COURT OF APPEAL

MILITARY

Sheehan J.
Mahon J.
Edwards J.

Record No. 16/2016

DIRECTOR OF MILITARY PROSECUTIONS

RESPONDENT

- AND –

RONAN DONAGHY

APPELLANT

JUDGMENT of the Court delivered on the 31st day of January 2017 by Mr. Justice Mahon

1. This is the appellant's appeal against sentences imposed on 12th January 2016 by the learned military judge following a limited court martial at the Military Justice Centre in McKee Barracks which commenced on 10th September 2015. An appeal against conviction was the subject of a judgment of this Court delivered on 17th June 2016. That appeal was dismissed.

2. The appellant was convicted of six counts as a result of allegations made by the complainant, Corporal C, relating to incidents which took place at Aiken Barracks in Dundalk, Co. Louth on the 30th October, 2013.

3. The six counts and the sentences imposed are as follows:-

(i) Count No. 1:

Conduct to the prejudice of good order and discipline contrary to s. 168(3)(a)(iii) of the Defence Act 1954 by making a statement to Corporal C to the effect that he would be with her in the female changing area in a minute, knowing that such an action would be contrary to para. 9(a) of the 27th Infantry Battalion Gymnasium Orders.

In respect of this count no punishment was imposed.

(ii) Count No. 2:

Conduct to the prejudice of good order and discipline contrary to s. 168(3)(a)(iii) of the Defence Act 1954, by entering the female changing area contrary to para. 9(a) of the 27th Infantry Battalion Gymnasium Orders.

In respect of this count, the appellant received a reprimand and was fined €250.

(iii) Count No. 3:

Conduct to the prejudice of good order and discipline contrary to s. 168(1) of the Defence Act 1954 by entering the female sauna, in a state of undress, where said sauna was occupied by Corporal C.

In respect of this count, the appellant was sentenced to seven days detention and his rank was reduced to Private. A fine of €500 was also imposed.

(iv) Count No. 4:-

Conduct to the prejudice of good order and discipline contrary to s. 168(1) of the Defence Act 1954 by not leaving the female sauna when requested by Corporal C.

In respect of this count, the appellant received a severe reprimand and a fine of €500.

(v) Count No. 5:

Committing an offence contrary to s. 169 of the Defence Act 1954 namely sexual assault contrary to s. 2 of the Criminal Law (Rape) (Amendment) Act 1990 by entering the female shower cubicle occupied by Corporal C in a state of undress causing her, by his actions, to apprehend an assault.

In respect of this count, the appellant's rank was reduced to that of Private. He was ordered to be discharged from the Defence Forces. He was also sentenced to twelve weeks detention with the final eight weeks suspended for a period of one year.

(vi) Count No. 7:

Conduct to the prejudice of good order and discipline contrary to s. 168(1) of the Defence Act 1954 by permitting his genital area to become exposed to Corporal C.

In respect of this count, the appellant received a severe reprimand and was fined €500.

4. In their totality, the sentences resulted in the appellant being deemed discharged from the Defence Forces at the rank of Private, the sentence of detention for twelve weeks with the final eight weeks suspended, the imposition of fines totalling €1,750 and the receipt of reprimands.

5. Subsequent to conviction, but prior to sentencing, the appellant applied for and was granted a discharge from the Defence Forces on the 9th July, 2015. He was not therefore a member of the Defence Forces on the date of sentencing.

6. Section 210 of the Defence Force Act 1954, as amended, provides for the penalties available to a sentencing military judge:-

> *"210. Subject to Section 192, punishments may be awarded in respect of offences against military law committed by persons subject to military law as men and convicted by court martial according to the following scale:-*
>
> *Scale*
>
> *(a) Imprisonment for life or any specified period.*
>
> *(b) Discharge with disgrace from the Defence Forces.*
>
> *(c) Discharge from the Defence Forces.*
>
> *(d) Detention:-*
>
> *(a) In the case of a general court martial or limited court martial for any term not exceeding two years.*
>
> *(b) In the case of a summary court martial, for any term not exceeding six months with or without forfeiture of all pay or any pay thereof*
>
> (e) *Where the person convicted is a non commissioned officer, reduction to any lower non commissioned rank.*
>
> *(f) Forfeiture of all seniority or of a specified term of seniority.*
>
> *(g) Reduction to any lower point on the scale of pay for the rank held.*
>
> *(h) (a) In the case of a person subject to military law as a man under s. 119(a) or (b), a fine of an amount not exceeding fourteen days pay of the person at the most recent rate payable.*
>
> *(b) In the case of a person subject to military law as a man under s. 119(c) or (d), a fine not exceeding the maximum fine awardable for the time being by a court martial to a man holding the rank of private of the highest grade who is in receipt of the maximum pay applicable to that rank.*
>
> *(c) In the case of a person who is not a member of the Defence Forces but who was a non commissioned officer, private or sea man, when the offence was committed, a fine not exceeding an amount equal to fourteen days pay at the most recent rate applicable to his former rank.*
>
> (i) *Severe reprimand.*
>
> *(j) Reprimand."*

