

ΠΑΝΤΕΛΗΣ ΔΗΜΗΤΡΙΟΥ,

'Εφεσείων,

κατά

ΔΗΜΟΚΡΑΤΙΑΣ

'Εφεσιβλήτου.

(Ποινική 'Εφεσις υπ' αρ. 3566).

Στρατιωτικά αδικήματα - Ποινή - Συντρέχουσαι ποιναι φυλακίσεως τριῶν μηνῶν καὶ δύο μηνῶν διὰ τὰ ἀδικήματα τῆς λιποταξίας εἰς τὸ ἐξωτερικὸν καὶ πλαστογραφίας, ἀντιστοίχως - 'Ανεπαρκεῖς - 'Ακύρωσις τούτων καὶ ἐπιβολὴ συντρεχουσῶν ποινῶν ἔννεαμῆνου φυλακίσεως δι' ἀμφοτέρωτα τὰ ἀδικήματα - 'Εκδοχὴ ἐφεσείουτος, συνάδουσα πλήρως μὲ διαπίστωσιν Στρατιωτικοῦ Δικαστηρίου δι οὗτος διέπραξε τὰ ἀδικήματα ἐνῶ ἐτέλει πραγματι ὑπὸ τὸ κράτος μεγάλης ψυχικῆς ἀναταραχῆς, ἀπερρίφθη ἀδικαιολογήτως ὑπ' αὐτοῦ ἄνευ οἰασθήριστε ἐνώπιόν του μαρτυρίας περὶ τοῦ ἐναντίου - 'Αναστολὴ ἐκτελέσεως ἐπιβληθείσης ποινῆς ὑπὸ τὸ φῶς τῶν ὄλων ἰδιαιτέρως εἰδικῶν περιστάσεων τῆς ὑποθέσεως.

Στρατιωτικά ἀδικήματα - Ποινή - 'Αναστολὴ ἐκτελέσεως - Ποῖα τὰ κριτήρια - "Ἄρθρον 11 τοῦ περὶ Στρατιωτικοῦ Ποινικοῦ Κώδικος καὶ Δικονομίας Νόμου τοῦ 1964 (Νόμος 40/64) καὶ ἄρθρον 100 τοῦ 'Ελληνικοῦ Ποινικοῦ Κώδικος.

Ποινή - Στρατιωτικά 'Αδικήματα - 'Αναστολὴ ἐκτελέσεως.

'Εφεσις κατὰ ποινῆς

'Εφεσις ὑπὸ τοῦ Παντελῆ Δημητρίου κατὰ τῶν συντρεχουσῶν ποινῶν φυλακίσεως τριῶν μηνῶν καὶ δύο μηνῶν ἐπιβληθεισῶν ὑπὸ τοῦ Στρατιωτικοῦ Δικαστηρίου, κατὰ τὴν 19ην 'Απριλίου, 1974 (ὑπόθεσις ὑπ' ἀρ. 26/74) διὰ τὰ ἀδικήματα τῆς λιποταξίας εἰς τὸ ἐξωτερικὸν καὶ τῆς πλαστογραφίας κατὰ παράβασιν τοῦ ἄρθρου 33 τοῦ Περὶ Στρατιωτικοῦ Ποινικοῦ Κώδικος καὶ Δικονομίας Νόμου τοῦ 1964 (Νόμος 40/64) καὶ τῶν ἄρθρων 331, 333 (δ) (ι) καὶ 335 τοῦ Ποινικοῦ Κώδικος Κεφ. 154, ἀντιστοίχως.

Α. Δανὸς καὶ Π. Σολομωνίδης, διὰ τὸν ἐφεσείουτα.

Σ. Ταμάσιος, διὰ τὴν Δημοκρατίαν.

ΑΠΟΦΑΣΙΣ*

ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ, Πρ.: 'Ο έφεσείων κατεδικάσθη υπό του Στρατιωτικού Δικαστηρίου εις συντρεχούσας ποινάς φυλακίσεως τριών μηνών διά τὸ ἀδίκημα τῆς λιποταξίας εις τὸ ἔξωτερικόν καί δύο μηνών διά τὸ ἀδίκημα τῆς πλαστογραφίας.

Διά τῆς παρουσίας ἐφέσεως προσβάλλονται αἱ ὡς ἄνω ποιναὶ ὡς ὑπερβολικῶς αὐστηραί.

