

8 Ιανουαρίου 1979

[ΧΑΤΖΗΑΝΑΣΤΑΣΙΟΥ, ΔΗΜΗΤΡΙΑΔΗΣ, ΣΑΒΒΙΔΗΣ, ΔΙΚΑΣΤΑΙ]

ΠΑΝΑΓΙΩΤΗΣ ΑΝΔΡΕΑ ΣΩΤΗΡΙΟΥ,

Έφεσείων.

κατά

ΤΗΣ ΔΗΜΟΚΡΑΤΙΑΣ,

Καθ' ἧς ἡ Έφεσις.

(Ποινική Έφεσις ἀρ. 3976).

*Στρατιωτικά ἀδικήματα— Ποινή— Λιποταξία εἰς τὸ ἐσωτερικόν—
Ποινή φυλακίσεως ἑνὸς ἔτους— Ἐμειώθη εἰς τέσσερις μῆνας.*

Ὁ ἐφεσείων παρεδέχθη ἔνοχὴν διὰ τὸ ἀδίκημα τῆς λιποταξίας εἰς τὸ ἐσωτερικόν καὶ κατεδικάσθη εἰς φυλάκισιν ἑνὸς ἔτους. Κατὰ τὴν διάρκειαν τῆς στατιωτικῆς του θητείας ὁ ἐφεσείων κατεδικάσθη πειθαρχικῶς εἰς δύο ἄλλας περιπτώσεις ἡ δὲ μιὰ περίπτωση ἦτο διὰ παρομοίας φύσεως ἀδίκημα. Πρὸ τῆς λιποταξίας του εἶχεν συμπληρώσει θητείαν 28 μηνῶν.

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Εἰς ἔφεσιν γενομένην ὑπὸ τοῦ ἐφεσειόντος κατὰ τῆς ποινῆς τὸ δικαστήριον ἔκρινεν ὅτι:

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Ὑπὸ τὰς εἰδικὰς περιστάσεις τῆς ὑποθέσεως αὐτῆς ἡ ἔφεσις πρέπει νὰ ἐπιτραπῇ καὶ ἡ ποινὴ νὰ μειωθῇ εἰς 4 μῆνας φυλακίσεως.

Έφεσις ἐπετράπη.

Έφεσις κατὰ τῆς ποινῆς.

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Έφεσις κατὰ τῆς ποινῆς ὑπὸ τοῦ Παναγιώτη Ἀνδρέα Σωτηρίου ὁ ὁποῖος κατεδικάσθη τὴν 26ην Νοεμβρίου, 1978 ὑπὸ τοῦ Στρατιωτικοῦ Δικαστηρίου συνεδριάζοντος εἰς Λάρνακα (Υπόθεσις Ἀρ. 292/78) εἰς μίαν κατηγορίαν διὰ λιποταξίαν εἰς τὸ ἐσωτερικόν βάσει τοῦ ἀρθροῦ 59(1)(β) καὶ (2) τοῦ Στρατιωτικοῦ Ποινικοῦ Κώδικος καὶ Δικονομίας Νόμου τοῦ 1964 καὶ τοῦ ἐπεβλήθη ποινὴ φυλακίσεως ἑνὸς ἔτους.

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1. *Κουκούλης*, διὰ τὸν ἐφεσειόντα.

2. *Ταμάσιος*, διὰ τὴν καθ' ἧς ἡ ἔφεσις.

ΑΠΟΦΑΣΙΣ *

ΧΑΤΖΗΝΑΣΤΑΣΙΟΥ Δ.: 'Ο κατηγορούμενος κατηγορείται διά λιποταξίαν εις τὸ ἔσωτερικόν. Τὰ γεγονότα τῆς ὑποθέσεως ἔχουν ὡς ἀκολούθως:

- 5 'Ο κατηγορούμενος κατετάγη εἰς τὰς τάξεις τῆς Ἐθνικῆς Φρουρᾶς πρὸ ἕξι ἐτῶν ἤτοι τὴν 22 Ἰανουαρίου, 1972. Οὗτος κατὰγεται ἐξ Ἀμμοχώστου βραδύτερον δὲ μετεκόμισε εἰς Λάρνακα εἰς τὴν πρῶν Τουρκικὴν συνοικίαν. Αἱ γραμματικαὶ του γνώσεις εἶναι τοῦ δημοτικοῦ. Πρὸ τῆς κατατάξεως του εἰς τὰς τάξεις τῆς Ἐθνικῆς
- 10 Φρουρᾶς ἐπαγγέλλετο τὸν ὑδραυλικόν. Τὰ γεγονότα τῆς παρούσης ὑποθέσεως εἶναι ὡς ταῦτα περιγράφονται εἰς τὰς λεπτομερείας ἀδικήματος τοῦ κατηγορητηρίου. Εἰς ὠρισμένην κατάθεσιν ἐν σχέσει μὲ τὸ παρὸν ἀδίκημα, ἤτις ἐλήφθη συμφώνως τῶν δικαστικῶν κανονισμῶν ὁ κατηγορούμενος παρεδέχθη τὴν διάπραξιν
- 15 τοῦ παρόντος ἀδικήματος καὶ ἀνέφερε ὅτι διέπραξε τοῦτο διότι ἀντιμετώπιζε οἰκογενειακὰ προβλήματα καὶ ἐπειδὴ ὑπέφερε ἀπὸ παλαιὰ τραύματα. 'Ο κατηγορούμενος συνελήφθη τὴν 4 Ἰουλίου, 1978 ὑπὸ ὀργάνων τῆς Στρατονομίας. 'Ο κατηγορούμενος διὰ τὸ παρὸν ἀδίκημα ἐτιμωρήθη διὰ πενθημέρου ἀπλῆς πειθαρχικῆς ποινῆς φυλακίσεως. Κατὰ τὴν διάρκειαν τῆς στρατιωτικῆς του ζωῆς εἶχε δύο ἄλλας πειθαρχικὰς ποινὰς ἐκ τῶν ὁποίων ἡ
- 20 μία εἶναι διὰ παρομοίας φύσεως ἀδίκημα.

Τὸ πρωτόδικον Δικαστήριον παρετήρησε ὅτι ἡ λιποταξία εἰς τὸ ἔσωτερικόν εἶναι ἓνα σοβαρὸν ἀδίκημα ποὺ πολλὰς φορὰς ἐτο-
 25 νίσθη εἰς τὸ Δικαστήριον αὐτὸν καὶ ἐν πάσῃ περιπτώσει ὠφείλε ὁ κατηγορούμενος νὰ τὸ ἐγνώριζε. Διὰ αὐτὸ τὸ ἀδίκημα ὁ νομοθέτης πρόβλεψε ποινὴν φυλακίσεως μέχρι πέντε ἐτῶν. Περαιτέρω τὸ Δικαστήριον ἐτόνισε ὅτι ὁ κατηγορούμενος ἦτο μακρὰν τῆς μονάδας του διὰ περίοδο δύο ἐτῶν καὶ ὅτι δὲν ἐπέστρεψε ἀνθρωπίνως

30 ἀλλὰ ἀφοῦ συνελήφθη ὑπὸ ὀργάνων τῆς Στρατονομίας. Ἐν ὄψει τῆς σωρείας τῶν προηγουμένων καταδικῶν τὸ Δικαστήριον ἐπέβαλε τὴν ποινὴν τῆς φυλακίσεως ἐνὸς ἔτους ἀπὸ τῆς ἡμερομηνίας ἐκδόσεως τῆς ἀποφάσεώς του.

Κατὰ τὴν 30 Νοεμβρίου, 1978, ὁ κατηγορούμενος κατεχώρισε
 35 ἔφεσιν στηριζόμενος εἰς τὸ γεγονὸς ὅτι ἡ ποινὴ ἦτο ὑπερβολικὴ.

Κατ' ἔφεσιν ὁ συνήγορος τοῦ κατηγορουμένου ὑπέβαλε ὅτι ὑπὸ τὰς περιστάσεις ἡ ποινὴ ἦτο ὑπερβολικὴ. Ἐπίσης ἀνέφερε

* An English translation of this judgment appears at pp. 308-310 post.

εις τὸ Δικαστήριον ὅτι ὑπάρχει Διαταγὴ τῆς Ἐθνικῆς Φρουρᾶς ὑπ' ἀρ. Φ/421.2/23/134476/Σ269 ἡμερομηνίας 20 Μαΐου, 1978, διὰ τῆς ὁποίας ὅσοι εἶχαν 26μηνη θητεία ἀπελύοντο. Κατὰ τὴν 20 Μαΐου, 1978, ὁ κατηγορούμενος εἶχε συμπληρώσει θητείαν 28 μηνῶν πρὸ τῆς λιποταξίας του, ἤτοι μέχρι τὴν 20 Μαΐου, 1978. Περαιτέρω ὁ συνήγορος τοῦ κατηγορουμένου ἀνέφερε ὅτι ὁ κατηγορούμενος ὠδηγήθη εἰς τὴν μονάδα του, ἐτιμωρήθη ὑπὸ πειθιμέρου ποινῆς φυλακίσεως καὶ ἀπελύθη ὑπὸ τῆς Ἐθνικῆς Φρουρᾶς λόγῳ τοῦ ὅτι ἦταν παντρεμένος μὲ δύο παιδιά.