The grounds of appeal

7. A number of grounds of appeal were submitted on behalf of the appellant. They relate to the following:-

- A claimed failure to impose a proportionate sentence.
- A discharge from the Defence Forces at the rank of Private.

8. In particular, the learned military judge is criticised on the following basis:-

> (i) Imposing too harsh a sentence in circumstances where the maximum sentence in respect of Count No. 5 is a prison sentence of two years. (The otherwise maximum sentence of ten years imprisonment for this offence is reduced to two years imprisonment by virtue of s. 210 of the Defence Act 1954.)
>
> (ii) The failure to identify on the scale of gravity where the sexual offence as particularised should rest.
>
> (iii) The learned military judge failed to attach sufficient weight to the fact that the circumstances of the sexual assault did not involve any physical harm to the complainant, and that, in reality, what constituted the offence in the particular circumstances of this case was a fear or apprehension on the part of the complainant that she would be subjected to an assault.
>
> (iv) The learned military judge placed too great a weight on the deterrent principle in arriving at sentence.
>
> (v) The learned military judge attached insufficient weight to the mitigation factors, including, a complete lack of previous convictions, twenty one years service in the Defence Forces, reaching the rank of Corporal, four overseas tours with good reports from such trips, an unblemished disciplinary record for seven years prior to the commission of these offences, and the appellant's family circumstances (being married with three young children and with significant financial outgoings including mortgage repayments of €1,200 per month), and the assessment of the appellant as a man unlikely to commit further sexual offences.

9. It is also submitted on behalf of the appellant that the learned military judge was not empowered to direct that the appellant be discharged to a lower rank than his rank at the date of discharge in circumstances where, prior to the court martial, and his sentencing, the appellant had retired from the Defence Forces following twenty one years service. The appellant was entitled to apply

to retire after twenty one years service and his retirement had been approved by the Minister for Defence / Army Pensions Board prior to sentencing.

10. For his part, the respondent submits that the sentences imposed by the learned military judge were not excessive and that, before passing sentence the all relevant matters were taken into consideration, including the appellant's personal circumstances and the various mitigating factors.

11. It is submitted on behalf of the respondent that the sentencing judgment represents a careful balance by the learned military judge of the various factors in the case, and it is contended that the resulting sentence was proportionate and fair having regard to all the circumstances.

12. Following upon the hearing of this appeal in the course of which detailed oral submissions were made by both parties, the court sought additional written submissions in relation to the interpretation of s. 210 of the Defence Act 1954, (as amended). The request for additional particulars was conveyed to the parties in the following terms:-

> "Section 210 of the Defence Act 1954, (as amended) provides for a number of penalties, including in particular, demotion, reduction in rank, reduction to a lower pay scale, discharge, forfeiture of seniority, reprimand, severe reprimand and detention (other than imprisonment for up to life as provided for in s. 210(A)).

The submissions are requested to assist the court in determining the extent to which such penalties (or any of them) can lawfully be imposed on an individual, who, prior to sentence, has been discharged from the Defence Forces."

13. In due course, additional and very helpful written submissions were made on behalf of both parties.

14. It is contended on behalf of the appellant that directing the discharge of a soldier is an impossibility and is meaningless if the individual concerned is no longer a member of the Defence Forces. It is suggested that this is exactly the situation where the appellant is concerned. Likewise it is argued that the reduction in rank of an individual who has, prior to any such order being made, left the Defence Forces is also meaningless and can have no effect. It is submitted that as of the date of sentencing the appellant was not a member of the Defence Forces and held no rank, and was subject to punishment only to the extent permitted by s. 120 of the Defence Act 1954 (as amended).

