ANDREAS FOKA COSTA,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 2826)

Military Criminal Code—National Guard—Sentence—Military Service—Desertion, contrary to sections 29 (1) (*b*) *and* 29 (1) (*a*), *respectively, of Military Criminal Code* (*Law No.* 40 *of* 1964, *as amended by Law No.* 77 *of* 1965)—*Sentences of six and twelve months' imposed by the Military Court of Nicosia—Appeal against sentence as being excessive—Appellant an apparently abnormal person—Sufficient reason for the Court of Appeal, in the exceptional circumstances of the case, to find the sentences imposed manifestly excessive—Sentences reduced accordingly.*

Military Service—Desertion—Sentence—See above.

National Guard—Desertion etc.—See above.

Criminal Law—Sentence—Appeal against sentence as being manifestly excessive—Sentence reduced—See under Military Criminal Code above.

Appeal against sentence.

Appeal against the sentence imposed on the appellant who was convicted on the 12th July, 1966 at the Military Court sitting at Nicosia (Case No. 350/66) on two counts of the offence of desertion contrary to sections 29 (1) (*b*) and 29 (1) (*a*) of the Military Criminal Code, 1964, (Law 40 of 1964, as amended by Law 77 of 1965), and was sentenced to six and twelve months' imprisonment, on each count respectively, the sentences to run concurrently.

L. Clerides, with *Chr. Tselingas*, for the appellant.

A. Frangos, Counsel of the Republic, for the respondent.

The judgment of the Court was delivered by :

VASSILIADES, AG. P.: This is an appeal against the sentences of six and twelve months' imprisonment concur-

rently, imposed on the appellant by the Military Court of Nicosia, for two offences of desertion contrary to sections 29 (1) (*b*) and 29 (1) (*a*), respectively, of the Military Criminal Code, (Law 40 of 1964, as amended by Law 77 of 1965).

The first sentence is for failure on the part of the appellant soldier to return to his unit after expiry of 48 hours leave ; and the second, for absenting himself from his unit without the necessary permit.

To both these counts, in the information, the appellant pleaded guilty ; and on stating the facts to the Court for purposes of sentence, the Army officer conducting the prosecution, informed the Court that the appellant presented peculiarities and abnormalities of personality, which made it necessary for the Authorities to arrange for his examination by a psychiatrist, whose report the prosecution produced to the Court, and had it read.

The medical report in question, is on record as exhibit (1) and is quite definite as to the mental limitations of the appellant. He is described as mentally backwards to an obvious extent, and that his personality presents irregularities, lack of sense of responsibility, childish reactions, and other such mental deficiencies.

With this evidence before them, very fairly put to the court by the prosecution, and standing uncontested, the Military Court were dealing with an apparently abnormal person. In their reasons for the sentence imposed, the Court make reference to appellant's mental condition ; but they seem to treat this matter as an extenuating circumstance and a ground for leniency rather than as a state of mental condition going to the root of appellant's responsibility for offences under the military code, affecting sentence accordingly.

When the appeal came on for hearing on the first day, this Court, after hearing counsel for the appellant (particularly in connection with the latter's mental state) adjourned further hearing to enable the appropriate Authority to reconsider the question of appellant's fitness to serve as a soldier, in view of his mental deficiencies.

Today, we are told by learned counsel for the Republic, that the appropriate Authority found it impossible to consider further the matter referred to them taking the view that,

while serving a sentence of imprisonment, the appellant cannot be considered as a member of the military forces. Therefore, his fitness to serve could not be investigated.

In the circumstances of this case, we find it unnecessary to go further into this matter. We have before us a young man, unfortunate enough to have to face life with a heavy mental handicap to the extent described in the medical certificate on record, (*exhibit* 1). It is clear to us that the Military Court, in passing sentence on him, they did not attach to this personal factor of the appellant, the proper weight ; nor did they allow this material consideration to affect sentence to the appropriate extent.

It may be that the fitness of this unfortunate young man to be subject to military law, should have been further investigated before passing sentence upon him at all. Be that as it may, however, we are unanimously of the opinion that, in the exceptional circumstances of this case, there is sufficient reason for this Court to consider the sentence imposed on this appellant, as manifestly excessive ; and to allow this appeal on that ground, reducing the sentence to one of imprisonment for the period served, *i.e.* from the date of conviction to the present day.

Appeal allowed ; sentence on each count reduced accordingly, to run concurrently from the date of conviction to the present day. Appellant discharged from prison forthwith.

Appeal allowed.