

κατὰ

ΔΗΜΟΚΡΑΤΙΑΣ,

Ἐφεσιβλήτου.

(Ποινικὴ Ἔφεσις ὑπ' ἀρ. 3634).

Στρατιωτικὰ Ἄδικήματα—Ποινὴ—Δεκαοκτὰμηνος φυλάκισις
διὰ λιποταξίαν—Ἄρθρον 29 τοῦ Περί Στρατιωτικοῦ Ποι-
νικοῦ Κώδικος καὶ Δικονομίας Νόμου τοῦ 1964 (Νόμος
40/64)—Ὁ ἐφεσείων ἐνεφανίσθη ἀνευ συνηγόρου καὶ δὲν
εἶχε τὴν δυνατότητα νὰ προβάλλῃ πλήρως διὰ τὰ ἐλαφρυν- 5
τικὰ—Τὸ Στρατιωτικὸν Δικαστήριον δὲν ἐζήτησεν «Ἐκ-
θεσίαν Κοινωνικῆς Ἐρεύνης»—Ἱατρικὴ ἔκθεσις τεθεῖσα ἐ-
νώπιον Ἀνωτάτου Δικαστηρίου—Ἐὰν εὑρίσκετο ἐνώπιον
Στρατιωτικοῦ Δικαστηρίου περιεχόμενόν τῆς θὰ συνέβαλ-
... λεν σοβαρῶς εἰς μετριάσμον ποινῆς—Ἐλάττωσις ποινῆς. 10

Ποινὴ—Στρατιωτικὰ ἀδικήματα—Ἴδε «Στρατιωτικὰ Ἄδική-
ματα».

Ἔφεσις κατὰ τῆς ποινῆς.

Ἔφεσις ὑπὸ τοῦ Μιχαὴλ Κωστῆ Νικολάου κατὰ τῆς
δεκαοκταμήνου ποινῆς φυλακίσεως τῆς ἐπιβληθείσης ὑ- 15
πὸ τοῦ Στρατιωτικοῦ Δικαστηρίου διὰ τὸ ἀδίκημα τῆς
λιποταξίας εἰς τὸ ἐσωτερικὸν κατὰ παράβασιν τοῦ ἄρ-
θρου 29 τοῦ Περί Στρατιωτικοῦ Ποινικοῦ Κώδικος καὶ
Δικονομίας Νόμου τοῦ 1964 (Νόμος 40/64).

Ε. Εὐσταθίου, διὰ τὸν ἐφεσεῖοντα. 20

Χρ. Τσέλιγκας, διὰ τὴν Δημοκρατίαν.

ΑΠΟΦΑΣΙΣ *

ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ, πρ. Ὁ ἐφεσείων ἐφεσιβάλλει ποινήν
δεκαοκταμήνου φυλακίσεως ἐπιβληθείσαν εἰς αὐτὸν ὑπὸ 25
τοῦ Στρατιωτικοῦ Δικαστηρίου διὰ τὸ ἀδίκημα τῆς λιπο-

* An English translation of this judgment appears at
pp. 126 - 128 *post*.

ταξίας εις τὸ ἐσωτερικόν, κατὰ παράβασιν τοῦ ἄρθρου 29 τοῦ περὶ Στρατιωτικοῦ Ποινικοῦ Κώδικος καὶ Δικονομίας Νόμου τοῦ 1964 (Νόμος 40/64).

11η Σεπτεμβρίου
1975

ΜΙΧΑΗΛ
ΚΩΣΤΗ
ΝΙΚΟΛΑΟΥ

ΔΗΜΟΚΡΑΤΙΑΣ

5 Κατὰ τὴν ἐπιμέτρησιν τῆς ποινῆς ὑπὸ τοῦ πρωτοδικου δικαστηρίου ἐλήφθησαν ὑπ' ὄψιν, αἰτήσῃ τοῦ ἐφεσεῖοντος, ἕτερα τρία παρόμοια ἀδικήματα διαπραχθέντα ὑπ' αὐτοῦ, ὡς καὶ ἐκκρεμοῦσα ἐναντίον του κατηγορία διὰ ῥῆσιν ἀσκόπων πυροβολισμῶν δι' ὑπηρεσιακοῦ ὄπλου.

