

1984 April 4

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

CHRISTOS HADJIEFTYCHIOU,

*Applicant,*

v.

THE EDUCATIONAL SERVICE COMMISSION,

*Respondent.*

(Case No. 314/79).

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5 *Administrative Law—Collective organ—Composition—Defective if all its members entitled to participate in its meetings are not invited to do so—Even members with no right to vote have to be duly notified—Director of Personnel not notified about the meetings of Educational Service Commission, convened for purposes of disciplinary proceedings, as provided by the proviso to section 4(2) of the Public Educational Service Law, 1969 (Law 10/69)—Composition of Commission defective—Sub judice decision regarding applicant annulled.*

15 *Educational Service Commission—Composition—Defective composition—Through failure to notify Director of Personnel about its meetings—Proviso to section 4(2) of the Public Educational Service Law, 1969 (Law 10/69)—But shorter than three years' length of the appointments of certain members of the Commission—Did not render its composition defective.*

20 Under the proviso to section 4(2) of the Public Educational Service Law, 1969 (Law 10/69) the Director of Personnel and the Head of the Department concerned of the Ministry of Education are entitled to be present at the meetings of the Educational Service Commission and express their views, but without the right to vote. The Director of Personnel was not notified to attend the

meetings of the Commission, in the course of which there took place a disciplinary trial of the applicant, because it had become, with his consent, the established practice not to invite him to meetings in relation to disciplinary matters.

*Upon a recourse by the applicant against his disciplinary conviction and punishment:* 5

*Held, that the composition of a collective organ is defective if all its members entitled to participate in its meetings are not invited to do so, unless such meetings take place on definite dates fixed and known to its members in advance; that even a member of a collective organ who does not have the right to vote at its meetings has to be duly notified about them so that he may attend them if he so wishes; and that, therefore, due to the failure to notify the Director of Personnel about the meetings of the respondent Commission in relation to the applicant, its composition at such meetings was defective and, accordingly, its sub judice decision regarding the applicant has to be annulled.* 10 15

*Held, further, that the shorter than three year's length of the appointments of certain members of the Commission did not render the composition of the Commission defective.* 20

*Sub judice decision annulled.*

**Cases referred to:** 25

Decisions of the Greek Council of State Nos. 214/70, 710/70, 669/74 - 671/74 and 1212/63.

**Recourse.**

Recourse against the decision of the respondent to punish applicant disciplinarily in respect of divers disciplinary offences. 30

*C. Hadji Pieras, for the applicant.*

*A. S. Angelides, for the respondent.*

*Cur. adv. vult.*

TRIANAFYLLIDES P. read the following judgment. The applicant has been punished disciplinarily, by means of a decision of the respondent Educational Service Commission, in respect of divers disciplinary offences. 35

One of the main issues which has been strenuously argued during the hearing of this case has been that of the validity of the composition of the respondent Commission at the material time.

5 As regards the aspect of the shorter that three years' length of the appointments of certain members of the Commission, I abide by the view, which I have expounded in my judgment in similar case No. 313/79, that such  
10 appointments did not render the composition of the Commission defective; and against the said judgment an appeal has been made and is at present pending (R. A. 333 *Christodoulides v. The Educational Service Commission*).

In the case now before me there has been raised another issue regarding the composition of the respondent Commission which did not have to be determined in the previous case 313/79, namely that there was contravened the proviso to section 4(2) of the Public Educational Service Law, 1969 (Law 10/69), which provides that the  
15 Director of Education, the Director of Personnel and the Head of the Department concerned of the Ministry of  
20 Education are entitled to be present at the meetings of the Educational Service Commission and express their views, but without the right to vote.

The said proviso was amended, on the 29th June 1979, by the Public Educational Service (Amendment) Law,  
25 1979 (Law 53/79), which is not relevant to the outcome of the present case, because the disciplinary process before the respondent Commission commenced and was completed prior to that date.

30 During the rather lengthy hearing of this case counsel appearing for the respondent has stated that all the minutes of the respondent Commission are always sent to the Director-General of the Ministry of Education and to all the Heads of Departments in such Ministry. Counsel  
35 for the respondent added that, at the material time, the post of Director of Education was vacant and that the Director of Personnel was not notified to attend any of the relevant for the purposes of this case meetings of the Commission, because it had become, with his consent,

the established practice not to invite him to meetings in relation to disciplinary matters.

Counsel for the respondent has argued that the Head of the Department concerned in the Ministry of Education had had notice of the meetings in question of the Commission through the contents of its minutes which had been sent to him and that he could attend any one of such meetings if he so wished.

It is well established that the composition of a collective organ is defective if all its members entitled to participate in its meetings are not invited to do so, unless such meetings take place on definite dates fixed and known to its members in advance (see, *inter alia*, the decisions of the Council of State in Greece in cases 247/70, 710/70 and 669/74-671/74.

I am prepared to accept that due to a vacancy in the post of Director of Education at the material time it was not feasible to secure the attendance of the Director of Education at the relevant meetings of the Commission.

I am, also, prepared to accept, not without quite some reluctance, that the regular forwarding of the minutes of the respondent Commission to the Ministry of Education and, also, to the Head of the Department concerned of such Ministry, afforded notice to such Head of Department to participate in the relevant meetings of the Commission if he so wished.

But it is common ground that the Director of Personnel was never notified about, and invited to, such meetings because, with his consent, it had been arranged that he should not participate in disciplinary proceedings before the respondent Commission.

In my view this arrangement was a flagrant contravention of the proviso to section 4(2) of Law 10/69, amounting to an alteration of the composition of the respondent Commission which could have been effected only by the House of Representatives, which, actually, amended later the said proviso to section 4(2) by Law 53/79 so as to exclude therefrom the reference to the Director of Personnel.

5 Proper compliance with the proviso to section 4(2) of  
Law 10/69 entailed that the Director of Personnel should  
have been duly notified about the meetings of the res-  
pondent Commission and it was up to him to make up  
his own mind on each occasion, even in relation to dis-  
10 ciplinary proceedings, whether he would attend a meeting  
of the Commission in order to express his opinion, even  
without having the right to vote; and he could not decide  
whether or not to attend a particular meeting of the Com-  
mission without knowing what disciplinary or other mat-  
ters were to be considered, so that he could decide whe-  
ther his presence at such meeting was necessary in the  
interests of proper administration.

15 It is, in my opinion, clear that even a member of a  
collective organ who does not have the right to vote at  
its meetings has to be duly notified about them so that  
he may attend them if he so wishes (see, inter alia, the  
decision of the Council of State in Greece in case 1212/63  
20 in the Digest of the Council of State, 1961-1970, vol. 2,  
p. 60, para. 329).

I have, consequently, in the light of all the foregoing  
reached the conclusion that, due to the failure to notify  
the Director of Personnel about the meetings of the res-  
25 pondent Commission in relation to the applicant, its com-  
position at such meetings was defective and, therefore,  
its sub judice decision regarding the applicant has to be  
annulled; but, of course, it is open to the respondent  
Commission to deal once again, with a proper composi-  
tion, with the disciplinary charges against the applicant.

30 It is, in the circumstances, unnecessary to deal with  
any other issue which has been raised in this case.

I am making no order as to the costs of the present  
case.

35 *Sub judice decision  
annulled. No order as  
to costs.*