15. The respondent maintains that the various punishment options stipulated in s. 210 remain applicable and capable of being imposed in circumstances where an individual retires prior to the completion of a criminal or disciplinary process. The decision of Noonan J. in *Fingleton v. Central Bank of Ireland* [2016] IEHC 1 is cited as an authority for such contention. In the course of his judgment Noonan J. stated:-

> *"…A similar anomaly arises in the context of the person concerned being entitled at any time during the currency of the inquiry to oust its jurisdiction by the simple expedient of resigning or retiring. One merely has to state the proposition to demonstrate its absurdity. Yet this is what the applicant contends is the intent of the legislature to be gleaned from the natural and ordinary meaning of the words used. It would also have the consequence that the respondent, having identified a possible contravention and the persons potentially responsible, would have to embark on an investigation, the formation of a suspicion and all the subsequent steps without ever knowing whether it would be deprived of jurisdiction at any moment at the will of the person being investigated".*

16. *Fingleton* was concerned with an application to prohibit an inquiry established in 2015 pursuant to the provisions of the Central Bank and Financial Services Authority Act 2004, into the management (and in particular the applicant's role of Managing Director) of the Irish Nationwide Building Society prior to its collapse in 2010/2011 on the grounds (inter alia) that the applicant had resigned from his management position in 2009. Noonan J. held that the applicant was lawfully subject to the inquiry notwithstanding his earlier resignation.

17. It is also pointed out by the respondent that the various penalties available under s. 210 of the 1954 Act specifically include (at (H)(c) a punishment designed solely for an individual who was, in the past, a member of the Defence Forces is not a member at the time of the imposition of the punishment. The respondent points to the fact that none of the other categories of punishment include such specific reference to a person who was in the past a member of the Defence Forces but is not a member at the time of the application of the punishment, and that therefore they apply in equal measure to a serving member of the PDF as to a former member in respect of offences committed while a member.

18. As to the argument that the penalties of demotion and / or discharge from the Defence Forces cannot be imposed after a soldier has been discharged or that any such penalty is therefore incapable of taking effect or is meaningless, there are other examples of penalties for other non-military offences in respect of which the same argument might be made, but has not been made. For example, a disqualification from driving being imposed on an already disqualified driver, or a sentence of imprisonment directed to be served concurrently with a longer sentence. On the civil side there exists the penalty of striking a solicitor off the roll of solicitors in circumstances where he has already removed himself from the register.

19. In the course of his sentencing judgment, the learned military judge referred to the fact that, as of the date of sentencing, the appellant was no longer a member of the Defence Forces, he stated:-

> *"Now, in this case, the offences were committed on the 30th October, 2013, while you were serving in the Permanent Defence Forces with the rank of Corporal under service No. 855729. You applied for, and were granted, a discharger from the Permanent Defence Forces on the 9th July, 2015 and therefore s. 120 of the Defence Act 1954 comes into play."*

20. Having quoted extensively from s. 120, the learned military judge, while expressing his view that the full range of penalties provided by s. 210 was available to the military court, questioned the practicality of ordering a discharge in circumstances where the applicant had already left the Defence Forces. He stated:-

> *"So, the full range of punishment set out in s. 210 are available to the court under the provisions of that section. It is somewhat unclear as to what the practical effect of an award of a discharge would be, in circumstances, where you have applied for and been granted a discharge from the date of the charge and the date of the trial."*

21. Section 192(1) of the Defence Act 1954 provides for the trial and punishment of a person in respect of an offence committed by

that person while subject to military law. It states:-

> *"192(1) Subject to the provisions of this Act, a court-martial, whether general or limited, shall have jurisdiction to try and punish any person for an offence against military law committed by such person while subject to military law as an officer or a man."*

22. The court agrees with the submission made on behalf of the respondent in relation to the meaning of section 192. That submission states:-

> *"It is clear from the express wording of s. 192 that the jurisdiction to try and punish a person by court martial is based on the commission of an offence against military law by a man or an officer subject to military law. Notably, the section confers jurisdiction to try and punish. It follows that the imposition of punishment does not depend on the person still being subject to military law at the time the question of punishment falls for consideration."*

23. The appellant was, as a member of the Defence Forces subject to military law at the time of the commission of his offences and having been properly convicted of the commission of those offences was subject to the imposition of penalty by the learned military judge. Section 210 (as earlier referred to) provides for a wide range of penalties. It is necessary however for the court to consider, in the context of this appeal, if the learned military judge was in error in imposing one or more penalties on the basis that they were unduly harsh and, also, (and separately), if the learned military judge had jurisdiction to impose particular penalties having regard to, specifically, the fact that at the time they were imposed, the appellant was no longer a member of the Defence Forces, and had left the Defence Forces with permission.