10 Ὁ ἐφεσεῖων, ὅστις εἶναι 21 ἐτῶν, ἐνεφανίσθη ἐνώπιον τοῦ Στρατιωτικοῦ Δικαστηρίου ἀνευ συνηγόρου καὶ οὕτω δὲν εἶχε τὴν δυνατότητα νὰ προβάλῃ πλήρως ὅλα τὰ ἐλαφρυντικά τὰ ἀφορῶντα εἰς τὸ ἄτομόν του. Τὸ δὲ Στρατιωτικὸν Δικαστήριον δὲν ἐζήτησεν «ἐκθεσιν κοινωνικῆς ἐρεῦνης», ὡς δεόν νὰ γίνεται εἰς ἐκάστην περι-
15 πτωσιν κατὰ τὴν ὁποίαν ἐξετάζεται τὸ ἐνδεχόμενον ἐπιβολῆς ποινῆς φυλακίσεως εἰς πρόσωπον νεαρᾶς ἡλικίας.

Σήμερον ὁ συνηγόρος του ἔχει θέσει ἐνώπιόν μας ἐκ-
θεσιν τοῦ Ἐπιμελητοῦ τῶν Ψυχιατρικῶν Ἰδρυμάτων Ἀ-
θαλάσσης, ἡμερομηνίας 2ας Σεπτεμβρίου, 1975, τὸ οὐ-
20 σιῶδες μέρος τῆς ὁποίας ἔχει ὡς ἀκολούθως :

«Ἐκ τοῦ ἱστορικοῦ καὶ τῆς κλινικῆς ἐξετάσεως πρό-
κειται περὶ ἀτόμου πάσχοντος ἐξ Ἀμβλυνοῖας (Π Π
72) καὶ Διαταραχῶν τῆς Προσωπικότητος χαρακτη-
25 ριζομένης ὑπὸ ἐντόνου ἀνωριμότητος καὶ ἀνεπαρκείας, συναισθηματικῆς ἀσταθείας μειωμένης προσαρμογῆς, εὐερεθιστότητος καὶ ἐνίοτε δρῶν κατὰ παρορμητικὸν τρόπον λόγῳ μειωμένης νοημοσύνης καὶ ἀναστολῶν.

Κατὰ τὴν διάρκειαν τῆς στρατιωτικῆς του θητείας τὸ ὡς ἄνω ἄτομον γενικῶς δὲν ἐπαρουσίασε σοβα-
30 ρὰ προβλήματα, ἀργότερον ὅμως ὅταν ὑπηρετοῦσεν ὡς ἐφεδρος λόγῳ τῶν εἰδικῶν συνθηκῶν ἐκ τοῦ πολέμου, τῆς βασικῆς διαταραχῆς τῆς προσωπικότητός του καὶ τῆς Ἀμβλυνοῖας του ἣτις πλησιάζει τὰ ὄρια τῆς ἡλιθιότητος ἀνέπτυξε μειωμένην προσαρμογὴν
35 εἰς τὰ καθήκοντά του ὡς στρατιώτου ὡς καὶ μειωμένην ἀνοχὴν εἰς διαφόρους συνθήκας τοῦ στρατοῦ. Λόγῳ τῆς μειωμένης κρίσεώς του καὶ τῶν μειωμένων ἀναστολῶν, ἀνέπτυξε παρορμητικὴν συμπεριφο-
40 ρὰν μὲ ἀποτέλεσμα τίς συχνές λιποταξίες. Εἶμεθα τῆς γνώμης ὅτι τὸ ὡς ἄνω ἄτομον πρέπει νὰ ἀπαλλαγῇ τῶν στρατιωτικῶν του καθηκόντων ἀφοῦ πα-

ραπεμφθῆ πρὸς τὴν Ἐπιτροπὴν Ἐξετάσεως Σωματικῆς Ἰκανότητος».

