

ΜΙΧΑΛΑΚΗΣ ΧΡΙΣΤΟΥ,

Ἐφεσείων,

κατὰ

ΔΗΜΟΚΡΑΤΙΑΣ,

Ἐφεσιβλήτου.

(Ποινικὴ Ἔφεσις ὑπ' ἀρ. 3377).

Στρατιωτικὴ Ὑπηρεσία - Στρατιωτικὰ Ἀδικήματα - Ποινὴ -
Ἐξαμῆνος φυλάκισις διὰ τὸ ἀδίκημα τῆς ἐγκαταλείψεως ὀρι-
σθείσης θέσεως - Ἄρθρον 56(β) τοῦ Περὶ Στρατιωτικοῦ
Ποινικοῦ Κώδικος καὶ Δικονομίας Νόμου 1964 (40/64) - Ὁ
ἐφεσείων ἐνεφανίσθη ἄνευ συνηγόρου εἰς τὸ Πρωτόδικον Δικα-
στήριον - Δὲν ἐπεκαλέσθη τὰ ἐλαφρυντικὰ ὅτι ὄχι μόνον ὡς
πολίτης ἀλλὰ καὶ ὡς στρατιώτης ἔχει ἀπολύτως λευκὸν πα-
ρελθὸν - Καὶ ὅτι ἐπέδειξε, κατὰ τὴν διάρκειαν τῶν μέχρι
σήμερον σπουδῶν του, ἀρίστην διαγωγὴν καὶ ἐπίδοσιν καὶ ὅτι
ὑφίστανται λίαν εὐδαίμωνι προοπτικαὶ διὰ περαιτέρω ἀνωτέρας
σπουδᾶς του - Ὁ παράγων περαιτέρω σπουδῶν λαμβάνεται ὑπ'
ὄψιν ὑπὸ τοῦ Στρατιωτικοῦ Δικαστηρίου, κατὰ παράγαν αὐτοῦ
τακτικὴν, κατὰ τὴν ἐπιμέτρησιν τῆς ποινῆς - Ὑπὸ τὰς περι-
στάσεις ἡ ποινὴ ὑποβιβάζεται εἰς φυλάκισιν τριῶν μηνῶν.

Ποινὴ - Στρατιωτικὸν Δικαστήριον - Ἔφεσις κατὰ ἑξαμήνου ποινῆς
φυλακίσεως διὰ τὸ ἀδίκημα τῆς ἐγκαταλείψεως ὀρισθείσης
θέσεως.

Ἔφεσις κατὰ τῆς ποινῆς.

Ἔφεσις ὑπὸ τοῦ Μιχαλάκη Χρίστου κατὰ τῆς ἑξαμήνου ποινῆς
φυλακίσεως τῆς ἐπιβληθείσης ὑπὸ τοῦ Στρατιωτικοῦ Δικαστηρίου,
συνεδριάζοντος ἐν Λευκωσίᾳ, κατὰ τὴν 19ην Ὀκτωβρίου, 1972
(ὑπόθεσις ὑπ' ἀρ. 169/72) διὰ τὸ ἀδίκημα τῆς ἐγκαταλείψεως
ὀρισθείσης θέσεως κατὰ παράβασιν τοῦ ἀρθροῦ 56(β) τοῦ Περὶ
Στρατιωτικοῦ Ποινικοῦ Κώδικος καὶ Δικονομίας Νόμου τοῦ 1964
(Νόμος 40 τοῦ 1964).

Δ. Παπαχρυσοστόμου καὶ Α. Δανός, διὰ τὸν ἐφεσειοντα.

Α. Κορφιώτης, διὰ τὴν Δημοκρατίαν.

24η Νοεμβρίου
1972

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ΜΙΧΑΛΑΚΗΣ
ΧΡΙΣΤΟΥ

ν.
ΔΗΜΟΚΡΑΤΙΑΣ

... .. ΑΠΟΦΑΣΙΣ*

ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ, Πρ.: 'Ο έφεσείων κατεδικάσθη, βάσει παραδοχής του, υπό του Στρατιωτικού Δικαστηρίου, διά τὸ ἀδίκημα τῆς ἐγκαταλείψεως ὀρισθείσης θέσεως, κατὰ παράβασιν τοῦ ἄρθρου 56(β) τοῦ περὶ Στρατιωτικοῦ Ποινικοῦ Κώδικος καὶ Δικονομίας Νόμου 1964 (40/64), καὶ ἐπεβλήθη εἰς αὐτὸν ποινὴ ἑξαμήνου φυλακίσεως ἀπὸ τῆς 19ης Ὀκτωβρίου 1972.

Ἐνώπιον τοῦ Στρατιωτικοῦ Δικαστηρίου ὁ έφεσείων ἐνεφανίσθη ἄνευ συνηγόρου καὶ δὲν ἐπεκαλέσθη τὰ ἐλαφρυντικά ὅτι ὄχι μόνον ὡς πολίτης ἀλλὰ καὶ ὡς στρατιώτης ἔχει ἀπολύτως λευκὸν παρελθὸν καὶ ὅτι ἐπέδειξε, κατὰ τὴν διάρκειαν τῶν μέχρι σήμερον σπουδῶν του, ἀρίστην διαγωγὴν καὶ ἐπίδοσιν καὶ ὅτι ὑφίστανται λίαν εὐοίωνοι προοπτικαὶ διὰ περαιτέρω ἀνωτέρας σπουδᾶς του.