24. There are many aspects to the imposition of penalties as part of the sentencing process. One is undoubtedly the punishment of the offender. Another is the deterrent effect by sending forth the message that serious offending will result in the imposition of significant penalties. The seriousness of the offending, or the gravity of the crime, is usually marked by the severity of the penalty imposed.

25. In this case, the appellant's conviction of sexual assault resulted in the reduction in rank to that of Private and an order discharging him from the Defence Forces (a reduction in rank to that of Private was also imposed in respect of Count no. 3 being the offence contrary to s. 168(1) of the Defence Act 1954 of entering the female sauna in a state of undress while the sauna was occupied by a female colleague). Another consequence of these penalties being imposed on the appellant in circumstances where he had already been discharged from the Defence Forces is in relation to the retrospective alteration of his military record. The imposition of these penalties marks the gravity of the offences in question.

26. When imposing sentence, a judge generally enjoys a wide discretion in the sentence to be imposed. The sentencing judge is of course bound to respect the principles of proportionally and totality. A sentencing judge is required to identify relevant factors and give due weight to them. *In DPP v. McC(R)*[2008] 2 I.R. 92 at 104, the Supreme Court stated:-

> *"This requires that any sentencing court should conduct a systematic analysis of the facts of the case, assess the gravity of the offence, the point on the spectrum at which the particular offence or offences may lie, the circumstances and character of the offender and the mitigating factors to be taken into account : - all with a view to arriving at a sentence which is both fair and proportionate."*

27. To a degree most of the offences in respect of which the appellant was convicted might not, at first sight, appear particularly serious. The exception has to be Count No. 5, the sexual assault contrary to s. 2 of the Criminal Law (Rape) Amendment 1990. The other offences however cannot be considered in any way minor or lacking in seriousness particularly having regard to the fact that they were committed within a military setting where strict discipline is of crucial importance. The fact that the Defence Forces have become very much a mixed group of men and women required to engage in similar duties and to work closely together within a strict disciplinary regime serves to emphasise the importance of having, in effect, a zero tolerance attitude to inter gender offending. Arguably, what constitutes relatively minor offending in civil society may be considered serious offending within a military setting.

28. The learned military judge sentenced the appellant on 12th January 2016. His sentencing judgment was detailed and obviously very carefully considered.

29. In the course of his sentencing judgement, the learned military judge stated:-

> *"The purpose of sentencing includes punishment or retribution, and by that is meant just desserts, not revenge or retaliation. It also includes deterrents of an accused person and others from re-offending. It also includes reparation to an injured party, if applicable, and it also includes rehabilitation or reform of an offender in the public good, or the interest of the service in the case of a member of the Defence Forces. And there are a number of core sentencing principles that apply in this jurisdiction and which were set out in the case of DPP v. M in 1994 in a judgment of Ms. Justice Denham."*

30. The learned military judge went on to specifically refer to the principle of proportionality, the importance of ensuring that the sentence should be proportionate to the crime committed, and also to the circumstances of the accused.

31. The learned military judge also identified the various mitigating factors. He also noted that there was no evidence of any remorse or any attempt of any nature to make amends or reparation to the complainant.

32. In relation to Count No. 1, no punishment was imposed. In relation to Count Nos. 2, 4 and 7, relatively modest fines were imposed and in respect of two of these Counts, the appellant also received a reprimand. The Court is satisfied that these penalties were entirely appropriate.

33. In relation to Count No. 3 (entering the female sauna in a state of undress when occupied by Corporal C), the learned sentencing judge clearly rightly deemed the offence to be serious. He referred to the fact that at the time the appellant was an NCO and in a position of responsibility in relation to the barracks gym, and that his actions amounted to a breach of trust towards a fellow NCO. He placed the offence in the middle of the range of the gravity scale for s. 168 offences, and imposed a penalty of seven days detention and a reduction in the appellant's rank to that of Private, as well as a fine of €500.

34. In relation to Count No. 5, being the sexual assault offence, the learned sentencing judge considered the offence was *"located above the lower and in the mid range of the scale of seriousness for an offence of this nature against military law, which also*

constitutes an offence against the Criminal law of the State". He imposed a sentence of twelve weeks detention with the final eight weeks suspended for a period of one year. He also reduced the appellant's rank to that of Private and directed that he be discharged from the Defence Forces.

