

ΧΡΙΣΤΑΚΗΣ ΓΕΩΡΓΙΟΥ

'Εφεσείων,

κατά

ΔΗΜΟΚΡΑΤΙΑΣ,

'Εφεσιβλήτου.

(Ποινική *'Εφεσις* υπ' αρ. 3602).

Στρατιωτικά 'Αδικήματα - Ποινή τετραμήνου φυλακίσεως δι' ανυπακοήν - "Άρθρον 49 (β) του Περί Στρατιωτικού Ποινικού Κώδικος και Δικονομίας Νόμου, 1964 (40 του 1964) - 'Ισχυρισμός εφεσείοντος περι ασθενείας δε διέπραξε τὸ ἀδίκημα ἀπερρίφθη ὑπὸ Στρατιωτικοῦ Δικαστηρίου - Γεγονότα τεθέντα ἐνώπιον Ἀνωτάτου Δικαστηρίου ἀποτελοῦν ἰσχυροτάτην ἔνδειξιν περι ασθενείας - Ἐὰν ἐτίθεντο ἐνώπιον Στρατιωτικοῦ Δικαστηρίου τοῦτο θὰ ἦτο ἐπιεικέστερον κατὰ τὴν ἐπιμέτρησιν τῆς ποινῆς - Ἐλάττωσις ποινῆς.

'Εφεσις κατὰ τῆς ποινῆς.

'Εφεσις ὑπὸ τοῦ Χριστάκη Γεωργίου κατὰ τῆς τετραμήνου ποινῆς φυλακίσεως τῆς ἐπιβληθείσης ὑπὸ τοῦ Στρατιωτικοῦ Δικαστηρίου διὰ τὸ ἀδίκημα τῆς ἀνυπακοῆς, κατὰ παράβασιν τοῦ ἀρθρου 49 (β) τοῦ περι Στρατιωτικοῦ Ποινικοῦ Κώδικος και Δικονομίας Νόμου τοῦ 1964 (Νόμος 40/64).

ΑΠΟΦΑΣΙΣ*

Α. Εὐτυχίου, διὰ τὸν εφεσείοντα.

Γλ. Μιχαηλίδης, διὰ τὴν Δημοκρατίαν.

ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ, Πρ.: Ὁ εφεσείων κατεδικάσθη ὑπὸ τοῦ Στρατιωτικοῦ Δικαστηρίου εἰς τετράμηνον φυλάκισιν ἀπὸ τῆς 11ης Ὀκτωβρίου 1974, παραδεχθεὶς κατηγορίαν διὰ τὸ ἀδίκημα τῆς ἀνυπακοῆς, κατὰ παράβασιν τοῦ ἀρθρου 49 (β) τοῦ περι Στρατιωτικοῦ Ποινικοῦ Κώδικος και Δικονομίας Νόμου τοῦ 1964 (Νόμος 40/64).

* An English translation of this judgment appears at pp. 74 - 75 *post.*

Τὸ ἀδίκημα διεπράχθη κατὰ τὰς νυκτερινὰς ὥρας τῆς 21ης Μαΐου 1974 ὅτε ὁ ἐφεσείων ἠρνήθη νὰ ἐκτελέσῃ ὑπηρεσίαν σκοποῦ, παρὰ τὸ γεγονός ὅτι διετάχθη νὰ πράξῃ τοῦτο ὑπὸ ἀνωτέρου του. Ὡς προκύπτει ἐκ τῆς δικογραφίας ὁ ἐφεσείων προέβαλεν ὡς δικαιολογίαν διὰ τὴν ἀρνήσιν του τὸ γεγονός ὅτι ἔπασχεν ἐκ νευρικοῦ κλονισμοῦ.

Ἐνώπιον τοῦ Στρατιωτικοῦ Δικαστηρίου ὁ ἐφεσείων ἐνεφανίσθη ἀνευ συνηγόρου, καὶ οὕτω ὅταν ἐκλήθη νὰ ἐκθέσῃ οἰαδήποτε τυχόν ἐλαφρυντικά στοιχεῖα περιορίσθη εἰς τὸ νὰ δηλώσῃ μεταμέλειαν διὰ τὴν ἀνυπακοήν του, χωρὶς νὰ ἀναφερθῇ ἐπίσης καὶ εἰς τὸ θέμα τῆς ἀσθενείας του. Ὡς δὲ προκύπτει ἐκ τοῦ κειμένου τῆς ἐνώπιόν μας ἀποφάσεως, τὸ Στρατιωτικὸν Δικαστήριον ὄχι μόνον δὲν ἔλαβεν ὑπ' ὄψιν του πρὸς μετρίασμόν τῆς ποινῆς ὅτι ὁ ἐφεσείων ἦτο ἀσθενής ὅτε διέπραξε τὸ ἀδίκημα, ἀλλ' ἀντιθέτως ἐθεώρησε τὸν περὶ ἀσθενείας ἰσχυρισμόν του ὡς πρόσχημα.

Κατὰ τὴν διάρκειαν τῆς ἀκροάσεως τῆς παρούσης ἐφέσεως, καὶ κατόπιν ἐρεύνης εἰς τὰ ἀρχεῖα τοῦ Ψυχιατρικοῦ Τμήματος τοῦ Γενικοῦ Νοσοκομείου Λευκωσίας, ἐξηκριβώθη ὅτι τὴν 21ην Μαΐου 1974, ἀμέσως μετὰ τὴν διάπραξιν τοῦ ἐν λόγω ἀδικήματος, ὁ ἐφεσείων ἐξητάσθη ὑπὸ ἰατροῦ καὶ τοῦ ἐχορηγηθῆ ἀναρρωτικῆ ἄδεια διὰ δεκαπενθήμερον, ἐν συνδυασμῶ μετὰ φαρμακευτικῆς θεραπείας.

