

{ΔΙΚΑΣΤΑΙ ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ Πρόεδρος  
ΣΤΑΥΡΙΝΙΔΗΣ, ΜΑΛΑΧΤΟΣ, Δικασταί}  
ΙΩΑΝΝΗΣ ΚΩΣΤΑ ΒΑΣΙΛΕΙΟΥ,

8η Φεβρουαρίου  
1975

ΙΩΑΝΝΗΣ  
ΚΩΣΤΑ  
ΒΑΣΙΛΕΙΟΥ

Έφεσείων.

κατά

ΔΗΜΟΚΡΑΤΙΑΣ

ΤΗΣ ΔΗΜΟΚΡΑΤΙΑΣ.

Έφεσιβλήτου

(Ποινική Έφεσις υπ' αρ. 3605).

5 Στρατιωτικά Άδικήματα—Ποινή—Έλάττωμος ποινή φυλακίσεως δια τὸ ἀδίκημα τῆς λιποταξίας εἰς τὸ ἐσωτερικὸν κατὰ παράβασιν τοῦ ἄρθρου 29(1) τοῦ περὶ Στρατιωτικοῦ Ποινικοῦ Κώδικος καὶ Δικονομίας Νόμου, 1964 (Νόμος 40/64)—Καίτοι ἐν ὄψει τῶν προσωπικῶν περιστάσεων τοῦ ἐφεσεύοντος ἴσως θὰ ἦδύνατο νὰ ληθῆ ὅτι εἶναι ἀσχηρὰ δὲν δύναται νὰ θεωρηθῆ ὡς καταφανὸς ὑπερβολικὴ

#### Έφεσις κατὰ τῆς ποινῆς.

10 Έφεσις ὑπὸ τοῦ Ιωάννου Κώστα Βασιλείου κατὰ τῆς ἐξαμήνου ποινῆς φυλακίσεως τῆς ἐπιβληθείσης ὑπὸ τοῦ Στρατιωτικοῦ Δικαστηρίου Λευκωσίας διὰ τὸ ἀδίκημα τῆς λιποταξίας εἰς τὸ ἐσωτερικὸν κατὰ παράβασιν τοῦ ἀρθρου 29(1) τοῦ Περι Στρατιωτικοῦ Ποινικοῦ Κώδικος καὶ Δικονομίας Νόμου τοῦ 1964 (Νομος 40 64)

15 Α Παπαφιλίππου διὰ τὸν ἐφεσεύοντα

Ν Χαραλάμους, Δικηγόρος τῆς Δημοκρατίας  
διὰ τὴν Δημοκρατίαν

#### ΑΠΟΦΑΣΙΣ \*

20 ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ Πρ Ο ἐφεσείων κατεδικασθη εἰς φυλάκισιν ἕξ μηνῶν διὰ τὸ ἀδίκημα τῆς λιποταξίας εἰς τὸ ἐσωτερικὸν, κατὰ παράβασιν τοῦ ἀρθρου 29(1) τοῦ Περι Στρατιωτικοῦ Ποινικοῦ Κώδικος καὶ Δικονομίας Νόμου τοῦ 1964 (Νόμος 40/64)

25 Ἡ λιποταξία τοῦ ἐφεσεύοντος διήρκησεν ἀπὸ τῆς 8ης Σεπτεμβρίου 1974 μέχρι τῆς 27ης Σεπτεμβρίου 1974 ὅτε ἐπανῆλθεν αὐτοβούλως εἰς τὴν μονάδα του

\* An English translation of this judgment appears at pp 14 - 16 *post*

5η Φεβρουαρίου  
1975

ΙΩΑΝΝΗΣ  
ΚΩΣΤΑΣ  
ΒΑΣΙΛΕΙΟΥ

ΔΗΜΟΚΡΑΤΙΑΣ

Κατά τον ουσιαώδη χρόνον υπηρέτει εις μονάδα ε-  
σταθμευμένην εις τήν περιοχήν Πάφου Ἀπεστάλη πρὸς  
ὑπηρεσίαν εις ἑτέραν μονάδα καὶ ὅτε συνεπλήρωσε τὴν  
ὑπηρεσίαν του ἐκεῖ δὲν ἐπέστρεψεν εις τήν μονάδα του,  
ἀλλὰ μετέβη διὰ τὴν συναντήσῃ τήν οἰκογένειάν του

5

Ὡς λόγον διὰ τὴν διάπραξιν τοῦ ἀδικήματος προεβα-  
λε τὸ γεγονός ὅτι ἠθελε νὰ φροντίσῃ διὰ τὴν οἰκογέ-  
νειάν του, ἢ ὅποια ἐστερεῖτο πόρων Ὁ ἐφεσεῖων εἶναι  
πατὴρ δύο τέκνων καὶ ἡ σύζυγος του ἦτο τότε ἀσθενής

Ὁ ἐφεσεῖων εἶχεν ἀπο.αθῆ δι. σδειαν εις τὸν Διοικη- 10  
την του, ἀλλ' ὅταν οὗτος ἠρνηθῇ νὰ τοῦ χορηγήσῃ  
ταύτην ὁ ἐφεσεῖων ἐλιποτάκτησε

