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[TRIANTAFYLIDIS, P., A. LOIZOU, MALACHTOS, JJ.]

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ANTONIS
KYRIACOU
DEMETRIOU
v.
THE REPUBLIC

ANTONIS KYRIACOU DEMETRIOU,

Appellant,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 3321).

Military Service—Military Court—Sentence—Six months' imprisonment for insulting a superior—Section 52 of the Military Criminal Code and Procedure Law, 1964 (Law No. 40 of 1964)—Need for military discipline—Principles upon which Military Court may assess sentence—Same as those applied by Criminal Courts—One of such principles being the personal circumstances of an accused person—Appellant appearing in person at his trial—Not placing personal circumstances before Military Court—Sentence reduced in the light of the special circumstances of this case.

Sentence—Appeal—Military Court—Principles upon which proper assessment of sentence should be made by Military Court—Same as those applied by the ordinary Criminal Courts—Personal circumstances of an accused person must be taken into account in assessing sentence.

Insulting a superior contrary to section 52 of the Military Criminal Code and Procedure Law, 1964 (Law No. 40 of 1964)—Offence more serious than the misdemeanour of public insult contained in the Criminal Code, Cap. 154.

The Supreme Court allowing this appeal against sentence of six months' imprisonment imposed on the Appellant by the Military Court for insulting a superior,

Held, (1). Insulting a superior in the army is an offence entirely different and more serious than the misdemeanour of the public insult contained in the Criminal Code, Cap. 154 (see *Kyrmizis v. The Republic* (1965) 2 C.L.R. 55).

(2) In the same case the Supreme Court held that the Military Court must apply the same principles as criminal Courts in assessing sentence; and one of those principles is

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to the effect that the personal circumstances of an accused person must be taken into account (see *Lazarou v. The Police* (1969) 2 C.L.R. 184).

(3) But the Appellant appearing in person at the trial without counsel, did not place before the Military Court all his personal circumstances.

(4) In the light of the special circumstances we think that a sentence of three months' (instead of six months') imprisonment is the appropriate one.

Appeal allowed. Sentence reduced as aforesaid.

Cases referred to:

Kyrmizis v. The Republic (1965) 2 C.L.R. 55;

Lazarou v. The Police (1969) 2 C.L.R. 184.

Appeal against sentence.

Appeal against sentence by Antonios Kyriacou Demetriou who was convicted on the 27th January, 1972 at the Military Court sitting at Nicosia (Case No. 201/71) on one count of the offence of insulting a superior contrary to section 52 of the Military Criminal Code and Procedure Law, 1964 and was sentenced to 6 months' imprisonment.

A. HjiIoannou with *T. Papadopoulos*, for the Appellant.

A. Korfiotis, for the Respondent.

The judgment of the Court was delivered by:

TRIANTAFYLLIDES, P.: By the present appeal the Appellant appeals against a sentence of six months' imprisonment which was imposed on him by the Military Court on the 27th January, 1972, in respect of the offence of insulting a superior, contrary to section 52 of the Military Criminal Code and Procedure Law, 1964 (40/64).

Before the Military Court the Appellant, appearing without counsel, pleaded guilty.

In passing sentence the Military Court took seriously into consideration the fact that when the Appellant was asked by the Court if he had anything to plead in mitigation he asked to be forgiven. On the other hand the Court emphasized the importance of the preservation of discipline in the army and

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for this reason it imposed on the Appellant the aforesaid sentence.

We fully agree with the view of the Military Court as regards the need for military discipline. As the Supreme Court has already pointed out in the case of *Kyrmizis v. The Republic* (1965) 2 C.L.R. 55, insulting a superior in the army is an offence entirely different and more serious than the misdemeanour of public insult contained in the Criminal Code, Cap. 154.

In its judgment in the case of *Kyrmizis* the Supreme Court stated that in assessing sentence the Military Court must apply the same principles as criminal Courts. One of these principles is to the effect that the personal circumstances of an accused person must be taken into account; see the judgment in the case of *Lazarou v. The Police* (1969) 2 C.L.R. 184.

The Appellant, appearing without counsel, did not place before the Military Court all his personal circumstances and, especially, the fact, which is not in dispute, that he was born in Cyprus in 1953, from a Cypriot father and an English mother, but he was residing in England, where he was educated; he returned to Cyprus and enlisted in the army from January 1971, although by reason of his residence abroad he could have tried, and possibly have succeeded, to avoid doing his military service. We have no doubt—and on this learned counsel appearing for the Republic has agreed—that if the above matters had been placed before the Military Court they would have been given the proper weight, with the result that leniency would have been shown to the Appellant.

We came thus to the conclusion that in the light of the special circumstances of the present case a sentence of three, instead of six, months' imprisonment, is sufficient both to punish the Appellant and to ensure full protection of the discipline in the army from offences like the one of which the Appellant was convicted. The three months' imprisonment to run as from the date of the imposition of the sentence of imprisonment by the Military Court.

Appeal allowed.