

1985 October 17

[A. LOIZOU, DEMETRIADES, LORIS, STYLIANIDES, PIKIS, JJ.]

PETROS CHRISTODOULIDES,

Appellant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Revisional Jurisdiction Appeal No. 333).

5 *The Educational Service Law 10/69 ss. 4(2), 4(3), 4(5) and*
 10(3)—The Educational Service Committee—Composition
 of—Absence of one of its members by reason of resigna-
 tion—The Committee may continue to function—By virtue
10 *of the provisions of section 10(3)—Provided its members*
 do not become less than three—Re-appointment of members
 of the Committee whose term expired for a period shorter
 than the 3 years provided by section 4(3)—Not excluded
 by law—Though undesirable, yet, it may be necessitated
 by circumstances.

15 *Collective Organs—Absence of statutory provision relating to*
 quorum—In such a case the quorum is half its members
 plus one—There is no statutory provision as to the quorum
 of the Educational Service Committee—Therefore said
 principle applies.

20 The point in issue in this appeal is the validity of the
 composition of the Public Educational Service Committee at
 the time they tried, convicted and punished the appellant
 in disciplinary proceedings under the Certain Disciplinary
 Offences (Investigation and Trial) Law, 3/77 as amended
 by Laws 38/77 and 12/78.

 Though the appellant had been summoned to appear
 before the Committee on 19.12.78, the hearing of the case
 began on 9.1.1979 and continued with 9 sittings in Fe-

bruary, 2 in March, 2 in April and 5 in June. The first two days of hearing were utilised for the trial of preliminary objections, including one for the composition of the respondent Committee.

The Committee was composed at the time of its Chairman, serving at the time a three year term of office and of three other members, who, having been appointed in 1975 for a three year term of office, were reappointed at its expiration for a period of two months, i. e. January and February 1979 and then further reappointed until the end of June 1979, when they were reappointed for a term of three years. The fifth member of the Committee had resigned before the commencement of the proceedings in question and was not replaced until after the conclusion of the proceedings.

The case for the appellant was that the composition of the Committee was defective for breach of sub-sections (2) and (3) of section 4 of Law 10/69 regulating respectively the numerical composition and the tenure in office of its members. The point was set down for determination as a preliminary legal issue. The trial Judge did not accept the applicant's contention*. Hence the present appeal by the applicant.

Held, dismissing the appeal, Pikis, J. dissenting:

(1) The absence of a statutory provision for a quorum and the absence of a member through resignation, does not vitiate the Committee's composition. In fact it cannot be held that its composition was unlawful by reason of being composed at the time of a chairman and three (instead of four members) because it is expressly provided by s. 10(3) of Law 10(69) that the validity of any decision of the Committee is not affected, if there exists a vacancy, provided the total number of its members does not become less than three.

In the absence of a statutory provision the case law has established that the quorum of a collective organ is half its members plus one. Therefore, notwithstanding the

* See Christodoulides v. The Educational Service Commission (1984) 3 C.L.R. 1340.

resignation of one of its members the Committee could lawfully function; and as there was no fifth member at the time the principle that for a collective organ to be considered as properly and lawfully convened notice should be given to everyone of its members does not come into play.

(2) The appointment of the members of the Committee for periods shorter than three years is not in law excluded. Though undesirable, yet, it may be necessitated by circumstances such as these of affording the opportunity to the Committee to conclude matters pending before it with the same composition as they originally commenced. In such a case any other approach might lead to the absurdity of a member having to be reappointed for 3 years, whilst a pending prosecution might be concluded within a short time.

In the present case the appointment for short periods until all its members were reappointed for 3 years with terms commencing at the same time was necessitated by the circumstances and was not intended to serve any extraneous purpose by making insecure the tenure of the office of the Committee's members. The approach of the President of this Court, i. e. the trial Judge, was correct.

*Appeal dismissed by majority.
No order as to costs.*

Cases referred to:

Maratheftis v. The Republic (1965) 3 C.L.R. 576;

Pissas v. The Republic (1976) 3 C.L.R. 30;

HadjiGeorghiou v. The Republic (1966) 3 C.L.R. 504;

Cl. Georghiades v. The Republic (1966) 3 C.L.R. 252;

J. Georghiades v. The Republic (1966) 3 C.L.R. 317;

Papadopoulos v. The Republic (1985) 3 C.L.R. 154;

J. N. Christofides Trading Ltd. v. The Republic (1985)
3 C.L.R. 546;

Decisions 3369/75 and 257/54 of the Greek Council of State.

Appeal.

Appeal against the judgment of the President of the Supreme Court of Cyprus (Triantafyllides, P.) given on the 3rd September, 1983 (Revisional Jurisdiction Case No. 313/79)* whereby preliminary objection raised by appellant regarding the composition of the Educational Service Commission was dismissed.

