

1984 June 27

[TRIANTAFYLIDIS, P., LORIS, PIKIS, JJ.]

1. ALITHIA EKDOTIKI ETERIA LIMITED,
2. MICHALAKIS CHRISTOFIDES,

*Appellants.*

v.

THE POLICE.

*Respondents.*

(*Criminal Appeals Nos. 4484-4485*).

*Criminal Law—Parties to offences—Company as newspaper publishers  
—Publishing false news and insulting Head of State, contrary  
to sections 50 and 46(A) of the Criminal Code, Cap. 154 (as  
amended)—Principles governing criminal liability of the company  
5 —Article complained of written by an unidentifiable person but  
endorsed by an article of the Chief Editor of the newspaper written  
subsequently—Reasonably open to trial Judge to hold that publica-  
tion in question emanated from a person behaving as the “embodi-  
ment” of the publishers as a company—Conviction of appellant  
10 2, the person responsible for the administration and control of  
the newspaper under s. 3A of Cap. 79, warranted once the company  
was criminally liable in respect of the publication in question.*

*Criminal Law—Sentence—Insulting Head of State and publishing  
false news—£400 fine on person responsible for the purposes  
15 of section 3A of the Press Law, Cap. 79—Who admitted that  
he failed to exercise control over the contents of the newspaper—  
Not manifestly excessive.*

The appellants were convicted of the offence of insulting  
the Head of State and of the offence of publishing false news.

20 Appellant 1 was the proprietor of the said newspaper and  
appellant 2 was named by appellant 1 to be the person res-  
ponsible for the administration and control of such newspaper,  
under the provisions of section 3A of the Press Law, Cap. 79,  
as amended by the Press (Amendment) Law, 1965 (Law 69/65),

The chief editor of "Alithia" newspaper was at all material times a certain Alecos Constantinides but the publication concerned in these appeals has not been written by an identifiable person.

The publication in question was to be found in the issue of such newspaper on the 27th June 1983, which was a Monday; and though it was correct that in the Monday issues of "Alithia" it was not stated that Constantinides was the Chief Editor, apparently because he did not work as Chief Editor in relation to such issues, it has not been suggested that the "Alithia" newspaper which was published on Mondays is not the same "Alithia" newspaper which is published on all other days of the week. The publication in respect of which the appellants were convicted was preceded by an earlier closely similar publication in the issue of "Alithia" on the 25th June 1983, which was a Saturday, and in that issue there appeared the name of Constantinides as the chief editor; and, then, there followed, on the 3rd July 1983, which was a Sunday, an article by Constantinides himself by means of which the publication of the 27th June 1983, which gave rise to the present criminal proceedings, appeared to be endorsed.

Upon appeal against conviction by both appellants and by appellant 2 against the sentence of C£400 fine it was contended:

- (a) That it has not been established that appellant 1, as a company, was criminally responsible in respect of the publication in question, either under section 46(A) or under section 50 of Cap. 154; and that, consequently, in view of the provisions of section 3A(2) of Cap. 79, as amended by Law 69/65, appellant 2 could not be found guilty of either of the offences of which he was convicted, because criminal liability on his part could only arise if appellant 1 had committed the said offences.
- (b) That the publication in question, which appeared to have emanated from a member of the editorial staff of the newspaper concerned, was not published by anybody who could be so identified with appellant 1 as to be treated in law as the act of appellant 1 as a company.

(c) That the sentence of C£400 which was passed on appellant 2 was, in the circumstances manifestly excessive.

*Held.* that in the light of the relevant principles of law governing the criminal liability of a company in a case such as the present one (see. inter alia, *Dias United Publishing Company Ltd. v. The Police* (1982) 2 C.L.R. 229) it was reasonably open to the trial Court to hold that the publication of the 27th June 1983 emanated from a person behaving as the "embodiment" of appellant 1 as a company, even if at that time such person was not identified; and that, consequently, the conviction of appellant 1 has to be upheld in respect of both the offences concerned; that as regards appellant 2 his conviction was, also, warranted, in the circumstances of this case, once it had been established that appellant 1 was criminally liable in respect of the publication in question.

(2) That the sentence of C£400 fine that was passed upon appellant 2 was not manifestly excessive, especially since he admitted during his trial that he had failed to exercise control over the contents of the "Alithia" newspaper, as he was expected to do in the capacity of the person named as being responsible for the purposes of section 3A of Cap. 79, as amended by Law 69/65.

*Appeals dismissed.*

Cases referred to:

*Dias United Publishing Co. Ltd. v. Police* (1982) 2 C.L.R. 229;  
*Tesco Supermarkets Ltd. v. Natrass* [1971] 2 All E.R. 127;  
*R. v. Andrews Wcatherfoil Ltd.* [1972] 1 All E.R. 65.

**Appeals against conviction.**

Appeals against conviction by Alithia Ekdotiki Eteria Ltd. and Another who were convicted on the 20th October, 1983 at the District Court of Nicosia (Criminal Case No. 11990/83) on one count of the offence of insulting the Head of the State contrary to section 46(A) of the Criminal Code, Cap. 154 (as amended by Law 5/67) and on one count of the offence of publishing false news contrary to section 50 of the Criminal Code, Cap. 154 (as amended by Law 70/65) and were sentenced

by Aristodemou, D.J. to pay £400.- fine each on count 1 with no sentence being passed on count 2.