35. This Court finds no error of principle in relation to the detention orders made in respect of Counts numbered 3 and 5. The Court does however have a concern in relation to the reduction in rank to that of Private, and the order of discharge from the Defence Forces.

36. If the appellant had not been discharged from the Defence Forces, the reduction in rank from Corporal to Private would immediately result in a reduction in income. That immediate effect did not occur because the appellant had previously been discharged from the Defence Forces, and had received the salary appropriate to the rank of Corporal up to his discharge. The Court's concern in relation to the reduction in rank is twofold.

37. Firstly there is the longer term financial consequences for the appellant and his family as a consequence of the imposition of that penalty. Having imposed this penalty, the learned sentencing judge stated that:-

> *"The Court is not making any order relating directly to your pension entitlements accrued during your service".*

38. Having concluded the sentencing, the learned military judge was then addressed by counsel for the appellant as to the apparent uncertainty of the consequences of the reduction in rank and discharge from the Defence Forces that would follow in respect of his pay and pensions. The learned military judge said he was uncertain as to what, if any, the effect of the reduction in rank would have on the appellant's pension. He commented:-

> *"It may be that there will be no impact on his pension, and if, as a consequence there is some adverse effect on your pension, well so be it and let the cards fall where they may in that regard.""*

39. He declined to defer the imposition of the sentences while the financial consequences of the penalty were clarified.

40. It was therefore the case that at the time of sentencing the effect of the reduction in rank on the appellant's pension was completely unknown. Indeed, this Court was advised that the position was many months later, still unknown, and that ultimately it was a matter for the Department of Defence to decide whether or not to pay the appellant's pension based on his leaving the army as a corporal or as a private. A reduction in his pension to that appropriate to a Private as compared to that appropriate to the rank of Corporal would, over a lifetime, be potentially very substantial in financial terms, particularly having regard to the appellant's relatively young age at the present time. If there was to be a loss of pension the penalty would amount to a very severe punishment and one undoubtedly excessively harsh and disproportionate for the offence.

41. The Court is satisfied that the learned military judge's decision to impose the reduction in rank penalty in the absence of certainty of the financial consequences for the appellant's pension amounted in itself to an error of principle.

42. Secondly, it is necessary for the court to consider if the learned military judge had the power (as conferred by s. 210 of the Defence Act 1954, as amended) to direct the appellant's rank be reduced from Corporal to Private or that he be discharged from the Defence Forces, in circumstances where (and with the permission of the Defence Forces) at the time of imposition of those penalties, the appellant had already been discharged at the rank of Corporal and was therefore no longer a member of the Defence Forces and held no rank in the Defence Forces. This issue is quite distinct from the process of measuring the appropriateness of such penalties against the offences.

43. The penalties in question are set out in the format of a Scale in section 210(1). Included in the Scale are the following:-

> *". . .*
>
> *E. Discharge with ignominy from the Defence Forces.*
>
> *F. Discharge from the Defence Forces.*
>
> *G. Where the person convicted is a non-commissioned officer, reduction to, -*
>
> (a) *if he holds a non-commissioned army rank, any lower non-commissioned army rank, or*
>
> *(b) if he holds a non-commissioned naval rank, any lower non-commissioned naval rank."*

In this case, the relevant penalties are those of "F. Discharge" and "G(a) Reduction in rank from Corporal to Private".

44. Section 5 of the Interpretation Act 2005, provides as follows:-

> *"(1) In construing a provision of any Act (other than a provision that relates to the imposition of a penal or other sanction) –*
>
> *(a) that is obscure or ambiguous, or*
>
> *(b) that on a literal interpretation would be absurd or would fail to reflect the plain intention of –*
>
> *(i) in the case of an Act to which paragraph (a) of the definition of "Act" in section 2 (1) relates, the Oireachtas, or*
>
> *(ii) in the case of an Act to which paragraph (b) of that definition relates, the parliament concerned,*
>
> *the provision shall be given a construction that reflects the plain intention of the Oireachtas or parliament concerned, as the case may be, where that intention can be ascertained from the Act as a whole.*
>
> *(2) In construing a provision of a statutory instrument (other than a provision that relates to the imposition of a penal*

or other sanction) –

(a) *that is obscure or ambiguous, or*

(b) that on a literal interpretation would be absurd or would fail to reflect the plain intention of the instrument as a whole in the context of the enactment (including the Act) under which it was made,

the provision shall be given a construction that reflects the plain intention of the maker of the instrument where that intention can be ascertained from the instrument as a whole in the context of that enactment."