Ἄ συνήγορος ὅστις ἐμφανίζεται διὰ τὴν Δημοκρατίαν ἐδήλωσε, λίαν ἀκριβοδικαίως, ὅτι, κατὰ παγίαν αὐτοῦ τακτικὴν, τὸ Στρατιωτικὸν Δικαστήριον λαμβάνει ὑπ' ὄψιν κατὰ τὴν ἐπιμέτρησιν τῆς ποινῆς τὸν παράγοντα περαιτέρω σπουδῶν λόγῳ καλῆς ἐπιδόσεως εἰς τὰς μέχρι τῆς ἡμέρας τῆς καταδίκης σπουδᾶς, καὶ ὅτι ὁ παράγων οὗτος συντελεῖ εἰς ἐπιεικεστέραν μεταχείρισιν. Ἡ σημασία τοῦ παράγοντος τούτου δὲν εἶναι, βεβαίως, δυνατὸν νὰ εἶναι ἢ ἰδίᾳ εἰς ὅλας τὰς ὑποθέσεις, διότι ἐκάστη περίπτωσις δέον νὰ κρίνεται ἀναλόγως τῶν ἰδιαιτέρων περιστατικῶν τῆς.

Εἰς τὴν παροῦσαν ὑπόθεσιν, λαμβάνοντες ὑπ' ὄψιν ὅλα ὅσα ἐτέθησαν ἐνώπιον ἡμῶν ὑπὸ τοῦ συνηγόρου τοῦ έφεσείοντος, συμπεριλαμβανομένου ἰδίως τοῦ παράγοντος τῆς ἐπιδόσεως καὶ προοπτικῶν τοῦ έφεσείοντος ἐν σχέσει πρὸς τὰς σπουδᾶς του, ἀλλὰ μὴ δυνάμενοι ἀφ' ἐτέρου νὰ παραβλέψωμεν τὴν σοβαρότητα τοῦ ἀδικήματος διὰ τὸ ὅποῖον ὁ έφεσείων κατεδικάσθη, ἀπεφασίσαμεν ὅτι καίτοι δὲν δυνάμεθα νὰ ἀποφανθῶμεν ὅτι ἡ ἐπιβολὴ ποινῆς φυλακίσεως ἦτο ὑπερβολικὴ ἢ μὴ ἀρμόζουσα, ἐν τούτοις, ὑπὸ τὰς περιστάσεις, ἡ τοιαύτη ποινὴ δέον νὰ ὑποβιβασθῇ εἰς φυλάκισιν τριῶν μηνῶν, ὑπολογιζομένης ταύτης ἀπὸ τῆς ἡμέρας τῆς καταδίκης του.

This is an English translation of the judgment in Greek appearing at pp. 117-118 ante.

(*Military Service — Military offences — Sentence — Six months' imprisonment for abandonment of post—Section 56(b) of the*

* An English translation of this judgment appears at pp. 118-120 post.

Military Criminal Code and Procedure Law, 1964 (Law 40 of 1964)—Appellant appearing without counsel at trial—Not mentioning in mitigation that both as a citizen and a soldier he had an entirely clean record—And that he had showed excellent conduct and achievements during his studies and has very good prospects for higher education—Factor of such prospects taken into consideration by Military Court, in assessing sentence, according to its established practice—Sentence reduced.

Sentence—Military Court—Appeal against sentence of six months' imprisonment for abandonment of post—See, also, under Military Service.

Appeal against sentence.

Appeal against sentence by Michalakis Christou who was convicted on the 19th October, 1972 at the Military Court, sitting at Nicosia, (Case No. 169/72) on one count of the offence of abandonment of his post contrary to section 56(b) of the Military Criminal Code and Procedure Law of 1964 (Law 40 of 1964) and was sentenced to six months' imprisonment.

The judgment of the Court was delivered by:

TRIANAFYLLIDES, P.: The Appellant was convicted by the Military Court after he had pleaded guilty to the offence of abandonment of his post, contrary to section 56(b) of the Military Criminal Code and Procedure Law, 1964 (40/64), and he was sentenced to six months' imprisonment as from the 19th of October, 1972.

Before the Military Court the Appellant appeared without counsel and he did not mention in mitigation that not only as a citizen but as a soldier too he had an entirely clean record, and that he had showed, during his studies up to now, excellent conduct and achievement and that he has very good prospects for higher education.

Counsel who appears for the Republic declared, very fairly, that, according to its established practice, the Military Court takes into consideration, in assessing sentence, the factor of the prospects of higher education in view of a good record in the studies of an accused till the date of his conviction, and

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that this factor leads to more lenient treatment. The significance of this factor is certainly, not the same in each instance, because each case must be judged according to its particular circumstances.

In the present case, bearing in mind everything that was placed before us by learned counsel for the Appellant, including especially the factor of the till now achievement and further prospects of the Appellant in relation to his studies, but being unable, on the other hand, to overlook the seriousness of the offence of which the Appellant was convicted, we decided that, though we are not in a position to say that the imposition of a sentence of imprisonment was excessive punishment or wrong in principle, nevertheless, in the circumstances, the sentence must be reduced to three months' imprisonment, to run from the date of conviction.

Appeal allowed.