Αἱ ποιναὶ ἐπεβλήθησαν κατὰ πλειοψηφίαν, τοῦ Προέδρου τοῦ Στρατιωτικοῦ Δικαστηρίου ἐκφράσαντος τὴν γνώμην ὅτι, λόγω τῆς σοβαρότητος τῶν ἀδικημάτων, ἔδει νὰ ἐπιβληθοῦν συντρεχούσαι ποιναὶ φυλακίσεως ἑνέα μηνῶν δι' ἑκάστην κατηγορίαν.

Συμφωνοῦμεν πλήρως πρὸς τὴν ἄποψιν τοῦ Προέδρου τοῦ Στρατιωτικοῦ Δικαστηρίου καί ὡς ἐκ τούτου ἀκυροῦνται ὡς ἀνεπαρκεῖς αἱ ὑπὸ τῆς πλειοψηφίας τοῦ Δικαστηρίου ἐπιμετρηθεῖσαι ποιναί, καί ἀντ' αὐτῶν ἐπιβάλλομεν εις τὸν ἐφεσείοντα συντρεχούσας ποινάς ἑνεαμήνου φυλακίσεως δι' ἀμφοτέρα τὰ ἀδικήματα.

Εἰς, ἐν τούτοις, παράγων ὁ ὁποῖος προσδίδει ἰδιαίτεραν μορφήν εις τὴν παροῦσαν ὑπόθεσιν εἶναι τὸ γεγονός ὅτι ὁ ἐφεσείων ἔθεσεν εὐθύς ἀμέσως ὑπ ὄψιν τοῦ ἱεραρχικῶς ἀνωτέρου ἀξιωματικοῦ τοῦ τοῦς λόγους οἱ ὁποῖοι τὸν ὤθησαν εις τὴν διάπραξιν τῶν εἰρημένων ἀδικημάτων, καί, ὡς προκύπτει ἐκ τῆς ἐνώπιόν μας δικογραφίας, ἡ ἐκδοχὴ του, ἦτοι ὅτι, εὐρισκόμενος ἐν ψυχικῇ ἀναστατώσει, ἠναγκάσθη νὰ μεταβῆ ἀποτόμως εις Ἀθήνας διὰ νὰ θέσῃ τέρμα εις μίαν ἐξώγαμον σχέσιν ἡ ὁποία προεκάλει μεγάλην ἀναταραχὴν εις τὴν οἰκογένειάν του, καί ὅτι τελῶν ὑπὸ τὴν πίεσιν τῶν γεγονότων, καί μὴ ἔχων οὕτω εὐκαιρίαν νὰ ἐξασφαλίσῃ τὴν δέουσαν ἀδειαν ἀπουσίας, ἐπλαστογράφησε ταύτην, οὐδόλως διεμφισβητήθη ὑπὸ τῆς εἰσαγγελίας. Ἡ ἐκδοχὴ του δὲ αὕτη συνάδει πλήρως μὲ τὴν διαπίστωσιν τοῦ Στρατιωτικοῦ Δικαστηρίου ὅτι ὁ ἐφεσείων διέπραξε τὰ ἀδικήματα ἐνῶ ἐτέλει πράγματι ὑπὸ τὸ κράτος μεγάλης ψυχικῆς ἀναταραχῆς, τὴν ὁποίαν τὸ Δικαστήριον περιέγραψεν ὡς « διανοητικὴν συσκότισιν».

Παρὰ ὅμως τὴν ὡς ἀνωτέρω διαπίστωσιν του τὸ Στρατιωτικὸν Δικαστήριον, ἄνευ οἰασδήποτε ἐνώπιόν του μαρτυρίας περὶ τοῦ ἐναντίου, ἀπέρριψεν, ἀδικαιολογήτως κατὰ τὴν γνώμην μας, τὴν ἐκδοχὴν τοῦ ἐφεσείουτος.

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

Ὑπὸ τὸ φῶς τῶν ὀλως ἰδιαιτέρως εἰδικῶν περιστάσεων τῆς παρουσίας ὑποθέσεως ἐξητάσαμεν τὸ ἐνδεχόμενον ἀναστολῆς — βάρσει τοῦ ἄρθρου 11 τοῦ Περί Στρατιωτικοῦ Ποινικοῦ Κώδικος καὶ Δικονομίας Νόμου τοῦ 1964 (Νόμος 40/64) — τῆς ἐκτελέσεως τῶν εἰς τὸν ἐφεσεῖοντα ἐπιβληθεισῶν ποινῶν φυλακίσεως.

