

[ΔΙΚΑΣΤΑΙ ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ, Προεδρος
ΣΤΑΥΡΙΝΙΔΗΣ, ΜΑΛΑΧΤΟΣ Δικασταί]

ΚΩΣΤΑΣ ΧΡΙΣΤΟΔΟΥΛΟΥ ΚΑΤΣΙΑΡΗΣ,

Έφεσεΐον,

κατά

ΤΗΣ ΔΗΜΟΚΡΑΤΙΑΣ,

Έφεσθλήτου

(Ποινική Έφεσις υπ' αρ. 3606).

5η Φεβρουαρίου
1975

ΚΩΣΤΑΣ
ΧΡΙΣΤΟΔΟΥΛΟΥ
ΚΑΤΣΙΑΡΗΣ

ΔΗΜΟΚΡΑΤΙΑΣ

Στρατιωτικά Ἀδικήματα—Ποινή—Φυλάκισις ἐνός ἔτους διὰ τὸ ἀδίκημα τῆς λιποταξίας εἰς τὸ ἐσωτερικὸν κατὰ παράβασιν τοῦ ἀρ. 29(1) τοῦ Περὶ Στρατιωτικοῦ Ποινικοῦ Κώδικος καὶ Δικονομίας Νόμου 1964 (Νόμος 40/64)—Σοβαρῶτης ἀδικήματος—Στρατιωτικὸν Δικαστήριον δὲν ἀπέδωκε τὴν δέουσαν σημασίαν εἰς τὰς περιστάσεις ὑπὸ τὰς ὁποίας ὁ ἐφεσεΐων εὐρέθη μακρὰν τῆς μονάδος του καὶ εἰς τὸ γεγονός ὅτι ἐπανῆλθεν εἰς αὐτὴν ἰδίᾳ βουλήσει, ἔστιν καὶ μὲ κάποιαν καθυστέρησιν—Υποβιβασμὸς ποινῆς

10 Ἔφεσις κατὰ τῆς ποινῆς.

Ἔφεσις ὑπὸ τοῦ Κώστα Χριστοδούλου Κατσιαρῆ κατὰ τῆς ποινῆς φυλακίσεως ἐνός ἔτους τῆς ἐπιβληθείσης ὑπὸ τοῦ Στρατιωτικοῦ Δικαστηρίου Λευκωσίας διὰ τὸ ἀδίκημα τῆς λιποταξίας εἰς τὸ ἐσωτερικὸν κατὰ παράβασιν τοῦ ἀρθροῦ 29(1) τοῦ Περὶ Στρατιωτικοῦ Ποινικοῦ Κώδικος καὶ Δικονομίας Νόμου τοῦ 1964 (Νόμος 40/64)

Α. Παπαφιλίππου, διὰ τὸν ἐφεσεΐοντα

Ν. Χαράλαμπος, Δικηγόρος τῆς Δημοκρατίας
διὰ τὴν Δημοκρατίαν

20

ΑΠΟΦΑΣΙΣ

ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ πρ Ὁ ἐφεσεΐων κατεδικάσθη ὑπὸ τοῦ Στρατιωτικοῦ Δικαστηρίου Λευκωσίας, τὴν 10ην Δεκεμβρίου 1974, εἰς ποινὴν φυλακίσεως ἐνός ἔτους

An English translation of this judgment appears at pp 19 - 20 *post*.

8η Φεβρουαρίου
1975

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ΚΩΣΤΑΣ
ΧΡΙΣΤΟΔΟΥΛΟΥ
ΚΑΤΣΙΑΡΗΣ

v

ΔΗΜΟΚΡΑΤΙΑΣ

διὰ τὸ ἀδίκημα τῆς λιποταξίας εἰς τὸ ἐσωτερικόν, κατὰ παράβασιν τοῦ ἀρθροῦ 29(1) τοῦ Περί Στρατιωτικοῦ Ποινικοῦ Κώδικος καὶ Δικονομίας Νόμου τοῦ 1964 (Νόμος 40/64).

Ἡ περίοδος τῆς λιποταξίας τοῦ ἐφεσεῖοντος ἦτο ἀπὸ τῆς 17ης Αὐγούστου 1974 μέχρι τῆς 3ης Ὀκτωβρίου 1974 ὅτε ὁ ἐφεσεῖων ἐπανῆλθεν αὐτοβούλως εἰς τὴν μονάδα του.

Ὁ ἐφεσεῖων εἶναι πρόσωπον μὲ λευκὸν παρελθόν, τόσον ὡς στρατιώτης ὅσον καὶ ὡς πολίτης. Κατετάγη ὡς ἐφεδρος εἰς τὰς τάξεις τῆς Ἐθνικῆς Φρουρᾶς τὸν Ἰούλιον τοῦ 1974, ὅτε ἤρχισεν ἡ Τουρκικὴ εἰσβολή, καὶ μέχρι τῆς λήξεως τῶν ἐχθροπραξιῶν τὴν 17ην Αὐγούστου 1974 ὁ ἐφεσεῖων ἔλαβε μέρος εἰς μάχας ἐναντίον τῶν εἰσβολέων, πληγῶθεις κατ' αὐτάς.

