

1983 September 3

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PETROS CHRISTODOULIDES,

Applicant.

v.

THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

(Case No. 313/79).

Educational Service Commission—Composition—Recourse against disciplinary conviction and punishment imposed by Commission. —Validity of appointments of members of Commission not challenged directly as such by the recourse but only indirectly— Court cannot decide in an ancillary manner about such validity so as to annul for this reason the sub judice decision of the Commission—Whether members of the Commission whose full term of office of three years has expired can be reappointed shorter than three years periods—And whether Commission unlawfully composed when only its chairman and three, instead of four, other members are present—Sections 4(3) and 10(3) of the Public Educational Service Law, 1969 (Law 10/69).

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The applicant in this recourse complained against his disciplinary conviction by the respondent Commission and against the punishment that was imposed on him as a result of such conviction.

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Counsel for the applicant submitted, by way of preliminary objection, that the composition of the respondent Commission at the material time was contrary to section 4(2) and (3) of the Public Educational Service Law, 1969 (Law 10/69) which provides that the Commission consists of a chairman and four other members appointed by the President of the Republic and that the term of office of all of them is a period of three years.

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5 It was not disputed that at the material time the respondent Commission was composed of its chairman and of only three other members, as its fourth member had resigned; and that though the chairman was serving a three years' term of office the said three members were, after the expiry of their terms of office of three years, re-appointed for shorter than three years periods. Counsel for applicant submitted in this connection that the appointments of the said three members for periods of less than three years were invalid as being contrary to section 10 4(3) of Law 10/69.

15 *Held*, that this Court should not decide in an ancillary manner, about the validity of appointments made by the President of the Republic, for the sole purpose of determining whether or not the respondent Commission was properly composed at the material time; that since the appointments concerned of the three members of the respondent Commission are not challenged directly as such by the applicant's recourse, but their validity is disputed only indirectly it cannot be decided in these circumstances if at the material time the composition of the respondent 20 Commission was defective, so as to annul for this reason its sub judice decision (*In re Georghiou* (1983) 2 C.L.R. 1, 5 followed. *Louca v. The President of the Republic* (1983) 3 C.L.R. 783 distinguished).

25 *Held*, further, and on the assumption that the above view is wrong:

30 (1) That bearing in mind that the Commission was not created by the Constitution but was only a statutory mechanism; and that, though normally the appointments in question ought to have been made for a period of three years, the said period, as provided for in section 4(3) of Law 10/69, cannot, when viewed in the context of all relevant considerations, be regarded as excluding the re-appointment for a shorter than three years' period of someone who is already a member of the respondent Commission and who has previously served a full term of office 35 of three years (as it had already happened with the three members of the Commission with whom we are now concerned, since they were appointed in 1975). (p. 1346 post).

(2) That the submission of applicant's counsel that the respondent Commission was unlawfully composed, at the material

time, by only its chairman and three, instead of four, other members cannot be sustained because it is provided by section 10(3) of Law 10/69 that the validity of any decision of the Commission is not affected if there exists a vacancy on it—as it was the position at the material time due to the resignation of one of its members—provided that the total number of members of the Commission does not become less than three. 5

Preliminary objection dismissed.

Cases referred to:

In re Georghiou (1983) 2 C.L.R. 1 at p. 5; 10

Louca v. President of the Republic (1983) 3 C.L.R. 783;

Decisions of the Greek Council of State Nos.: 3369/75, 1129/57 and 497/57.

Recourse.

Recourse against the disciplinary conviction and punishment imposed on applicant by the respondent. 15

A. Markides, for the applicant.

G. Tornaritis with *A.S. Angelides*, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicant complains, in effect, against his disciplinary conviction by the respondent Commission and against the punishment that was imposed on him as a result of such conviction. 20

The applicant as the material time was a teacher in Elementary Education. 25

The disciplinary proceedings against him took place before the respondent Commission on various dates between the 9th January 1979 and the 22nd June 1979 and the applicant was eventually found guilty of disciplinary offences which were committed by him during the period from the 15th to the 20th July 1974. 30

He was punished by being demoted to the status of a first appointed teacher, he was ordered to pay a fine of C£200 and his annual increment was postponed for two years. 35

This judgment will be confined to the preliminary issue, which was raised by counsel for the applicant, regarding the validity of the composition, at the material time, of the respondent Commission.

