κράτηση του ανήλικου ήταν ακριβώς για τον ίδιο λόγο με την παρούσα, ο κίνδυνος διάπραξης άλλων αδικημάτων. Παρόλο τούτο το Δικαστήριο Ανθρωπίνων Δικαιωμάτων βρήκε ότι υπήρχε παραβίαση του άρθρου 5.1 και αναφέρονται τα εξής:

(b) Article 5 § 1 (b) and (c)

8. *The Court observes that the main purpose of the applicant's placement in the temporary detention centre for minor offenders was, as held by the domestic courts, to prevent him from committing new delinquent acts. The Court will therefore examine whether the applicant's placement in the centre could be "reasonably considered necessary to prevent his committing an offence" within the meaning of Article 5 § 1 (c).*

9. *As already found above, the applicant's placement in the temporary detention centre for minor offenders did not pursue the purpose of educational supervision. The stated purpose of the applicant's placement in the detention centre for minor offenders was to correct his behaviour and to deter him from committing further delinquent acts rather than to punish him. However, the Court's case-law indicates that it may be necessary to look beyond the appearances and the language used and concentrate on the realities of the situation.*

10. *The Court notes that the applicant's detention lasted thirty days and was served in a detention centre for minor offenders rather than in an educational institution. As established above, the centre was closed and guarded to prevent inmates from leaving without authorisation. Inmates were subjected to constant supervision and to a strict disciplinary regime (see paragraph **Error! Reference source not found.** above). The Court therefore considers that the deprivation of liberty, imposed after a finding that the applicant's actions contained elements of the criminal offence of extortion and served in a detention centre for minor offenders subject to a quasi-penitentiary regime as described above, contained punitive elements*

as well as elements of prevention and deterrence. The Court finds it difficult to distinguish between the punishment and deterrent aims of the measure in question, these objectives not being mutually exclusive and being recognised as characteristic features of criminal penalties. Indeed, in the Court's case-law criminal penalties have customarily been recognised as comprising the twin objectives of punishment and deterrence (see *Öztürk*, cited above, § 53; *Bendenoun v. France*, 24 February 1994, § 47, Series A no. 284; *Lauko v. Slovakia*, 2 September 1998, § 58, Reports 1998-VI; and *Ezeh and Connors*, cited above, §§ 102 and 105).

11. As regards minor defendants, the Court has held that the criminal proceedings must be so organised as to respect the principle of the best interests of the child. It is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings (see *V. v. the United Kingdom [GC]*, no. 24888/94, § 86, ECHR 1999-IX; *T. v. the United Kingdom [GC]*, no. 24724/94, § 84, 16 December 1999; *Panovits v. Cyprus*, no. 4268/04, § 67, 11 December 2008; and *Adamkiewicz v. Poland*, no. 54729/00, § 70, 2 March 2010). The right of an accused minor to effective participation in his criminal trial requires that the authorities deal with him with due regard to his vulnerability and capacities from the first stages of his involvement in a criminal investigation and, in particular, during any questioning by the police. The authorities must take steps to reduce as far as possible his feelings of intimidation and inhibition and ensure that the accused minor has a broad understanding of the nature of the investigation, of what is at stake for him, including the significance of any penalty which may be imposed as well as of his rights of defence and, in particular, of his right to remain silent (see *Panovits*, cited above, § 67; *S.C. v. the United Kingdom*, no. 60958/00, § 29, ECHR 2004-IV; and *Martin v. Estonia*, no. 35985/09, § 92, 30 May 2013).

Το Δικαστήριο τόνισε, μεταξύ άλλων, ότι σκοπός της κράτησης ήταν η τιμωρία και όχι μόνο η πρόληψη και αναμόρφωση του υποδίκου, συνεπώς, παραβιάζεται το άρθρο 5.1.