Ἀντιθέτως ὁ οὐνήγορος τῆς Δημοκρατίας ἀνέφερε ὅτι ὁ κατηγορούμενος δὲν ἐπέστρεψε ἀνθρωπίνως εἰς τὴν μονάδα του ἀλλὰ συνελήφθη καὶ ὅτι ἐπίσης τὸ προηγούμενον του ἀποτελεῖ σοβαρὸν λόγον διὰ ἐπιβολὴν σοβαροτέρας ποινῆς.

Ἐλάβαμεν σοβαρῶς ὑπόψιν ὅλα τὰ γεγονότα τῆς παρουσίας ὑποθέσεως καὶ κατελήξαμε εἰς τὸ συμπέρασμα ὅτι ὑπὸ τὰς εἰδικὰς περιστάσεις πρέπει νὰ ἐπιτραπῇ ἡ ἔφεσις καὶ ἡ ποινὴ τοῦ Δικαστηρίου νὰ μειωθῇ εἰς τέσσερεις μῆνας φυλάκισιν καὶ νὰ ἀρχίζη ἀπὸ τὴν ἡμερομηνίαν καταδίκης.

Ἔφεσις ἐπετράπη.

(This is an English translation of the judgment in Greek appearing at pp. 306-308 ante.)

Military offences—Sentence—Desertion in the interior—One year's imprisonment—Reduced to four months' imprisonment.

The appellant, a member of the National Guard, pleaded guilty to the offence of desertion in the interior and was sentenced to one year's imprisonment. In the course of his military service he was convicted disciplinarily on two occasions, one of which for an offence of a similar nature. Prior to his desertion he had completed a period of 28 months military service.

Upon appeal against sentence:

Held, that in the special circumstances of this case the appeal must be allowed and the sentence be reduced to four months' imprisonment.

Appeal allowed.

Appeal against sentence.

Appeal against sentence by Panayiotis Andrea Soteriou who was convicted on the 23rd November, 1978 by the Military Court sitting at Larnaca (Case No. 292/78) on one count of the offence of desertion contrary to section 29(1)(b) and (2) of the Military Criminal Code and Procedure Law, 1964 and was sentenced to one year's imprisonment.

A. Koukounis, for the appellant.

St. Tamasios, for the respondent.

10 HADJIANASTASSIOU, J. gave the following judgment of the Court. The accused was charged with desertion in the interior. The facts of the case are as follows:

The accused enlisted in the National Guard about six years ago, that is on the 22nd January, 1972. He comes from Fama-
15 gusta but later he moved to Larnaca, in the former Turkish Quarter. His education is that of an elementary school. Before his enlistment in the National Guard he was working as a plumber. The facts of the present case are as set out in the indictment. In a certain statement in relation to the present
20 offence, which was obtained in accordance with the judicial rules, the accused admitted committing the present offence and stated that he committed it because he was facing family problems and he was suffering from old wounds. The accused was arrested on the 4th June, 1978, by members of the Military
25 Police and was punished for the present offence with a simple disciplinary punishment of five days' imprisonment. During his military life he had two other disciplinary punishments, one of which for an offence of a similar nature.

The first instance Court observed that desertion in the interior
30 is a serious offence, a fact which was stressed many times by the Court and which, in any event, the accused ought to have known. For this offence, the legislator provided a sentence of imprisonment up to five years. The Court further observed that the accused was away from his unit for a period of two years
35 and did not return on his own accord but after having been arrested by members of the Military Police. In view of the great number of previous convictions the Court imposed the sentence of one year's imprisonment from the date of its judgment.

On the 30th November, 1978, the accused filed an appeal relying on the ground that the sentence was excessive.

On appeal counsel for the accused submitted that the sentence was excessive, having regard to the circumstances of the case. He also mentioned to the Court that there is an order of the National Guard, No. F/421.2/23/134476/S269, dated the 20th May, 1978, in accordance with which those having a twenty-six months service were released. The accused had on the 20th May, 1978, completed a service of 28 months before his desertion, that is until the 20th May, 1978. Counsel for the accused further said that the accused was led to his unit, was punished with a sentence of imprisonment for five days and was released by the National Guard, because he was married with two children.

On the other hand, counsel for the Republic stressed the fact that the accused did not return to his unit on his own accord but after having been arrested and that his past record provides a serious ground for the imposition of a more severe sentence.

We took into account all the facts of the present case and arrived at the conclusion that in the special circumstances of the case, the appeal should be allowed and the sentence be reduced to four months' imprisonment, to start running from the date of conviction.

Appeal allowed. Sentence reduced to four months' imprisonment.