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Ἐπειδὴ εἶναι πρόδηλον ὅτι ὁ Νόμος 40/64 συνετάχθη κατ' ἀναλογίαν πρὸς τὰς ἐν Ἑλλάδι ἰσχυοῦσας διατάξεις, εἶναι χρήσιμος ἡ ἀναφορά εἰς τὸ ἄρθρον 100 τοῦ Ἑλληνικοῦ Ποινικοῦ Κώδικος τὸ ὁποῖον καθορίζει τὰ ἀκόλουθα κριτήρια ἐν σχέσει πρὸς ἀναστολήν ἐκτελέσεως ποινῆς:—

« Ἡ ἀναστολή τῆς ἐκτελέσεως δύναται νὰ χορηγηθῆ, ἐὰν ἐκ τῆς ἐρεύνης τῶν περιστάσεων, ὑφ' ἃς ἐτελέσθη ἡ πρᾶξις, ἰδίᾳ δὲ τῶν αἰτίων αὐτῆς, τοῦ προηγουμένου βίου καὶ τοῦ χαρακτῆρος τοῦ καταδικασθέντος, τὸ δικαστήριον κρίνῃ ὅτι ἡ ἐκτέλεσις τῆς ποινῆς δὲν εἶναι ἀναγκαία, ἵνα ἀποτρέψῃ τούτον ἀπὸ τῆς τελέσεως ἄλλων ἀξιοποίνων πράξεων. Ἐν τῇ κρίσει τοῦ δὲ ταύτη τὸ δικαστήριον δεόν προσέτι νὰ λαμβάνῃ ὑπ' ὄψιν καὶ τὴν μετὰ τὴν πρᾶξιν διαγωγὴν τοῦ ὑπαίτιου, ἰδίως δὲ τὴν ἐπιδειχθεῖσαν μετάνοιαν καὶ τὴν προθυμίαν πρὸς ἐπινόρθωσιν τῶν συνεπειῶν αὐτῆς».

Ὁ ἐφεσεῖων ἔχει λευκὸν παρελθὸν καὶ ὡς ἰδιώτης καὶ ὡς στρατιωτικὸς. Εἶναι πρόσωπον καλοῦ ἐν γένει χαρακτῆρος καὶ προσέφερον, ὡς ἐτόνισε καὶ τὸ Στρατιωτικὸν Δικαστήριον, πολῦτιμον ὑπηρεσίαν εἰς τὸν τόπον τοῦ ἐν τῇ ἐκτελέσει τῶν στρατιωτικῶν καθηκόντων του.

Ἐχει, ἐπίσης, ἐκφράσει τὴν μετάνοιάν του διὰ τὰ ὑπ' αὐτοῦ διαπραχθέντα ἀδικήματα τῆς λιποταξίας καὶ πλαστογραφίας.

Πιστεύομεν ὅτι ἡ ἐκτέλεσις τῶν εἰς αὐτὸν ἐπιβληθεισῶν ποινῶν φυλακίσεως δὲν εἶναι ἀναγκαία διὰ νὰ τὸν ἀποτρέψῃ ἀπὸ τῆς διαπράξεως ἄλλων ἀξιοποίνων πράξεων. Διήνυσεν ἤδη εἰς τὰς φυλακὰς περίοδον πέραν τοῦ μηνός, τοῦ εἶχεν ἐπιβληθῆ δὲ προηγουμένως καὶ πειθαρχικὴ ποινὴ ἐξηκονταήμερου κρατήσεως.

Ἐν ὄψει ὀλων τῶν ὡς ἄνω δεδομένων, ὡς καὶ τῶν πιθανῶν ἐπιπτώσεων τῆς καταδίκης τοῦ ἐφεσεῖοντος ἐπὶ τῆς σταδιοδρομίας του, κατελήξαμεν εἰς τὸ συμπέρασμα ὅπως ἀναστείλωμεν τὴν ἐκτέλεσιν τῶν ποινῶν φυλακίσεως τοῦ ἐφεσεῖοντος διὰ περίοδον τριῶν ἐτῶν ἀπὸ σήμερον.

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This is an English translation of the judgment in Greek appearing at pp. 45-47 *ante*.