Τοῦτο, κατὰ τὴν γνώμην μας, ἀποτελεῖ ἰσχυροτάτην ἔνδειξιν ὅτι ὁ ἐφεσείων ἦτο πράγματι ἀσθενής ὅτε διέπραξε τὸ περὶ οὗ ὁ λόγος ἀδίκημα. Εἴμεθα δὲ βέβαιοι ὅτι ἐὰν τὸ Στρατιωτικὸν Δικαστήριον εἶχεν ἐνώπιόν του τὰ ὡς ἄνω γεγονότα δὲν θὰ ἐθεώρει ὡς πρόσχημα τὸν ἰσχυρισμόν τοῦ ἐφεσείοντος περὶ ἀσθενείας καὶ θὰ ἦτο ἐπιεικέστερον κατὰ τὴν ἐπιμέτρησιν τῆς ποινῆς τὴν ὁποίαν τοῦ ἐπέβαλεν.

Ὁ συνηγόρος τοῦ ἐφεσείοντος εἰσηγήθη νὰ ἀκυρώσωμεν ἐξ ὀλοκλήρου τὴν ποινὴν τῆς φυλακίσεως. Δὲν δυνάμεθα νὰ ἀποδεχθῶμεν τὴν τοιαύτην εἰσήγησιν διότι τὸ ἀδίκημα τῆς ἀνυπακοῆς στρατιώτου, ὑφ' οἰασδήποτε περιστάσεις, εἶναι σοβαρόν, ὡς ἔχον ἄμεσον σχέσηιν μετὰ βασικωτάτων προϋποθέσεων διὰ τὴν διατήρησιν τῆς πειθαρχίας.

Ὡς ἐκ τούτου θεωροῦμεν ὅτι, ὑπὸ τὰς περιστάσεις, ἔδει μὲν νὰ ἐπιβληθῇ φυλακίσις εἰς τὸν ἐφεσείοντα, ἀλλὰ αὕτη δεόν νὰ ὑποβιβασθῇ εἰς περίοδον δύο μηνῶν ἀπὸ τῆς ἡμερομηνίας ἀπὸ τῆς ὁποίας οὗτος κατεδικάσθη.

1974
Nov. 26

CHRISTAKIS
GEORGHIOU
v.
THE REPUBLIC

This is an English translation of the judgment in Greek appearing at pp. 72-73 *ante*.

Military offences—Disobedience contrary to section 49 (b) of the Military Criminal Code and Procedure Law, 1964 (Law 40 of 1964)—Appellant's allegation of being ill at commission of offence rejected by trial Court—Facts placed before Court of Appeal constituting strong indication of such illness—Had they been before Court below it would have been more lenient—Sentence reduced.

Appeal against sentence.

Appeal against sentence by Christakis Georghiou who was convicted on the 11th October, 1974 at the Military Court sitting at Nicosia (Case No. 101/74) on one count of the offence of disobedience contrary to section 49 (b) of the Military Criminal Code and Procedure Law, 1964 (Law 40/64) and was sentenced to four months' imprisonment.

A. Eftychiou, for the Appellant.

Gl. Michaelides, for the Respondent.

The following judgment was delivered by:—

TRIANAFYLLIDES, P.: The Appellant was sentenced, on October 11, 1974, by the Military Court, to four months' imprisonment, after he had pleaded guilty to the offence of disobedience, contrary to section 49 (b) of the Military Criminal Code and Procedure Law, 1964 (Law 40/64).

The offence was committed during the night of May 21, 1974, when the Appellant refused to carry out his duty as a sentry, despite the fact that he was ordered to do so by a superior of his. As it appears from the record before us the Appellant put forward as an excuse for his refusal the fact that he was suffering from nervous shock.

Before the Military Court the Appellant appeared in person, and so when he was called upon to place before such court any mitigating factors he confined himself to expressing his repentance for his disobedience, without referring to his illness.

As it appears from the text of its judgment the Military Court not only did not take into account in mitigation of sentence the fact that the Appellant had been ill when he committed

the offence, but, on the contrary, it considered his excuse in this respect as a mere pretext.

During the hearing of the present appeal, and after a search in the records of the Psychiatric Department of the Nicosia General Hospital, it was found out that on May 21, 1974, immediately after the commission of the offence in question, the Appellant was examined by a doctor and he was given fifteen days' sick leave while being under treatment.

This, in our opinion, is a strong indication that the Appellant was really ill when he committed the offence.

We are sure that if the Military Court had before it the above facts it would not have considered the Appellant's excuse of being ill as a pretext, and it would have been more lenient in imposing sentence on him.

Counsel for the Appellant submitted that the whole sentence of imprisonment should be set aside. We cannot uphold this submission as the offence of disobedience by a soldier, under any circumstances, is a serious one, being directly related to basic requirements for the preservation of discipline.

For this reason we are of the view that, in the circumstances, a sentence of imprisonment should be imposed on the Appellant, but it must be reduced to a period of two months from the date on which he was convicted.

Appeal allowed.

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