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Headnotes:

A determinant nature of military service in ensuring national security and its gravity may render some miscellaneous acts of civilians as military offences and it may be necessary to provide for heavy sanctions for those acts. However, imprisonment from 3 to 5 years for leaving the country without permission may not be regarded as a reasonable, acceptable and harmonious balance between the offence committed and the punishment in the area of military penal law.

Summary:

The First Army Military Court brought an action in the Constitutional Court alleging that article 67.1-A of Military Penal Code (as amended by the Law 4551) was contrary to the Constitution. The offending provision stipulated:

"the military persons who commit the following acts shall be deemed as having fled from the army and shall be imprisoned from 3 years to 5 years: a. personnel who spend 3 days in a foreign country for any reason in the absence of permission to go abroad even if they have leave within the country"

The Constitutional Court held that the legislative power has the competence to determine which acts shall be deemed to be an offence provided that that offence is compatible with the Constitution and the general rules of penal law. The kind of sanctions to be applied to those acts, the terms of imprisonment and the aggravating and mitigating circumstances, are also comprised within the discretionary power of the legislation. When the discretionary power of the legislation used, it must be taken into account whether the offence is military or not. The military service may require some special sanctions for its members different than the sanctions applied to ordinary citizens. But, the rule of law within the meaning of Article 2 of the Constitution is the State respecting human rights, preserving and strengthening those rights and establishing equitable law in all areas. Consequently, it is the requirement of the rule of law to ensure a reasonable, acceptable and harmonious balance between the offence and punishment in the military penal law.

When it is taken into account that military personnel accepted military requirements, it may be concluded that the offending provision does not strike an

acceptable just balance between the act committed and the penalty in a democratic society.

For those reasons, the Constitutional Court found that the impugned provision was in conflict with Article 2 of the Constitution and should be annulled.

Supplementary information:

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