Τὴν 17ην Αὐγούστου ἡ μονὰς τοῦ ἐφεσεῖοντος συνεπτύχθη, λόγῳ τῶν πολεμικῶν ἐπιχειρήσεων, ἀπὸ τὴν περιοχὴν Γερολάκκου, ὅπου εὐρίσκετο, πρὸς τὴν περιοχὴν Ἁγίων Τριμιθιάς. Κατὰ τὴν σύμπτυσιν ὁ ἐφεσεῖων καὶ μερικοὶ ἄλλοι στρατιῶται ἀπώλεσαν ἐπαφὴν μὲ τὴν μονάδα των, καὶ ὁ ἐφεσεῖων μετέθη εἰς Λεμεσό, ὅπου εὐρίσκετο ἡ οἰκογένειά του. Ἀπὸ ἐκεῖ προσεπάθη νὰ ἐπικοινωνήσῃ μετὰ τῆς μονάδος του, ἀλλὰ μέχρι τῆς δευτέρας ἐβδομάδος τοῦ Σεπτεμβρίου τοῦ 1974 δὲν κατάρθωσε νὰ πληροφορηθῇ ποῦ ἦτο αὕτη ἂν καὶ εἶχεν ἀποταθῆ ἔξ ἄρχῆς πρὸς τοῦτο εἰς τὴν Στρατιωτικὴν Διοίκησιν Λεμεσοῦ. Ἀκολούθως παρέμεινεν ἐπὶ τινα ἀκόμῃ χρόνον εἰς Λεμεσό, ἐργαζόμενος διὰ νὰ δυνηθῇ νὰ συνδράμῃ οἰκονομικῶς τὴν οἰκογένειάν του καὶ ἐπανῆλθεν εἰς τὴν μονάδα του τὴν 3ην Ὀκτωβρίου.

Δὲν ὑποτιμῶμεν τὴν σοβαρότητα τοῦ ἀδικήματος τῆς λιποταξίας, καὶ δὴ κατὰ τὰς δυσκόλους αὐτάς διὰ τὸν τόπον μας ἡμέρας, ἀλλὰ πιστεύομεν, ὅμως, ὅτι τὸ Στρατιωτικὸν Δικαστήριον δὲν ἀπέδωσε τὴν δέουσαν σημασίαν εἰς τὰς περιστάσεις ὑπὸ τὰς ὁποίας ὁ ἐφεσεῖων εὐρέθη μακρὰν τῆς μονάδος του καὶ εἰς τὸ γεγονός ὅτι ἐπανῆλθεν εἰς αὐτὴν ἰδίᾳ βουλήσει, ἔστω καὶ μὲ κάποιαν καθυστέρησιν. Ὡς ἐκ τούτου, λαμβανομένων ὑπ' ὄψιν ὅλων τῶν εἰδικῶν περιστάσεων τῆς παρούσης ὑποθέσεως, δέον ὅπως ἢ εἰς τὸν ἐφεσεῖοντα ἐπιβληθῆσιν ποινὴ ὑποβιβασθῆ εἰς φυλάκισιν ἔξ μηνῶν, ὑπολογιζομένης ταύ-

της από της 10ης Δεκεμβρίου 1974 ὅτε τοῦ ἐπεβλήθη
ποινὴ ὑπὸ τοῦ Στρατιωτικοῦ Δικαστηρίου.

1975
Febr. 6

COSTAS
CHRISTODOULOU
KATSIARIS

v.
REPUBLIC

This in an English translation of the judgment in Greek
appearing, at pp. 17 - 19 ante.

- 5 *Military Offences—Sentence—One year's imprisonment for
desertion, contrary to section 29(1) of the Military
Criminal Code and Procedure Law, 1964 (Law 40 of
1964)—Seriousness of the offence—Military Court did
not attribute the proper weight to the circumstances
10 under which appellant found himself away from his
unit and to the fact that he returned to it on his own
initiative, even though with some delay—Sentence re-
duced.*

Appeal against sentence.

- 15 Appeal against sentence by Costas Christodoulou
Katsiaris who was convicted on the 10th December,
1974 at the Military Court sitting at Nicosia (Case No.
193/74) on one count of the offence of desertion con-
trary to section 29(1) of the Military Criminal Code and
20 Procedure Law, 1964 (Law 40/64) and was sentenced
to one year's imprisonment.

L. Papaphilippou, for the appellant.

N. Charalambous, Counsel of the Republic,
for the respondent.

- 25 The judgment of the Court was delivered by :-

TRIANAFYLLIDES, P. : The appellant was sentenced
by the Military Court of Nicosia, on December 10, 1974,
to one year's imprisonment, for the offence of desertion,
contrary to section 29(1) of the Military Criminal Code
30 and Procedure Law, 1964 (Law 40/64).

The period of desertion of the appellant was from
August 17, 1974, till October 3, 1974, when the appel-
lant returned to his unit on his own initiative.

- 35 The appellant is a person with a clean record, both
as a soldier and a civilian. He enlisted as a reservist of
the National Guard in July 1974, when the Turkish

1975
Febr. 6

COSTAS
CHRISTODOULOU
KATSIARIS

v.
REPUBLIC

invasion commenced, and till the termination of the hostilities, of August 17, 1974, the appellant took part in the fighting against the invaders, and was wounded.

On August 17 the unit of the appellant retreated, for operational reasons, from the Yerolakkos area, where it was positioned, to Ayioi Trimithias area. During the retreat the appellant and some other soldiers lost contact with their unit, and, so, the appellant went to Limassol, where his family was.

From there he was trying to communicate with his unit, but until the second week of September 1974 he did not manage to rejoin it, although he had contacted, for this purpose, right from the beginning, the Military Command in Limassol. He remained in Limassol, working in order to earn money and assist financially his family, and he returned to his unit on October 3.

We do not underestimate the seriousness of the offence of desertion, especially during these difficult for our country times, but we are of the view, on the other hand, that the Military Court did not attribute the proper weight to the circumstances under which the appellant found himself away from his unit, and to the fact that he returned to it on his own initiative, even though with some delay. Taking, therefore, into consideration all the special circumstances of the present case, we have decided that the sentence imposed on the appellant should be reduced to one of six month's imprisonment to run from December 10, 1974, when sentence was passed upon him by the Military Court.

Appeal allowed.