

1982 May 12

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KLERI ANGELIDOU AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

(Cases Nos. 332/80, 333/80,
343/80, 344/80,
374/80, 396/80,
400/80, 414/80,
423/80, 435/80,
463/80).

*Administrative Law—Public officers—Appointments and promotions
—Educational Service Commission effecting promotions to the
post of Headmaster in Secondary Education by relying, to a
certain extent, on the personal views of its members about the
candidates—Principles on which such a course may be adopted—
If such knowledge or information is not taken into account in
order, merely, to strengthen the view formed on the basis of other
material before the Commission about the candidate concerned,
but as an independent element which is not in accord with the said
other material, it should be recorded in detail so as to render
feasible judicial control in this connection—Relevant passage
in the minutes of Commission so sweepingly and widely phrased
that it renders impossible the exercise at all of any judicial control
—Sub judice promotions annulled.*

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The applicants in these recourses challenged the validity of
promotions to the post of Headmaster in Secondary Education,
which were effected by the respondent Commission on June
7, 1980 and on August 30, 1980, as well as the validity of acting
promotions to the same post which were effected, also, on August

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30, 1980. After Counsel for the applicants had concluded their opening addresses on legal issues, the then Counsel for the respondent Commission stated that she had been authorised by the Commission to inform the Court that it was intended to
5 revoke all the promotions to the post of Headmaster in Secondary Education, which were challenged by the present recourses, so that they could be re-examined. Then the Commission met on December, 9, 1981 and decided that there did not exist any reason for revoking or re-examining its aforesaid decisions.

10 The minutes of December 9, 1981 read as follows:

“As regards the matter of the impression which the members of the Commission have formed during the interviews in respect of each one of the candidates, the Commission confirms that such opinion or impression, which is formed
15 not only during the interview but is, also, the product of the personal knowledge of each member from his long service in the public educational service as an educationalist (and this concerns the Chairman and 3 of the members), cannot be recorded in terms of numbers nor has it been
20 recorded till now. The evaluation of this criterion is clearly subjective and is expressed by the vote of each member”.

Held, (1) that it can be clearly derived from the contents as a whole of the minutes of December 9, 1981 that the personal
25 knowledge of members of the Commission about the candidates was one of the criteria which were taken into account in the course of the exercise of their discretionary powers in connection with the sub judice decisions of the Commission; that it appears to be a well established principle of Administrative Law that
30 personal knowledge or information possessed by members of a collective organ, such as the respondent Commission, about a candidate, constitutes material which can, in the absence of any express statutory provision to the contrary, be lawfully taken into account for the purpose of reaching a decision about
35 such candidate, provided that if such knowledge or information is not taken into account in order, merely to strengthen the view formed on the basis of other material before the said organ about the candidate concerned, but as an independent element which is not in accord with the said other material, it should be
40 recorded in detail so as to render feasible judicial control in

this connection (see, inter alia, in this respect, *Frangos v. The Republic* (1970) 3 C.L.R. 312, 333-338).

(2) That in the present instance the relevant passage of the minutes of December 9, 1981, is so sweepingly and widely phrased that it renders impossible the exercise at all of any judicial control for the purpose of ascertaining whether the personal knowledge of members of the Commission about the various candidates was consistent or inconsistent, and to what extent in each particular case, with the other material, regarding such candidates, which was before the Commission.

(3) That the subjective approach indicated by the passage in question in the minutes of the Commission undermines the basic tenet that all the candidates for promotion are entitled to be considered and evaluated collectively and objectively by the respondent Commission on the basis of the criteria prescribed by section 35 of Law 10/69 (as amended by the Public Educational Service (Amendment) Law, 1979, (Law 53/79); and any information or knowledge possessed by any one of the members of the Commission has to be evaluated by all of them in conjunction with such criteria.

(4) That, therefore, the effect of the minutes of December 9, 1981 on the outcome of all these recourses, as regards all the promotions and acting promotions which are challenged by them, is that their aforequoted contents vitiate completely, in a decisive manner, the administrative process leading up to the said promotions and acting promotions, in the sense that personal knowledge of members of the Commission was relied on in selecting the candidates to be promoted, permanently or in an acting capacity, in a mode incompatible with the afore-said relevant principle of Administrative Law, and, also, in a way which is inconsistent with the proper functioning of a collective organ, such as the respondent Commission; and this erroneous course was adopted without keeping such records as would enable this Court to exempt, possibly, from the vitiating effect of the said course any of the sub judice promotions or acting promotions; that, consequently, all the said promotions and acting promotions have to be annulled and it is left to the Commission to reconsider the filling, in the proper manner, of the posts concerned, in accordance with the relevant legislation and principles of Administrative Law.