5 Counsel for the applicant has submitted that such composition was contrary to subsections (2) and (3) of section 4 of the Public Educational Service Law, 1969 (Law 10/69). It is provided thereby that the Commission consists of a chairman and four other members appointed by the President of the Republic and
10 that the term of office of all of them is a period of three years.

It is not disputed that at the material time the respondent Commission was composed of its chairman, Mr. N. Hadji-Gavriel, and of only three other members, namely Mr. A. Georghiou, Mr. A. Papadouris and Mr. A. Papadopoulos,
15 as its other member, Mr. G. Fikardos, had resigned towards the end of 1978, prior to the commencement of the disciplinary trial of the applicant, and was not replaced until after the applicant had been found guilty of disciplinary offences and was punished in respect of them.

20 It appears to be common ground that at all material times the chairman of the Commission was serving a three years' term of office whereas the three aforesaid members of the Commission—Georghiou, Papadouris and Papadopoulos—who had initially been appointed in 1975 for terms of office of three
25 years each were, after the expiry of their said terms of office, re-appointed for shorter than three years periods, and, in particular, first for January and February 1979 and then till the end of June 1979, when they were all of them re-appointed for terms of office of three years.

30 Counsel for the applicant has submitted that the aforementioned appointments of three members of the respondent Commission for periods of less than three years were invalid as being contrary to section 4(3) of Law 10/69.

35 As in the present case it has not been argued by counsel for the respondent that the appointments of members of the Educational Service Commission, by the President of the Republic, under Law 10/69, are "Acts of Government", which do not come within the competence of this Court under Article 146 of the

Constitution, I will assume that they are not "Acts of Government".

I am, however, of the view that in these proceedings I should not decide, in an ancillary manner, about the validity of appointments made by the President of the Republic, for the sole purpose of determining whether or not the respondent Commission was properly composed at the material time (see, inter alia, *In re Georghiou*, (1983) 2 C.L.R. 1, 5); and in my opinion, the present case and the case of *Georghiou*, supra, are distinguishable from the case of *Louca v. The President of the Republic* (to be reported in (1983) 3 C.L.R.)* where the termination of the appointment of a member of the Public Service Commission was itself the subject-matter of the recourse, whereas in the present instance the appointments concerned of the three members of the respondent Commission are not challenged directly as such by the applicant's recourse, but their validity is disputed only indirectly. Consequently, it cannot be decided in these circumstances if at the material time the composition of the respondent Commission was defective, so as to annul for this reason its sub judice decision.

Assuming that my above view is wrong and there has to be determined the validity of the aforementioned short-term appointments of the three members concerned of the respondent Commission, in order to pronounce on the legality of its composition, at the material time, as an administrative collective organ, and, consequently, on the legality of its sub judice decision concerning the applicant (see the Conclusions from the Case-Law of the Council of State in Greece, 1929-1959, pp. 108-109) then my approach to this matter would be as follows:

It has, first, to be borne in mind that the Educational Service Commission is not an organ which was set up to carry out the functions of an organ envisaged by the Constitution (as it is the Public Service Commission created by the Public Service Law, 1967, Law 33/67, which was set up instead of the Public Service Commission envisaged by Article 124 of the Constitution). It is the creation of statutory provisions only; and it is useful to examine its antecedents:

By virtue of Articles 87(1)(b) and 89(1)(a)(ii) of the Constitution disciplinary powers over an educationalist such as the

* Reported in (1983) 3 C.L.R. 783.