Στην περίπτωση που ο κατηγορούμενος ήταν ενήλικας θα ήταν δικαιολογημένο το αίτημα της αστυνομίας όμως, επειδή ο συγκεκριμένος κατηγορούμενος είναι ανήλικος και οι συνθήκες κράτησης ούτε κατά προσέγγιση δεν ικανοποιούν τα ελάχιστα εκέγγυα που έπρεπε να υπάρχουν με βάση το άρθρο 5.1 της Σύμβασης, θα τον αφήσω ελεύθερο με τους ακόλουθους όρους:

1. Ο κηδεμόνας τού θα υπογράψει εγγύηση 10.000 ευρώ.
2. Θα παραδώσει τα ταξιδιωτικά του έγγραφα.
3. Θα εμφανίζεται στον Κεντρικό Αστυνομικό Σταθμό Λάρνακας τρεις φορές την ημέρα η ώρα 8:00πμ., η ώρα 12:00μ. με μισή ώρα απόκλιση και η ώρα 9:00 το βράδυ.
4. Θα εμφανίζεται καθημερινά στο Δικαστήριο μέχρι στις 10:30πμ. και θα υπογράφει ενώπιον του Δικαστηρίου.
5. Ορίζεται στις 4 Φεβρουαρίου 2014 όπου θα εμφανιστεί με το δικηγόρο του και θα με ενημερώσει αν τηρεί τους όρους αυτούς και θα πρέπει να εισηγηθεί σε ποιο ειδικό πρόγραμμα απεξάρτησης θα ενταχθεί. Αφού θα ενταχθεί σε ειδικό πρόγραμμα απεξάρτησης θα ενημερώνεται το Δικαστήριο με εβδομαδιαίες εκθέσεις.
7. Το Δικαστήριο θα ενημερώνεται με σχετικές αναλύσεις από το Κρατικό Χημείο ότι είναι καθαρός μία φορά την εβδομάδα αρχομένης την 4 Φεβρουαρίου 2014.
8. Επίσης ο κατηγορούμενος θα είναι υπό την επίβλεψη του κηδεμόνα του και οι γονείς του θα έρχονται στο Δικαστήριο μία φορά την εβδομάδα κάθε Τρίτη για να ενημερώνει το Δικαστήριο που πηγαίνει, τι κάμνει, με ποιες παρέες είναι και για το τι κάνει όλη την εβδομάδα.
9. Ο κατηγορούμενος περιορίζεται το δικαίωμα του να βγαίνει έξω σε νυκτερινά κέντρα, μπυραρίες ή να συναθροίζεται με παρέες

άσκοπα και θα μένει στο σπίτι και θα πηγαίνει μόνο στο σχολείο. Αν θα εξέλθει της οικίας για οποιονδήποτε λόγο θα ενημερώνει τους γονείς του για το που πηγαίνει ως και επίσης το δικηγόρο του.

- 10.** Οι πιο πάνω δρακόντειοι όροι τίθενται δια να υπάρχει παρακολούθηση και περιορισμό στον κατηγορούμενο προκειμένου να εξαλειφθεί όσο το δυνατόν η όποια πιθανότητα διάπραξης άλλων αδικημάτων. Στην περίπτωση που και αυτά τα μέτρα αποτύχουν το Δικαστήριο θα αναγκασθεί να καταφύγει στο τελευταίο έσχατο μέτρο της κράτησης για προστασία του κοινού και σημειώνεται ότι αν μόνο αυτή η οδός απομένει για να αποφευχθεί η πιθανότητα διάπραξης αδικημάτων επιτρέπεται και δεν παραβιάζει το άρθρο 5.1 της σύμβασης των Ανθρωπίνων Δικαιωμάτων.
- 11.** Θα είναι κόσμιος και ευγενικός με τους γονείς του στο σπίτι.

Η υπόθεση ορίζεται στις 4.2.2014 η ώρα 9:00πμ. για απάντηση για κατηγορούμενο 2 και επίδοση για κατηγορούμενο 1..

(Υπ.)

N. Ταλαρίδου-Κοντοπούλου, Ε.Δ.