45. In the course of his judgment in *DPP v. Avadenei* [2016] IECA, Edwards J. when dealing with a consultative case stated and which required the interpretation of certain legislative provisions in relation to a prosecution for drink driving, stated:-

"The consequence of this is that these provisions must be strictly and narrowly construed in accordance with the long established common law jurisprudence concerning the interpretation of penal provisions in statutes. Furthermore, s. 5 of the Act of 2005, which allows for a purposive interpretation in the case of a provision in an enactment or statutory instrument which is obscure or ambiguous, or which on a literal interpretation would be absurd or would fail to reflect the plain intention of the Oireachtas (or the maker of the relevant statutory instrument, as the case may be) contains a qualifier which expressly disapplies that section, and precludes its use, in the construction of 'a provision that relates to the imposition of a penal or other sanction'."

46. As the instant case clearly involves the imposition of penal sanctions in respect of criminal offences it is necessary and appropriate that the wording of the provisions be strictly construed on the basis of their ordinary meaning.The ordinary meaning of the penalties discharging a person from the Defence Forces or the penalty reducing the rank of that person in the Defence Forces, must surely be that such penalties are only available in respect of members of the Defence Forces who are serving at the time such penalties are imposed and are capable of being discharged and/or holding military rank. As of the date of sentencing the appellant was already discharged and held no military rank with the consequence that the number and variety of penalties available to the learned military judge (pursuant to s. 210) were restricted accordingly. The legislation does not provide for such penalties to be imposed in some retrospective fashion with, for example, the consequence of amending a military record accurately stating that the rank held at the date of discharge was (in the appellant's case) that of Corporal.

47. The court is therefore satisfied that the learned military judge was not empowered to impose the penalties of discharge and rank reduction on the appellant in respect of Count Nos. 3 and 5.

48. It is necessary that this Court now re-sentence the appellant in relation to these counts. The sentences imposed in respect of Count Nos. 2, 4 and 7 are unaltered and remain as imposed by the learned military judge.

49. Count No. 3 concerned conduct to the prejudice of good order and discipline contrary to s. 168(1) of the Defence Act 1954, by entering the female sauna in a state of undress where the sauna was then occupied by Corporal C. Count No. 5 concerned an offence contrary to s. 169 of the Defence Act 1954, namely sexual assault contrary to s. 2 of the Criminal Law (Rape) (Amendment) Act 1990, by entering the female shower cubicle occupied by Corporal C in a state of undress causing her, by his actions, to apprehend an assault. Both these offences were serious, the latter being clearly more serious than the former. The learned military judge correctly considered these offences to be serious, and to be more so from a military perspective. In terms of ranking the seriousness of these offences they probably fall into the category of the lower to mid range. The acts complained of, while reprehensible, did not include any actual violence or threat of violence. What occurred placed Corporal C in a very difficult and awkward situation and put her in fear that the appellant's behaviour, and that his persistence in that behaviour, might escalate into something far more serious. It is to the credit of Corporal C that that did not happen.

50. A number of strong mitigating factors exist in this case and indeed were specifically recognised by the learned military judge. These are first offences and they occurred after approximately 21 years of service in the Defence Forces, including four tours of overseas duty with positive reports from those trips. In addition, the appellant had been promoted to the non commissioned rank of Corporal and was clearly regarded by the military authorities as a person of trust and competence. On the other hand, and as also noted by the learned military judge, Corporal C had been put through the ordeal of a full trial and there was no evidence of any remorse or attempt to make amends or reparation to her. It is also a factor that the appellant's lengthy military career has been brought to an end in a rather unsavoury manner, and that is a matter which the appellant will have to live with for the rest of his life and which undoubtedly will not assist him in securing worthwhile civilian employment.

51. In respect of Count No. 3, the court will impose a sentence of one month's imprisonment, to be suspended for a period of six months with the appellant entering into a bond in the sum of €100 to be of good behaviour for said period. A fine of €500 is also imposed with twelve months for payment or one week's imprisonment in default thereof.

52. In relation to Count No. 5, the court will impose a sentence of six months imprisonment, said sentence to be suspended for a period of twelve months on condition that the appellant enter into a bond in the sum of €100 and to be of good behaviour and to keep the peace for the said period.