A. *Markides*, for the appellants.

L. *Loucaides*, Deputy Attorney-General of the Republic,  
for the respondents.

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*Cur. adv. vult.*

TRIANAFYLLIDES P. read the following judgment of the Court. The two appellants were the co-accused in criminal case No. 11990/83, in the District Court of Nicosia, and both of them were convicted of the offence of insulting the Head of State, contrary to section 46(A) of the Criminal Code, Cap. 154, as amended by the Criminal Code (Amendment) Law, 1967 (Law 5/67), and of the offence of publishing false news, contrary to section 50 of Cap. 154, as amended by the Criminal Code (Amendment) Law, 1965 (Law 70/65).

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The appellants were convicted in respect of a publication, on the 27th June 1983, in the "Alithia" daily newspaper.

Appellant 1 is the proprietor of the said newspaper and appellant 2 was named by appellant 1 to be the person responsible for the administration and control of such newspaper, under the provisions of section 3A of the Press Law, Cap. 79, as amended by the Press (Amendment) Law, 1965 (Law 69/65).

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Both appellants were sentenced to pay a fine of C£400 each in respect of the first of the aforementioned two offences and no sentence was passed upon them in respect of the second offence, inasmuch as it was found that the facts establishing its commission were the same as those establishing the commission of the first offence.

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Appellant 1 has appealed against its conviction, by means of Criminal Appeal 4484, and appellant 2 has appealed against his conviction and, also, the sentence which was imposed on him by means of Criminal Appeal 4485; and both appeals were heard together in view of their nature.

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Counsel for the appellants, in arguing these appeals, has abandoned his other grounds of appeal and submitted that it has not been established that appellant 1, as a company, was

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criminally responsible in respect of the publication in question, either under section 46(A) or under section 50 of Cap. 154; and that, consequently, in view of the provisions of section 3A(2) of Cap. 79, as amended by Law 69/65, appellant 2 could not be found guilty of either of the offences of which he was convicted, because criminal liability on his part could only arise if appellant 1 had committed the said offences.

It was argued, further, by counsel for the appellants, that in any case, the sentence of C£400 fine, which was passed on appellant 2, is, in the circumstances, manifestly excessive.

As regards the conviction of appellant 1 it has been contended by counsel for the appellants that the publication in question, which appears to have emanated from a member of the editorial staff of the newspaper concerned, was not published by anybody who could be so identified with appellant 1 as to be treated in law as the act of appellant 1 as a company.

In relation to the legal principles governing the criminal liability, in a case such as the present one, of a company useful reference may be made to the cases of *Dias United Publishing Company Ltd. v. The Police*, (1982) 2 C.L.R. 229, *Tesco Supermarkets Ltd. v. Natrass*, [1971] 2 All E.R. 127, and *R. v. Andrews Weatherfoil Ltd.*, [1972] 1 All E.R. 65, as well as to Halsbury's Law of England, 4th ed., vol. 7, p. 451, para. 757.

It has been submitted by counsel for the appellants that the present case is distinguishable from the *Dias* case, supra, in that the publication involved in that case was a leading article written by a certain Alecos Constantinides, who was at the time the chief editor of the "Simerini" newspaper in which such article was published, whereas in the present case the publication concerned does not appear to have been written by an identifiable person.

Actually, the aforesaid Constantinides became later, and has been at all material times, the chief editor of "Alithia" newspaper.

The publication in question is to be found in the issue of such newspaper on the 27th June 1983, which was a Monday; and though it is correct that in the Monday issues of "Alithia" it was not stated that Constantinides was the chief editor, appa-

rently because he did not work as chief editor in relation to such issues, it has not been suggested that the "Alithia" newspaper which is published on Mondays is not the same "Alithia" newspaper which is published on all other days of the week.

It is significant that the publication in respect of which the appellants were convicted was preceded by an earlier closely similar publication in the issue of "Alithia" on the 25th June 1983, which was a Saturday, and in that issue there appears the name of Constantinides as the chief editor; and, then, there followed, on the 3rd July 1983, which was a Sunday, an article by Constantinides himself by means of which the publication of the 27th June 1983, which gave rise to the present criminal proceedings, appears to be endorsed.

We are, therefore, of the opinion that, in the circumstances, it was reasonably open to the trial Court to hold, in the light of the relevant principles of law which were expounded by the case-law already referred to in this judgment, that the publication of the 27th June 1983 emanated from a person behaving as the "embodiment" of appellant 1 as a company, even if at that time such person was not identified.

Consequently, the conviction of appellant 1 has to be upheld in respect of both the offences concerned.

As regards appellant 2 we are of the view that his conviction was, also, warranted, in the circumstances of this case, once it had been established that appellant 1 was criminally liable in respect of the publication in question.

Coming, next, to the sentence of C£400 fine that was passed upon appellant 2 we do not find that it was manifestly excessive, especially since he admitted during his trial that he had failed to exercise control over the contents of the "Alithia" newspaper, as he was expected to do in the capacity of the person named as being responsible for the purposes of section 3A of Cap. 79, as amended by Law 69/65.

In the light of all the foregoing these appeals have to be dismissed.

*Appeals dismissed.*