A. Markides, for the appellant.

A. S. Angelides, for the respondent.

Cur. adv. vult.

The following judgments were read.

A. LOIZOU J.: This is an appeal from the judgment of the President of this Court by which a preliminary point of Law raised by the appellant regarding the composition of the Educational Service Commission (hereinafter to be referred as the respondent Commission) was not upheld.

The relevant circumstances of the case are these. The appellant was at all material times to the present proceedings a teacher in the Elementary Education. Disciplinary proceedings for offences which were committed by him between the 15th and the 20th July, 1974, were instituted before the respondent Commission which tried, found him guilty and punished him disciplinarily by demoting him to the status of a first appointed teacher, ordering him to pay a fine of two-hundred pounds and having his annual increment postponed for two years.

In fact the appellant was summoned to appear before the respondent Commission on the 19th December, 1978, but the hearing of the case commenced on the 9th January 1979 and continued with nine days of hearing in February, two in March, two in April, two in May and five in June 1979, the first two days of hearing having been utilized for the trial of preliminary objections including one for

* Reported in (1984) 3 C.L.R. 1340.

the composition of the respondent Commission.

As stated in the judgment of the learned President, it was not in dispute that at the material time the respondent Commission was composed of its Chairman Mr. N. Hadji-
5 Gavriel and of only three other members, namely Mr. A. Georghiou, Mr. A. Papadouris, and Mr. A. Papadopoulos, as its other member Mr. G. Figardos. had resigned towards the end of 1978 prior to the commencement of the disciplinary proceedings against the appellant and was not re-
10 placed until after the conclusion of the subject proceedings. It was also common ground that the Chairman of the respondent Commission was serving at the material time a three years term of office whereas its three aforementioned members who had been appointed on 1975 for a three
15 year term of office were re-appointed at its expiration first for a period of two months, namely for January and February 1979, and then till the end of June 1979, when they were all of them reappointed for terms of office of three years.

The ground of law relied upon by the appellant and argued before us is the following:

“The trial Court was misdirected in not accepting, in view of the admitted facts regarding the composition of the Commission, the submission of counsel for the appellant that the composition of the respondent
25 Commission was contrary to Law, was defective in Law, as being contrary to section 4(3) of the Educational Service Law 1969, (Law No. 10 of 1969).”

The learned President after referring to the historical background, Constitutional and Legal, regarding the establishment and the further evolution of the matter leading to the enactment of the Public Educational Service Law 1969, (Law No. 10 of 1969) and the provisions by virtue of which the respondent Commission was set up, held that
30 the period of a three year term of office provided for in section 4(3) of the Law cannot when viewed in the context of all relevant considerations, be regarded as excluding the reappointment for a shorter than three years period of someone who was already a member of the respondent
35 Commission and that it did not vitiate the Commission.

40 The learned President took the view that once under

section 4(5) of the Law a temporary appointment of someone else as member of the Commission could be made for a shorter period than three years, he failed to see why section 4(3) of the same Law should be interpreted so strictly as to exclude a 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 had expired and he justified the appointment under s.4(5) of the Law as coming within the ambit of "any other reason" in the sense of section 4(5) entitling the President of the Republic to reappoint the same member of the Commission temporarily for a shorter than a three years' period until either the same member or someone else is appointed permanently for a full term of office of three years.

We shall not dwell longer on the approach of the learned President whose judgment is to be found reported as *Petros Christodoulides v. The Educational Service Commission* (1984) 3 C.L.R. 1340.

It is unfortunate that the matters raised in this judgment have not been resolved by elaborate statutory provisions as it is usually the case and this passes the problem to this Court for its solution. There is no provision for a quorum and the absence of a member through resignation from the composition of the Commission. This, however, does not vitiate its composition, nor does it render it contrary to Law. In fact the respondent Commission could not be held to have been unlawfully composed at the material to these proceedings time by having then only its Chairman and three instead of four other members because it is expressly provided by section 10(3) of the Law, that the validity of any decision of the Commission is not affected if there exists a vacancy on it provided the total number of its members does not become less than three.

The question of quorum and the legal principles pertaining to it were expounded in the case of *Mikis Maratheftis and the Republic* (1965) 3 C.L.R. 576, in which it was held that the general principle applicable to the question of quorum of a collective organ viz that in the absence of a specific provision, such quorum is half its members plus one. Therefore the respondent Commission could lawfully fun-

ction without a replacement of its member that had resigned and of course there being no member the principle that for a collective organ to be considered as properly and lawfully convened notice should be given to everyone of its members, does not come into play. (*Ioannis Pissas v. The Republic* (1976) 3 C.L.R. 30 at p. 34). The cases of *Andreas HadjiGeorghiou v. The Republic* (1966) 3 C.L.R. 504; *Cleanthis Georghiades and The Republic* (1966) 3 C.L.R. 252; *J. Georghiades v. The Republic* (1966) 3 C.L.R. 317 bear out the approach on the quorum.