Sub judice decisions annulled.

Cases referred to:

- Frangos v. Republic* (1970) 3 C.L.R. 312 at pp. 333-338;
Ierides v. Republic (1976) 3 C.L.R. 9 at pp. 22-24;
 (1980) 3 C.L.R. 165 at pp. 180-181 (C.A.);
- 5 *Decisions of the Greek Council of State in Cases* 1809/1958,
 1821/1966 and 1661-1662/1974;
Michaeloudes v. Republic (1979) 3 C.L.R. 56.

Recourses.

- 10 Recourses against the promotions and/or acting promotions
 of the interested parties to the post of Headmaster in Secondary
 Education in preference and instead of the applicants.

- Chr. Demetriou (Mrs.)*, for the applicant in 332/80.
P. Pavlou for the applicant in 333/80.
Ph. Valiantis for the applicants in 343/80 and 344/80.
- 15 *D. Demetriades* for the applicant in 374/80.
L. Georghiou for the applicant in 396/80.
M. Savva (Mrs.) for the applicant in 400/80.
J. Erotokritou for the applicant in 414/80.
N. Papaefstathiou for the applicant in 423/80.
- 20 *A.S. Angelides* with *Ch. Ierides* for the applicant in 435/80
 and with *E. Evripidou* for the applicant in 463/80.
A. Pandelides for the respondent.
G. Constantinou (Miss) for the Attorney-General of the
 Republic as *amicus curiae*.
- 25 *M. Papapetrou* for interested party St. Demetriou.

Cur. adv. vult.

- 30 TRIANTAFYLIDIS P. read the following judgment. By means
 of the present recourses there are being challenged promotions
 to the post of Headmaster in Secondary Education, which were
 effected by the respondent Commission on June 7, 1980, and on
 August 30, 1980, as well as acting promotions to the same
 post which were effected, also, on August 30, 1980.

- 35 On February 20, 1982, I delivered an interim decision by
 means of which I called for arguments from counsel for the
 parties as regards the possible impact and effect on the outcome
 of these cases of the contents of the minutes of the respondent
 Commission dated December 9, 1981 (*see exhibit 12*), in which

the Commission appears to be stating additional reasoning in connection with its sub judge decisions.

It is useful, at this stage, to refer briefly to certain aspects of the procedural history of these cases, which were heard together in view of their nature:

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At the commencement of their hearing it was directed that arguments would be heard only on legal issues and, therefore, counsel have not, till now, been heard as regards any other issues pertaining to each individual case.

After counsel for the applicants had concluded their opening addresses on legal issues, counsel appearing for the Attorney-General, who was, at that time, appearing, also, for the respondent Commission, placed before the Court a copy of legal advice which she gave on October 31, 1981 (*see exhibit A*) to the Commission and she stated that she had been authorized by the Commission to inform the Court that it was intended to revoke all the promotions to the post of Headmaster in Secondary Education, which are challenged by the present recourses, so that they could be re-examined.

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Later on she produced a copy of a letter of the Chairman of the respondent Commission, dated November 27, 1981 (*see exhibit 9*), by which, after referring to the aforementioned advice of October 31, 1981, he confirmed that the Commission was ready to examine the possibility of revoking its sub judge decisions so that it could proceed to the re-examination of the matter of the promotions in question.

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Then, the Commission met on December 9, 1981, and decided (*see exhibit 12*) that there did not exist any reason for revoking or re-examining its aforesaid decisions.

Though I have not yet pronounced, finally, on any one of the legal issues raised by counsel for the applicants, I am not going to do so in this judgment; nor shall I decide whether or not, in the light of the relevant principles of Administrative Law, the reasoning contained in the minutes of December 9, 1981, (*exhibit 12*) can be relied on in support of the sub judge decisions of the respondent Commission, even though it came into existence subsequently. The reason for which I do not have to adopt either of, or both, the aforesaid courses is that

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they are unnecessary, because the minutes of December 9, 1981, contain, clearly, material on the basis of which all the promotions and acting promotions, the validity of which is being challenged in the present proceedings, have to be annulled
5 in any event.