Πρόκειται περὶ περιπτώσεως ὅπου θὰ ἠδύνατο ἴσως  
νὰ λεχθῇ, ἐν ὄψει τῶν προσωπικῶν περιστάσεων τοῦ ἐ-  
φεσειόντος, ὅτι ἢ εις αὐτὸν ἐπιβληθεῖσα ποινὴ εἶναι αὐ- 15  
στηρά

Ὡς προκύπτει ὅμως ἐκ τῆς ἐνώπιον μας δικογραφίας  
τὸ Στρατιωτικὸν Δικαστήριον εἶχεν ὑπ' ὄψιν του τὰς  
εἰρημένους περιστάσεις καὶ ἀπεφάσισεν ὡς ρητῶς ἀνε- 20  
φερε νὰ ἐπιβάλλῃ μᾶλλον ἐπιεικῆ ποινήν Ἰσως θὰ ἠδύ-  
νατο νὰ εἶναι καὶ ἐπιεικεστέρα Ἀλλὰ ἐντὸς τῶν ὁρίων  
τῆς κατ' ἐφεσιν δικαιοδοσίας μας δὲν νομίζομεν ὅτι εἶ-  
ναι ὀρθὸν νὰ ἐπέμβωμεν πρὸς μετριασμόν της, διότι  
δὲν δύναται νὰ θεωρηθῇ ὡς καταφανῶς υπερβολικὴ

Βεβαίως ἐκάστη ὑπόθεσις κρίνεται ἐπὶ τῇ βάσει τῶν 25  
ιδίων αὐτῆς γεγονότων, ἀλλὰ δέον ὅπως ἀναφερθῇ ὅτι  
ἐκ τῆς ἐρεῦνης τῆς νομολογίας τοῦ Ἀνωτάτου Δικαστη-  
ρίου προκύπτει ὅτι καὶ ἐν καιρῷ εἰρήνης ποινὰ φυλακί-  
σεως ἕξ μηνῶν διὰ λιποταξίαν δὲν ἐθωρήθησαν ὡς κα-  
ταφανῶς ὑπερβολικαί 30

Υπο τὸ φῶς τῶν ἀνωτέρω ἡ ἐφεσις ἀπορρίπτεται  
ἀλλ' ἡ ποινὴ τοῦ ἐφεσειόντος δέον νὰ λογίζεται ὡς ἀρ-  
εαμένη τὴν 5ην Δεκεμβρίου 1974 ὅτε ἐπεβλήθη ὑπὸ τοῦ  
Στρατιωτικοῦ Δικαστηρίου

This is an English translation of the judgment in Greek 35  
appearing at pp 13-14, ante

*Military Offences—Sentence—Six months' imprisonment for  
desertion contrary to section 29(1) of the Military Crimi-  
nal Code and Procedure Law, 1964 (Law 40 of*

1964)—Though in view of the personal circumstances of the appellant said sentence a severe one it cannot be treated as manifestly excessive

1975  
Febr 6  
—

IOANNIS  
COSTA  
VASSILIOU

**Appeal against sentence**

- 5 Appeal against sentence by Ioannis Costa Vassiliou who was convicted on the 5th December, 1974 at the Military Court sitting at Nicosia (Case No 185/74) on one count of the offence of desertion contrary to section 29(1) of the Military Criminal Code and Procedure Law  
10 1964 (Law 40/64) and was sentenced to six months' imprisonment

*L Papaphilippou* for the appellant

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

✓  
REPUBLIC

- 15 The judgment of the Court was delivered by -

TRIANAFYLLIDIS, P The appellant was sentenced to six months' imprisonment for the offence of desertion contrary to section 29(1) of the Military Criminal Code and Procedure Law, 1964 (Law 40/64)

- 20 The desertion of the appellant lasted from September 8, 1974, till September 27, 1974, when he returned on his own initiative to his unit

At the material time he was serving with a unit stationed in the Paphos area he was posted temporarily at  
25 another unit and when he completed his service there he did not return to his unit but went away to join his family

- He has put forward, as a reason for committing the offence in question, the fact that he wanted to look  
30 after his family, who were short of money

The appellant is a father of two children and his wife was ill at the time

The appellant had applied for leave to his Commander, and when it was refused he deserted

- 35 It is a case in which it may be said in view especially of the personal circumstances of the appellant, that the sentence imposed on him is a severe one. But, as it appears from the record before us, the Military

1975  
Febr 6  
---

IOANNIS  
COSTA  
VASSILIOU

v.  
REPUBLIC

Court took into account such circumstances and it decided, as it has expressly stated, to impose a rather lenient sentence. Perhaps it could have been more lenient. But within the limits of our appellate jurisdiction we do not think that it is right for us to interfere for the purpose of reducing such sentence, because it cannot be treated as manifestly excessive. 5

Of course, each case has to be decided on the basis of its own facts, but it may be pointed out that the case-law of the Supreme Court shows that even in times of peace sentences of six months' imprisonment for desertion have not been considered to be manifestly excessive. 10

In the light of all the above the appeal is dismissed, but the sentence of the appellant must be treated as having begun to run from December, 5, 1974, when it was imposed by the Military Court. 15

*Appeal dismissed.*