Εἶμεθα βέβαιοι ὅτι ἐὰν εὐρίσκετο ἡ ἐκθεσις αὐτῆ ἐνώπιον τοῦ Στρατιωτικοῦ Δικαστηρίου τὸ περιεχόμενόν της θὰ συνέβαλλεν σοβαρῶς εἰς τὸν μετριασμόν τῆς ποινῆς. Περὶ τούτου δὲ συνεφώνησεν, ἀκριβοδικαίως φερόμενος, καὶ ὁ συνήγορος ὅστις ἐμφανίζεται διὰ τὴν Δημοκρατίαν. 5

Ὑπὸ τὰς περιστάσεις νομίζομεν ὅτι ἐπιβάλλεται ἡ μείωσις τῆς ἐπιβληθείσης ποινῆς εἰς φυλάκισιν μόνον τεσσάρων μηνῶν. 10

Ἡ ἔφεσις γίνεται ἀποδεκτὴ ὡς ἀνωτέρω.

This is an English translation of the judgment in Greek appearing at pp. 124 - 126, *ante*.

Military Offences—Sentence—Eighteen months' imprisonment for desertion—Section 29 of the Military Criminal Code and Procedure Law, 1964 (Law 40 of 1964)—Appellant appearing without counsel and unable to place all mitigating factors—No "social investigation report" asked for by trial Court—Medical report placed before Court of Appeal—Had it been placed before Military Court its contents would have contributed to a serious extent in reducing sentence—Sentence reduced on this ground. 15 20

Sentence—Military Offences—See under "Military Offences".

Appeal against sentence. 25

Appeal against sentence by Michael Costi Nicolaou who was convicted on the 13th June, 1975 at the Military Court sitting at Nicosia (Case No. 130/75) on one count of the offence of desertion contrary to section 29 of the Military Criminal Code and Procedure Law, 1964 (Law 40/64) and was sentenced to eighteen months' imprisonment. 30

E. Efsthathiou, for the appellant.

Chr. Tselingas, for the respondent.

The judgment of the Court was delivered by :- 35

TRIANAFYLLIDES, P. : The appellant appeals against the sentence of eighteen months' imprisonment imposed on him by the Military Court for the offence of desertion, contrary to section 29 of the Military Criminal Code and Procedure Law, 1964 (Law 40/64). 40

In imposing sentence the trial court took into consideration, on an application by the appellant, three other similar offences committed by him, as well as a pending charge against him in respect of the offence of shooting
5 with a service firearm without good reason.

The appellant, who is 21 years old, appeared before the Military Court without the assistance of counsel and thus he was unable to place fully before such court all personal mitigating factors; moreover, the Military Court
10 did not ask for a "social investigation report", as it should be done in every case where the possibility of imposing a sentence of imprisonment on a young person is contemplated.

Today his counsel has placed before us a report from
15 the Psychiatric Institutions at Athalassa, dated 2nd September, 1975; the material part of such report reads as follows (in English translation):-

"From the history and the clinical examination it appears that he is a mentally backward person (I.Q.
20 72) with personality disorders characterized by pronounced immaturity and inadequacy, emotional instability, maladaptation, irritability, and he sometimes acts in an impulsive manner because of his reduced intelligence and inhibitions.

25 During his military service he did not, as a rule, cause any serious problems, but later on, while he was serving as a reservist, he developed reduced adaptability in relation to his duties as a soldier, as well as reduced tolerance of various situations in
30 the army, due to the special war conditions, to his basic disturbance of personality and to his mental backwardness which borders on stupidity. Because of his diminished judgment and inhibitions he developed impulsive behaviour which resulted in frequent
35 desertions. We are of the opinion that this person must be relieved of his military duties and should be referred for this purpose to the Examination of Physical Fitness Committee."

We are sure that had this report been placed before
40 the Military Court its contents would have contributed, to a serious extent, in reducing the sentence imposed on

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the appellant; with this view has agreed, too, very fair-mindedly, counsel who appears today for the Republic.

In the circumstances we are of the opinion that the sentence imposed on the appellant should be reduced to four months' imprisonment only.

5

The appeal is allowed accordingly.

Appeal allowed.

Sentence reduced.