

[ΔΙΚΑΣΤΑΙ, ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ, Πρόεδρος,
ΣΤΡΑΥΡΙΝΙΔΗΣ, Α. ΛΟΥΖΟΥ, Δικασταί]

ΜΙΧΑΗΛ ΚΩΣΤΑ ΓΙΑΝΝΑΚΟΥ,

Ἐφεσείων,

κατά

ΔΗΜΟΚΡΑΤΙΑΣ,

Ἐφεσιβλήτου.

(Ποινική Ἔφεσις ὑπ' ἀρ. 3338).

Στρατιωτικά ἀδικήματα - Στρατιωτικὸν Δικαστήριον - Ποινὴ - Τετραμήνος φυλακίσις διὰ τὰ ἀδικήματα ἐγκαταλείψεως θέσεως ὑπὸ σκοποῦ καὶ ἀνυπακοῆς - Ἄρθρα 54(β) καὶ 49(β) τοῦ περὶ Στρατιωτικοῦ Ποινικοῦ Κώδικος καὶ Δικονομίας Νόμου τοῦ 1964 (40/64), ἀντιστοιχῶς - Δὲν ἀνεφέρθη ἐνώπιον τῶν Στρατοδικῶν ὅτι διὰ τὰ ἴδια παραπτώματα εἶχεν ἐπιβληθῆ εἰς τὸν ἐφεσεῖοντα ὑπὸ τῶν Στρατιωτικῶν Ἀρχῶν ποινὴ εἰκοσαήμερου φυλακίσεως - Κακὴ οἰκονομικὴ κατάστασις τῆς οἰκογενείας τοῦ ἐφεσεῖοντος - Ἐλάττωσις ποινῆς.

Ποινὴ - Στρατιωτικὸν Δικαστήριον - Ἔφεσις κατὰ τετραμήνου ποινῆς φυλακίσεως δι' ἐγκατάλειψιν θέσεως ὑπὸ σκοποῦ καὶ δι' ἀνυπακοήν - Ἐλάττωσις ποινῆς.

Ἔφεσις κατὰ τῆς ποινῆς.

Ἔφεσις ὑπὸ τοῦ Μιχαὴλ Κώστα Γιαννακοῦ κατὰ τῆς τετραμήνου ποινῆς φυλακίσεως τῆς ἐπιβληθείσης ὑπὸ Στρατιωτικοῦ Δικαστηρίου διὰ τὰ ἀδικήματα τῆς ἐγκαταλείψεως θέσεως ὑπὸ σκοποῦ, κατὰ παράβασιν τοῦ ἀρθρου 54(β) τοῦ περὶ Στρατιωτικοῦ Ποινικοῦ Κώδικος καὶ Δικονομίας Νόμου τοῦ 1964 (40/64), καὶ τῆς ἀνυπακοῆς, κατὰ παράβασιν τοῦ ἀρθρου 49(β) τοῦ αὐτοῦ Νόμου.

Ὁ ἐφεσεῖων αὐτοπροσώπως.

Α. Κορφιώτης διὰ τὴν Δημοκρατίαν.

ΑΠΟΦΑΣΙΣ *

ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ, Πρ.: Ὁ ἐφεσεῖων κατεδικάσθη τὴν 30ην

* An English translation of this judgment appears at pp. 48-50 *post*.

12, Μαΐου
1972

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ΜΙΧΑΗΛ
ΚΩΣΤΑ
ΓΙΑΝΝΑΚΟΥ
v.

ΔΗΜΟΚΡΑΤΙΑΣ

Μαρτίου 1972 εις φυλάκισιν τεσσάρων μηνῶν ὑπὸ Στρατιωτικοῦ Δικαστηρίου διὰ τὰ ἀδικήματα τῆς ἐγκαταλείψεως θέσεως ὑπὸ σκοποῦ, κατὰ παράβασιν τοῦ ἄρθρου 54(β) τοῦ περὶ Στρατιωτικοῦ Ποινικοῦ Κώδικος καὶ Δικονομίας Νόμου τοῦ 1964 (40/64), καὶ τῆς ἀνυπακοῆς, κατὰ παράβασιν τοῦ ἄρθρου 49(β) τοῦ αὐτοῦ Νόμου.

Τὰ γεγονότα, ὡς ἐγένοντο ἀποδεκτὰ ὑπὸ τοῦ Στρατιωτικοῦ Δικαστηρίου, εἶναι ὅτι ὀλίγον πρὸ τῆς λήξεως τῆς διετοῦς στρατιωτικῆς θητείας τοῦ ἐφεσείουτος, κατὰ τὴν διάρκειαν τῆς ὁποίας ἡ διαγωγή του ὑπῆρξεν ἀρίστη, ἐγκατέλειπεν οὗτος τὴν σκοπιάν του λόγῳ βροχοθυέλλης καὶ ἐζήτησε καταφύγιον εἰς θάλαμον τοῦ στρατοπέδου· ἐκεῖ ὁ ἀρχιφύλαξ τὸν διέταξε νὰ ἐπιστρέψῃ εἰς τὴν θέσιν του καὶ ὁ ἐφεσείων δὲν συνεμορφώθη ἀμέσως, εἶπε δὲ ὅτι θὰ μετέβαινεν εἰς τὴν θέσιν του ὅταν θὰ ἐκόπταζεν ἡ βροχοθύελλα.

