

1969  
Nov. 15  
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ROLANDOS  
VIVARDI  
v.  
THE VINE  
PRODUCTS  
COUNCIL

[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ROLANDOS VIVARDI,

*Applicant,*

*and*

THE VINE PRODUCTS COUNCIL,

*Respondent.*

(Case No. 263/68).

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*Collective Organ—Meeting on two occasions to decide on an appointment—Composition thereof at second meeting not the same as at the first through the absence of a member who was present only at the first meeting—Validity of the subject decision not affected—Because such decision was taken only by members who were present at both such meetings.*

*Collective organ—Functioning and composition of—Principles applicable.*

Dismissing the recourse, the Court:—

*Held*, (1). The position in this case is that a member of the Respondent Council who was present at the first meeting, Mr. Ph., was absent at the second meeting, while nobody,—who had been absent at the first meeting—, was present at the second; so, with the exception of Mr. Ph. (*supra*) there were present at both meetings the same members of the Respondent Council.

(2) Bearing in mind the object and effect of the relevant principles of Administrative Law (see Conclusions from the Jurisprudence of the Greek Council of state (1929–1959) at p. 112), I am of opinion that what happened in the present case regarding the composition of the Respondent Council at the two meetings in question, cannot and should not lead to the annulment of the *sub judice* decision.

(3) I can quite well see why in a case where there has supervened a change in the composition of a collective organ, through the presence, at a later stage, of a previously absent member,

it is necessary for the whole process to be repeated all over again, so that all members, in reaching a decision, should be cognizant of all relevant factors; and, also, where a member of a collective organ has not been able to take part in all the relevant to a matter meetings, he should not be allowed to participate when the decision is being reached on such matter.

(4) But in a case, such as the present one, in which a member drops out after the first meeting, I can see no useful purpose being served by expecting the remaining members, before reaching a decision, to start *ab initio*, at their second meeting, the whole process which had commenced at the first meeting, at which all of them were all along present. I have been reinforced in this view by the decision of the Greek Council of State in case 777/58.

*Recourse dismissed.*  
*No order as to costs.*

Cases referred to:

Decisions of the Greek Council of State in cases: Nos. 1753(56), 103(57), 777(58), 1128(58). See also: Conclusions from the Jurisprudence of the (Greek) Council of State 1929–1959 at p. 112..

**Recourse.**

Recourse against the validity of the appointment to the post of Administrative Secretary of the Respondent Vine Products Council of the Interested Party Alkis Tsigarides in preference and instead of Applicant.

*G. Cacoyiannis*, for the Applicant.

*M. Kyprianou*, Counsel of the Republic, for the Respondent.

*A. Triantafyllides*, for the Interested Party.

*Cur. adv. vult.*

The facts sufficiently appear in the judgment of the Court delivered by:

TRIANTAFYLLIDES, J.: In this case the Applicant challenges,

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in effect, the validity of the appointment of the Interested Party, Mr. A. Tsigarides, to the post of Administrative Secretary of the Respondent Vine Products Council.

Learned counsel for Applicant, in an elaborate presentation of the case for the Applicant, has raised various matters which, I must say, have given me reason for worrying that, possibly, grave prejudice may have been caused to the Applicant through the non-fulfilment of promises for advancement previously given to the Applicant. I do not have to deal with these matters because they were eventually not pursued any further—and quite rightly so from the legal point of view—by counsel for the Applicant; but I do hope, indeed, that the appropriate authorities will, nevertheless, look into the moral aspect of this case and take such action as they may deem fit.

Counsel for the Applicant has, in the end, limited his case to the contention that the *sub judice* decision was taken as a result of two meetings, for the purpose, of the Respondent—the first one on the 2nd April, 1968 (see the minutes *exhibit 5*) and the second one on the 21st May, 1968 (see the minutes *exhibit 6*),—and that, as from the second meeting there was absent one of the members of the Respondent, Mr. T. Philippou, who was present at the first meeting, the appointment of the Interested Party was decided upon in an irregular manner.

From the material before me it appears that the history of relevant events is, briefly, as follows:—

The vacancy in the post of Administrative Secretary of the Respondent was advertised twice in the daily press; once on the 18th January, 1968, and once on the 13th April, 1968 (see *exhibit 2*).