It is stated in the minutes in question that:

10 “Όσον άφορά τὸ θέμα τῆς έντυπώσεως τὴν ὁποία τὰ μέλη τῆς Ἐπιτροπῆς σχημάτισαν κατὰ τὶς προσωπικὲς συνεντεύξεις γιὰ τὸν καθένα ἀπὸ τοὺς ὑποψηφίους, ἡ Ἐπιτροπὴ ἐπιβεβαιώνει ὅτι ἡ γνώμη ἢ ἡ έντύπωση αὐτῆ, ἡ ὁποία σχηματίζεται ὄχι μόνο κατὰ τὴν προσωπικὴ συνέντευξη ἀλλὰ εἶναι καὶ προϊὼν προσωπικῆς γνώσεως τοῦ κάθε μέλους ἀπὸ τῆ μακρόχρονη θητεία του στὴ δημόσια εκπαιδευτικὴ ὑπηρεσία ὡς εκπαιδευτικοὶ λειτουργοί, (καὶ αὐτὸ άφορᾷ
15 τὸν Πρόεδρο καὶ τὰ 3 μέλη) δέν εἶναι δυνατὸ νὰ καταγραφεῖ μὲ ἀριθμοὺς καὶ οὔτε μέχρι τώρα ἔχει καταγραφεῖ. Ἡ ἐκτίμηση τοῦ κριτηρίου αὐτοῦ εἶναι καθαρὰ ὑποκειμενικὴ καὶ ἐκφράζεται μὲ τὴν ψῆφο τοῦ κάθε μέλους”.

20 (“As regards the matter of the impression which the members of the Commission have formed during the interviews in respect of each one of the candidates, the Commission confirms that such opinion or impression, which is formed not only during the interview but is, also, the product of the personal knowledge of each member from
25 his long service in the public educational service as an educationalist (and this concerns the Chairman and 3 of the members) cannot be recorded in terms of numbers nor has it been recorded till now. The evaluation of this criterion is clearly subjective and is expressed by the vote
30 of each member”).

It can be clearly derived from the contents as a whole of the aforesaid minutes of December 9, 1981 (*exhibit 12*) that the personal knowledge of members of the Commission about the candidates was one of the criteria which were taken into account
35 in the course of the exercise of their discretionary powers in connection with the sub judice decisions of the Commission.

Though, at first sight, it might appear that the above quoted passage from the minutes of the respondent Commission

is in a part of such minutes which is under a heading referring only to promotions to the post of Headmaster in Secondary Education which were effected in August 1980, it appears clearly, on a closer perusal and consideration of the contents as a whole of the minutes in question, including their opening part, that the said heading was inserted only in relation to that part of the minutes which relates to the recommendations which were made in respect of the promotions that were effected in August 1980, and that the aforementioned passage covers all the promotions (including, of course, acting promotions) to the post concerned which were made in 1980.

It appears to be a well established principle of Administrative Law—which in other countries, such as Greece, has been, eventually, incorporated, too, into relevant legislation (see, for example, Article 101 of the Public Officers Code in Greece)—that personal knowledge or information possessed by members of a collective organ, such as the respondent Commission, about a candidate, constitutes material which can, in the absence of any express statutory provision to the contrary, be lawfully taken into account for the purpose of reaching a decision about such candidate, provided that if such knowledge or information is not taken into account in order, merely, to strengthen the view formed on the basis of other material before the said organ about the candidate concerned, but as an independent element which is not in accord with the said other material, it should be recorded in detail so as to render feasible judicial control in this connection (see, *inter alia*, in this respect, *Frangos v. The Republic*, (1970) 3 C.L.R. 312, 333–338, *Ierides v. The Republic*, (1976) 3 C.L.R. 9, 22–24, and, on appeal, *Ierides v. The Republic*, (1980) 3 C.L.R. 165, 180–181, as well as the Conclusions from the Case–Law of the Council of State in Greece—“Πορίσματα Νομολογίας του Συμβουλίου τῆς Ἐπικρατείας”—1929–1959, p. 356, Stasinopoulos “Lessons of Administrative Law”—“Μαθήματα Διοικητικοῦ Δικαίου”—1957, p. 347, Papa-hatzi “System of Administrative Law applicable in Greece”—“Σύστημα τοῦ Ἰσχύοντος στήν Ἑλλάδα Διοικητικοῦ Δικαίου”—5th ed. 1976, p. 344).

It is useful to refer, also, to the decisions of the Greek Council of State in cases 1809/1958, 1821/1966 and 1661–1662/1974.

The principle in question has been stated in really explicit

terms in regulation 28(1) of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and related Matters) Regulations, 1972 (see No. 205 in the Third Supplement, Part 1, to the Official Gazette of November 10, 1972); and though in *Michaeloudes v. The Republic*, (1979) 3 C.L.R. 56, the said regulation was, among others, found to be, in other respects, ultra vires section 35(2) of the Public Educational Service Law, 1969 (Law 10/69), such regulation continues to be a strong indication that the principle concerned should be adhered to by the respondent Commission as a matter of good and proper administration.