Τὸ Στρατιωτικὸν Δικαστήριον παρετήρησεν ὅτι ὁ ἐφεσείων εἶχεν ἀντιληφθῆ τὸ σφάλμα του καὶ μετεμελήθη δι' αὐτό, ἀλλὰ δὲν ἠδύνατο νὰ παρίδῃ τὴν πειθαρχίαν ἢ ὁποία πρέπει νὰ διέπῃ τὸ στράτευμα καὶ ὡς ἐκ τούτου ἐπέβαλεν εἰς αὐτὸν ποινὴν στερητικὴν τῆς ἐλευθερίας του.

Δυστυχῶς δὲν ἀνεφέρθη ἐνώπιον τῶν Στρατοδικῶν ὅτι διὰ τὰ ἴδια παραπτώματα εἶχεν ἐπιβληθῆ εἰς τὸ ἐφεσείουτα ὑπὸ τῶν Στρατιωτικῶν Ἀρχῶν ποινὴ εἰκοσαήμερου φυλακίσεως τὴν ὁποίαν ἐξέτισε εἰς πειθαρχεῖον τοῦ στρατεύματος. Εἴμεθα βέβαιοι ὅτι ἐὰν τὸ γεγονός τοῦτο ἦτο ἐν γνώσει τοῦ Στρατιωτικοῦ Δικαστηρίου θὰ ἐπεβάλλετο ἐλαφροτέρα ποινὴ εἰς τὸν ἐφεσείουτα, τοσοῦτω μᾶλλον καθ' ὅσον προσήχθη ἐνώπιον τοῦ Στρατοδικείου μετὰ τὴν ἀπόλυσίν του ἐκ τοῦ στρατεύματος διὰ νὰ τιμωρηθῆ καὶ πάλιν διὰ παραπτώματα διὰ τὰ ὁποία εἶχεν ἤδη τιμωρηθῆ ὑπὸ τῶν ἀνωτέρων του ἐνῶ ἐξετέλει τὴν θητείαν του.

Διὰ τοῦτο, καὶ λαμβάνοντες ὑπ' ὄψιν ἐπίσης τὴν κακὴν οἰκονομικὴν κατάστασιν τῆς οἰκογενείας τοῦ ἐφεσείουτος ἐναντι τῆς ὁποίας οὗτος ὑπέχει εὐθύνας, ὑποβιβάζομεν τὴν ποινὴν εἰς δέμηνον φυλάκισιν δι' ἐκάστην κατηγορίαν, αἱ ποιναὶ δὲ νὰ συντρέχωσι καὶ νὰ ἄρχωνται ἀπὸ τῆς 30ης Μαρτίου, 1972, ὅτε ἐφυλακίσθη ὁ ἐφεσείων ὑπὸ τοῦ Στρατιωτικοῦ Δικαστηρίου.

This is an English translation of the judgment in Greek appearing at pp. 47-48 ante.

Military Offences—Military Court—Sentence—Four months' imprisonment for abandonment of post as a sentry and for

disobedience—Sections 54(b) and 49(b) of the Military Criminal Code and Procedure Law, 1964 (40/64), respectively—Not mentioned before the Court below that for the same offences there had already been imposed on the Appellant a disciplinary sentence of twenty days' imprisonment by the Military Authorities—Bad financial position of Appellant's family—Sentence reduced.

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Sentence—Military Court—Appeal against sentence of four months' imprisonment for abandonment of post as a sentry and for disobedience—See also, under "Military Offences".

Appeal against sentence.

Appeal against sentence by Michael Costa Yiannakou who was convicted on the 30th March, 1972 at the Military Court sitting at Nicosia (Case No. 38/72) on two counts of the offences of abandonment of his post as a sentry and of disobedience contrary to section 54(b) and 49(b), respectively, of the Military Criminal Code and Procedure Law, 1964 (40/64) and was sentenced to four months' imprisonment on each count, the sentences to run concurrently.

Appellant appeared in person.

A. Korfiotis, for the Respondent.

The judgment of the Court was delivered by:—

TRIANFAYLLIDES, P.: The Appellant was sentenced on the 30th March, 1972, by the Military Court, to four months' imprisonment for the offences of abandonment of his post as a sentry, contrary to section 54(b) of the Military Criminal Code and Procedure Law of 1964 (40/64), and of disobedience, contrary to section 49(b) of the same Law.

The facts, as accepted by the Military Court, are that, shortly before the end of the two years' military service of the Appellant, during which his conduct was excellent, he abandoned his post as a sentry, because of a storm, and sought shelter in a building in the camp; there he was ordered by a superior to return to his post and the Appellant did not obey immediately, but said that he would return to his post when the storm was over.

The Military Court observed that the Appellant had realized his fault and had repented, but stated that it could not overlook

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discipline, which must reign in the army and, therefore, it imposed on Appellant a sentence depriving him of his liberty.

Unfortunately, it was not mentioned before the Judges of the Military Court that, for the same offences there had already been imposed on the Appellant by the military authorities a disciplinary sentence of twenty days' imprisonment which he had served in an army detention place. We are sure that if the Military Court was aware of this fact, it would have been imposed on the Appellant a lighter sentence, especially having in mind the fact that he was brought before the Military Court after his release from the army, in order to be punished once again for offences for which he had already been punished by his superiors during his military service.

For this reason, and also bearing in mind the bad financial position of the Appellant's family, towards which he has responsibilities, we reduce the sentence to two months' imprisonment on each count, to run concurrently and to commence from the 30th March, 1972, when the Appellant was imprisoned by the Military Court.

Appeal allowed.