present applicant were vested in the now no longer functioning Greek Communal Chamber and were exercised by collective organs which were created by statutory provisions, such as the Disciplinary Board set up by section 10 of the Education Office (Organization) Law, 1960 (Greek Communal Chamber Law 7/60), as amended by the Education Office (Organization) (Amendment) Law, 1962 (Greek Communal Chamber Law 6/62) and, later on, by the Disciplinary Board which was created by the Secondary School Teachers, Elementary School Teachers and School Employees of Communal Schools (Exercise of Administrative Powers) Law, 1963 (Greek Communal Chamber Law 8/63). The said Board was replaced by the Educational Service Commission which was set up at the Ministry of Education by the Competence of the Greek Communal Chamber (Transfer of Exercise) and Ministry of Education Law, 1965 (Law 12/65); and that Commission was replaced by the respondent Commission which was created by the Public Educational Service Law, 1969 (Law 10/69), again at the Ministry of Education (“παρά τω Υπουργείω”).

In my opinion, the evolution, as above, which culminated in what is now the respondent Commission is indicative of the real origin and nature of this organ; and it is against the background of its origin and nature that there has to be examined whether its composition at the material time was vitiated by the fact that some of its members were serving by virtue of appointments for periods of less than the term of office of three years (which is envisaged by section 4(3) of Law 10/69) bearing always in mind that this Commission was not created by the Constitution but is only a statutory mechanism.

It must be pointed out that the appointments in question were not made in situations to which section 10 of Law 10/69 is applicable, in which case they would have been made for the remaining part of the term of office of the respondent Commission, but they were, apparently, made under section 4 of Law 10/69.

Normally they ought to have been made for a period of three years; but, I am inclined to the view that the said period, as provided for in section 4(3) of Law 10/69, cannot, when viewed in the context of all relevant considerations, be regarded as excluding the re-appointment for a shorter than three years’

period of someone who is already a member of the respondent Commission and who has previously served a full term of office of three years (as it had already happened with the three members of the Commission with whom we are now concerned, since they were appointed in 1975).

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After all if a temporary appointment of somebody else as a member of the Commission can be made, under section 4(5) of Law 10/69, for a shorter than three years' period of time, to fill a temporary vacancy which is created by the absence of one of the members of the Commission, I fail to see why section 4(3) of the same Law should be interpreted so strictly as to exclude the temporary appointment for a period shorter than three years, under the said section 4(5), of a member of the Commission whose term of office has expired; and I would be inclined to think that such expiry can be regarded as "any other reason", in the sense of such section 4(5), entitling the President of the Republic to re-appoint the same member of the Commission temporarily for a shorter than three years period until either the same member or someone else is appointed permanently for a full term of office of three years.

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In my opinion the decision in case 3369/75 of the Greek Council of State, which was relied on by counsel, is distinguishable because in that case there existed express statutory provision in Greece excluding the replacement of members of the organ concerned during their two years' term of office and, thus, it was held that it was the intention of the legislature to ensure that the composition of the organ in question would remain unchanged for two years. On the other hand no such provision exists in Law 10/69, but instead the provisions of sections 4(4), 4(5) and 10(1) point to the contrary.

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Likewise cases 1129/57 and 497/57, which were also decided by the Greek Council of State, are distinguishable because in those cases members of a collective organ had been appointed without legal sanction for a period longer than their lawful term of office, whereas in the present instance the duration of the appointments of the members concerned of the respondent Commission is shorter than the maximum length of their term of office.

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Furthermore, I am of the view that the submission of applicant's counsel that the respondent Commission was unlawfully composed, at the material time, by only its chairman and three, instead of four, other members cannot be sustained
5 because it is provided by section 10(3) of Law 10/69 that the validity of any decision of the Commission is not affected if there exists a vacancy on it—as it was the position at the material time due to the resignation of one of its members—provided that the total number of members of the Commission does not
10 become less than three.

For all the foregoing reasons the preliminary objection of the applicant regarding the composition of the Commission cannot be upheld.

Order accordingly.