In the present instance the relevant passage of the minutes of December 9, 1981 (*exhibit 12*), which has been already quoted in this judgment, is so sweepingly and widely phrased that it renders impossible the exercise at all of any judicial control for the purpose of ascertaining whether the personal knowledge of members of the Commission about the various candidates was consistent or inconsistent, and to what extent in each particular case, with the other material, regarding such candidates, which was before the Commission.

Moreover, it is to be derived from the said passage that the personal knowledge of members of the Commission about each candidate was regarded as being a factor which could influence the impression formed by individual members about each candidate when he was being interviewed; it seems, therefore, that candidates may have been prejudiced or favoured, as regards the evaluation of their performance when interviewed, by what was already known about them by particular members of the Commission, whereas, in my view, the proper course would have been to evaluate each candidate objectively according to his performance when interviewed and then to weigh the impression from his performance together with all other relevant factors concerning him, including any personal knowledge or information possessed about him by any member of the Commission; in my opinion, the performance of a candidate when he is being interviewed is an independent criterion which is not to be coloured by what is already known in advance about him by those interviewing him; had it been otherwise it would have been to a large extent unnecessary to interview candidates about whom the majority of the members of the Commission possessed knowledge of their own due to past experiences of theirs.

Also, the passage in the relevant minutes of the Commission to the effect that the view formed about a candidate, from past personal knowledge of him, by members of the Commission is something which cannot be recorded and it is a clearly subjective criterion the evaluation of which can only be expressed by means of the vote of each member of the Commission, is, in my opinion, an approach which is incompatible with the proper functioning of the Commission as a collective organ; because, when a collective organ relies on information or knowledge of any of its members about a particular candidate it can only discharge its duties in a manner consistent with its nature and task as a collective organ if such information or knowledge is brought to the notice of all its members in order to be evaluated jointly in an objective manner, especially since it is quite possible that knowledge or information of a member may dispel, strengthen or qualify, as the case may be, the impression formed by another member of the Commission about a candidate on the basis of his own information or knowledge; and, in this respect, a sufficient record has to be duly kept in accordance with the aforementioned relevant principle of Administrative Law.

The subjective approach indicated by the passage in question in the minutes of the Commission (*exhibit 12*) undermines the basic tenet that all the candidates for promotion are entitled to be considered and evaluated collectively and objectively by the respondent Commission on the basis of the criteria prescribed by section 35 of Law 10/69 (as amended by the Public Educational Service (Amendment) Law, 1979, Law 53/79), and any information or knowledge possessed by any one of the members of the Commission has to be evaluated by all of them in conjunction with such criteria.

In the light of all the foregoing I have, as already indicated, reached the conclusion that the effect of the aforesaid minutes of December 9, 1981 (*exhibit 12*) on the outcome of all these recourses, as regards all the promotions and acting promotions which are challenged by them, is that their aforequoted contents vitiate completely, in a decisive manner, the administrative process leading up to the said promotions and acting promotions, in the sense that personal knowledge of members of the Commission was relied on in selecting the candidates to be promoted,

permanently or in an acting capacity, in a mode incompatible with the aforesaid relevant principle of Administrative Law, and, also, in a way which is inconsistent with the proper functioning of a collective organ, such as the respondent Commission; 5 and this erroneous course was adopted without keeping such records as would enable this Court to exempt, possibly, from the vitiating effect of the said course any of the sub judge promotions or acting promotions.

10 Consequently, I have no alternative but to annul all the said promotions and acting promotions and leave it to the Commission to reconsider the filling, in the proper manner, of the posts concerned, in accordance with the relevant legislation and principles of Administrative Law.

15 In the light of all pertinent considerations I have decided that it is proper to award part of the costs of each case against the Republic and in favour of the applicants, because the respondent Commission was advised by counsel from the Office of the Attorney-General of the Republic to reconsider the promotions and acting promotions concerned, but, on the basis, inter 20 alia, of the erroneous approach which is indicated by its minutes of December 9, 1981 (*exhibit 12*) and which led to the annulment of all the sub judge decisions, the Commission decided that it was not necessary to reconsider them and, thus, the costs of all the present cases were increased unduly.

25 I have, in the circumstances, decided to award to counsel for the applicants C£50 towards costs in respect of each one of these cases.

Sub judge decisions annulled. Order for costs as above.