

1988 April 5

(A LOIZOU, P. DEMETRIADES & PIKIS, JJ)

ANDREAS MICHALAKI THEOFANOUS,

Appellant,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 4983).

Sentence — Abandonment of post of sentry, contrary to section 54(6) of the Military Criminal Code and Procedure Laws 1964-1985 — One month's imprisonment — The most lenient that could be imposed in the circumstances.

The appellant who was on duty as sentry, near the confrontation line, abandoned his post and went to sleep. At the time there was a slight drizzle. The appellant stated that he repented for what he had done.

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The appellant was sentenced for the aforesaid offence to one month's imprisonment. He was, also, punished by an imprisonment of 20 days as a disciplinary punishment.

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Held, *dismissing the appeal*: The sentence was the most lenient that could be imposed. Soldiers serve under any weather conditions. The abandonment of a post of sentry, especially near the confrontation line, is a serious military offence.

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Appeal dismissed.

Appeal against sentence.

Appeal against sentence by Andreas Michalaki Theofanous who was convicted on the 30th March, 1988 at the Military Court (Case No. 43/88) on one count of the offence of abandonment of his post as a sentry contrary to section 54(6) of the Military Criminal Code and Procedure Laws 1964-1985 (Law No. 40/65 as amended) and was sentenced to one month's imprisonment.

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Chr. Pourgourides, for the appellant.

P. Ioulianos, for the respondent.

A. LOIZOU P. gave the judgment of the Court. The appellant was sentenced to one month's imprisonment for the offence of
5 abandonment of his post as a sentry, contrary to s.54(b) of the Military Criminal Code and Procedure Laws 1964-1985 (Law No. 40/1964 as amended).

In the early hours of the morning of the 12th December 1987 the appellant was on duty as a sentry from 03.00 to 06.00 hours at
10 a certain post along the line of confrontation which his unit was guarding. At about 05.00 hours the appellant abandoned his post without a permit and went to the dormitory of the guard post where he slept. It seems that at that time there was a slight drizzle. His commanding officer shortly afterwards found him sleeping in
15 his bed and woke him up. He was charged and he gave a voluntary statement. When he was formally charged for the offence he said «I want to say that I have repented and I will not do it again».

A sentence of twenty days disciplinary imprisonment was also imposed on him. From the copy of his personal record it appears
20 that the appellant had also other disciplinary punishments, but no previous criminal conviction. He comes from a poor family, attended a secondary school up to the third class and he is twenty years of age. The Military Court heard from counsel for the appellant what it had to take into consideration in his favour and
25 it had also before it the Social Welfare Report regarding his personal and family circumstances.

We have listened carefully to learned counsel for the appellant, but we have not been persuaded that the sentence was manifestly excessive justifying the interference of this Court. On the contrary,
30 we are of the view that the sentence of one month's imprisonment imposed on the appellant was in the circumstances the most lenient that could be imposed. Also we do not think that the whole process had anything which rendered the sentence legally viable nor do we find that there have been any violations of the principles
35 of Law governing sentencing.

The duty of sentry is of itself serious as the army entrust the guarding of an area to a soldier for a concrete period and the surprise of the rest or of the area depends from the alertness of the sentry. The abandonment of the post of a sentry constitutes a

serious military offence especially when the post is in the line of confrontation. Armies do not serve only under shade and without rain, but under any difficult weather conditions. If soldiers are encouraged not to do what is entrusted to them within the sphere of their duties on any kind of weather conditions then either there will not be an army or it has to be dissolved.

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- For all the above reasons the appeal is dismissed.

Appeal dismissed.