After the first advertisement, there was held, on the 2nd April, 1968, a meeting of the Respondent at which eleven candidates, including the Applicant—but not the Interested Party—were interviewed; then the members of Respondent exchanged views and decided that as the candidates interviewed did not satisfy them fully the relevant vacancy should be readvertised, but that the applications for appointment which had already been made would also be taken into account.

Subsequently to the second advertisement there were applications by new candidates—one of them being the

Interested Party—and interviews of new candidates took place on the 21st May, 1968. At that meeting of the Respondent, Mr. Philippou, who had been present at the meeting of the 2nd April, 1968, was absent, but otherwise the same members of Respondent who had been present at the meeting of the 2nd April, 1968, were also present at the meeting of the 21st May, 1968, and no member who was absent from the meeting of the 2nd April, 1968, was present at the meeting of the 21st May, 1968. At this latter meeting there were exchanged views about the qualifications of the candidates and the results of the interviews on both the aforesaid dates and it was decided to appoint, on probation, the Interested Party.

The issue which has to be decided is whether a collective organ, such as the Respondent, could validly take the *sub judice* decision on the 21st May, 1968, though its composition was not the same as that on the 2nd April, 1968, because of the fact that Mr. Philippou was absent from the second of the two meetings.

The relevant principles of Administrative Law are stated in the Conclusions from the Jurisprudence of the Greek Council of State (1929–1959) at p. 112; they are to the effect that the process, before any collective organ, regarding discussing about, and deciding on, any matter, has to take place from beginning to end while there are present the same members of such an organ, in order to ensure the knowledge and evaluation by each member of all factors which come to light during such process. If this process extends to more than one meeting, then the composition of the collective organ must remain unchanged at all its relevant meetings. If there is any change in the composition of the collective organ, at any meeting, through the presence of a member who did not take part at a past meeting on the matter, the organ cannot take a valid decision at its last relevant meeting, except if at such meeting the whole process is repeated fully *ab initio*, so that the consideration of the matter can be regarded as having commenced and been concluded at such last meeting.

In this respect it is useful to refer, also, to cases 1753(56), 103(57) and 1128(58), decided by the Greek Council of State, in which, in each case, a decision of a collective organ was annulled because of alteration, during the material time, of the composition of the organ, through the absence at a subsequent

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meeting on the same matter of a member who had been present at the previous meeting and the presence in his place, at the next meeting, of a member who had been absent at the previous meeting.

In the present case we are not faced with a situation of this nature; the position is that a member who was present at the first meeting, Mr. Philippou, was absent at the second meeting, while nobody—who had been absent at the first meeting—was present at the second meeting; so, with the exception of Mr. Philippou, there were present at both meetings the same members of Respondent.

Bearing in mind the effect and object of the relevant Administrative Law principles I am of the opinion that what happened in the present case, regarding the composition of the Respondent at the two meetings in question, cannot and should not lead to the annulment of the *sub judice* decision.

I can quite well see why in a case where there has supervened a change in the composition of a collective organ, through the presence, at a later stage, of a previously absent member, it is necessary for the whole process to be repeated all over again, so that all members, in reaching a decision, should be cognizant of all relevant factors; and, also, where a member of a collective organ has not been able to take part in all the relevant to a matter meetings he should not be allowed to participate when the decision is being reached on such matter.

But in a case, such as the present one, in which a member drops out after the first meeting, I can see no useful purpose being served by expecting the remaining members, before reaching a decision, to start *ab initio*, at their second meeting, the whole process which had commenced at the first meeting, at which all of them were all along present.

I have been reinforced in this view by the decision of the Greek Council of State in case 777(58); it is clear from the reasoning of the Council in its said decision that the non-participation of certain members, of the collective organ concerned, in the final vote regarding an appointment—(because they had not been present at all material stages of the matter)—would not have prevented the appointment from being validly made by the remaining members had there been secured, as

from among the remaining members, who were entitled to vote, the necessary for the occasion majority vote.

In the light of the foregoing this recourse fails and it is dismissed; but, in view of all relevant circumstances, I am not prepared to make any order as to costs.

*Application dismissed;  
no order as to costs.*

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