Military offences—Sentence—Concurrent terms of 3 months' and 2 months' imprisonment for the offences of desertion abroad and forgery, respectively—Inadequate—Set aside—Concurrent terms of nine months imposed instead—Version of Appellant which coincided with finding of Military Court that he committed offence concerned while being in fact under influence of great psychological stress, rejected by Military Court without any evidence before it to the contrary—Suspension of said sentence of imprisonment in the light of the special circumstances of the case.

Military offences—Sentence—Suspension—Criteria applicable—Section 11 of the Military Criminal Code and Procedure Law, 1964 (Law 40 of 1964) and section 100 of the Criminal Code in Greece.

Sentence—Suspension of sentence—Military offences.

Appeal against sentence.

Appeal against sentence by Pantelis Demetriou who was convicted on the 19th April, 1974 at the Military Court sitting at Nicosia (Case No. 26/74) on two counts of the offences of desertion abroad and forgery contrary to section 33 of the Military Criminal Code and Procedure Law, 1964 (Law 40/64) and sections 331, 333 (d) (i) and 335 of the Criminal Code Cap. 154 and sentenced to concurrent terms of imprisonment for three months and two months, respectively.

A. Danos with *P. Solomonides*, for the Appellant.

S. Tamasios, for the Respondent.

The judgment of the Court was delivered by:

TRIANAFYLLIDES, P.: The Appellant was sentenced by the Military Court to concurrent terms of imprisonment, of three months for the offence of deserting abroad and of two months for the offence of forgery.

By the present appeal the above sentences are attacked as being manifestly severe.

The sentences were imposed by majority, the President of the Military Court having expressed the dissenting view that, because of the seriousness of the offences, there should have been imposed concurrent terms of imprisonment of nine months in respect of each offence.

We fully agree with the view of the President of the Military Court and, therefore, the sentences imposed by the majority of the Court are set aside as inadequate, and we impose, instead, on the Appellant concurrent terms of nine months' imprisonment for the said offences.

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A factor which gives a particular complexion to the present case is the fact that the Appellant has, immediately after the commission of the offences concerned, disclosed to his hierarchically superior officer the reasons which made him commit them. As it appears from the record before us, his version, namely that, while labouring under severe emotional stress, he found himself forced to go suddenly to Athens, in order to put an end to an extra-marital relationship of his which was disturbing his family life, and, that, acting under the pressure of events, and not having thus an opportunity to secure leave of absence, he forged the necessary document, has not been disputed by the prosecution. This version of his coincides fully with the findings of the Military Court that the Appellant committed the offences concerned while being in fact under the influence of great psychological stress, which the Court described as "mental confusion".

Notwithstanding, however, its above finding, the Military Court, without any evidence before it to the contrary, proceeded to reject, unjustifiably in our view, the version of the Appellant.

In the light of the special circumstances of the present case we have examined the possibility of suspending, under section 11 of the Military Criminal Code and Procedure Law, 1964 (Law 40/64), the sentences of imprisonment imposed on the Appellant.

As it is obvious that Law 40/64 was drafted on the basis of corresponding provisions in force in Greece, it is useful to refer to section 100 of the Criminal Code in Greece, which lays down the following criteria in relation to the suspension of a sentence. It reads as follows (in translation):-

"Suspension of sentence may be granted if from an examination of the circumstances in which the offence was committed, and in particular in view of what caused it, the past life, and the character of the convicted person, the court is of the opinion that it is not necessary for him to serve the sentence in order to be deterred from committing

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other criminal acts. In forming such an opinion the Court must take, also, into consideration the conduct of the offender after the offence, and especially any repentance shown, and the willingness to make reparation for the consequences of the offence”.

The Appellant has a clean past, both as a civilian and a soldier. He is a person of generally good character, and has rendered—as was stressed also by the Military Court—valuable services to his country in performing his military duties. He has, also, expressed his repentance for the offences of desertion and forgery which have been committed by him.

We believe that it is not necessary for him to serve the terms of imprisonment imposed on him in order to be deterred from committing other criminal acts. He has already spent in prison a period of more than a month, and there was imposed on him, previously, a disciplinary sentence of sixty days’ detention.

In view of all the above factors, as well as of the probable adverse consequences of the conviction on the Appellant’s career, we decided to suspend for a period of three years from today the sentences of imprisonment imposed on the Appellant.

Appeal allowed.