As regards the second issue the appointments for short periods, I agree with the learned President that they are not in Law excluded, though one might think of them as undesirable, yet, they may be necessitated by circumstances such as these of affording the opportunity to the respondent Commission to conclude pending before it matters with the same composition as they originally commenced, (see *Papadopoulos v. The Republic* (1985) 3 C.L.R. 154), as in such a case any other approach might lead to the absurdity of a member who was involved in the hearing, for example of a disciplinary prosecution and whose term expired and such prosecution might be concluded within a short time thereafter would have to be reappointed for a period of three years so that his tenure of office would not be less than that prescribed by Law.

In the present case it is obvious that the appointment for short periods until all its members were reappointed for a further period of three years with terms commencing at the same time. was necessitated by the circumstances and in no way was intended to serve any extraneous purpose by making insecure the tenure of office of the members of the Commission or of some of them. Once there was, as put by the learned President, statutory justification for such shorter appointments there was nothing wrong in the composition of the Commission and I uphold his approach on the matter and the legal construction he placed on the relevant statutory provision.

For all the above reasons I would dismiss this appeal with no order as to costs.

40 Brother Judges, Demetriades, Loris and Stylianides, are

in agreement with this judgment and concur in the result.

PIKIS J.: A short but important point must be decided, namely, the validity of the composition of the Public Educational Service Committee, hereafter the Committee, at the time they tried, convicted and punished the appellant in disciplinary proceedings raised against him under the Certain Disciplinary Offences (Investigation and Trial) Law⁽¹⁾. At the time material for the purposes of these proceedings three members of the Committee were serving on short term appointments below the statutory norm of three years and the number of the members of the Committee fell below that prescribed by law. While the statute provided the Committee should be composed of the Chairman and four members the Committee consisted of a Chairman and three members. Upon expiration of their previous tenure the appointment of the members of the Committee was renewed, first for a two-month and later for a four-month period, whereas s.4(3) of the Educational Service Law⁽¹⁾ provides that members should serve on a three-year basis.

The case for the appellant is that the composition of the Committee was defective for breach of the provisions of subsections 2 and 3 of s.4 of Law 10/69 regulating respectively the numerical composition of the Committee and tenure in office of its members. Because of its importance the point was set down for determination as a preliminary legal issue considering the implications of a defective composition of the Committee on its deliberations and decisions.

The learned trial Judge held a deviation from the statutory provisions regulating the tenure of members and the numerical strength of the Committee did not render its composition defective. For his decision he drew support from the provisions of subsection 5 of s.4 of Law 10/69 that empowers in terms the President of the Republic to make, in the event of temporary absence of a member (because of leave, absence abroad or illness), an acting appointment for as long as the absence or the incapacitation of the member is expected to last. Far from agreeing that

⁽¹⁾ Law 3/77—amended by Laws 38/77-12/78

⁽²⁾ Law 10/89.

s. 4(5) of the law lessens the significance attached by the legislature to the numerical complexion of the Committee, to my mind it reinforces it. This subsection indicates the importance attached to the numerical strength of the Committee as an element of its composition. The trial-Court found that the provisions of subsection 3 of s. 10 of Law 10/69 validate the decisions of the Committee when composed of fewer members than the statutory norm provided the number does not drop below three. This is a doubtful interpretation of the aforesaid provision of the law. The provisions of subsection 3 cannot be divorced from the preceding provisions of s. 10, those of subsection 2 in particular, casting a mandatory duty on the President to fill a vacancy as soon as it occurs. The object of subsection 3 of s. 10 is, to my comprehension, to save the functionality of the Committee during the interval occurring between a vacancy and such short time as would ordinarily be reasonably necessary for the President to appoint a substitute. Section 10(3) is not, it seems to me, intended as a means of bypassing the provisions of s. 4(2) fixing the numerical strength of the Committee. Its object as I perceive it in the context of the legislation is to provide for the uninterrupted functioning of the Committee for the short time usually needed to fill the vacuum created by the occurrence of a vacancy. However, I do not find it necessary to probe the matter further for the composition of the Committee was defective for a far more consequential reason, namely, the terms of tenure of its members, a factor affecting the independence of the body.

A statutory body must, as a rule, be composed in accordance with the terms and conditions of the statute providing for its establishment. Two recent decisions of the Supreme Court, that is, *Papadopoulos v. The Republic* (1) and *J. N. Christofides Trading Ltd. v. The Republic* (2) discuss the importance of adherence to the formalities prescribed by law for the validation of the decisions of statutory bodies. As a general rule observance of a formality is treated as an essential condition for the validity of the actions of a statutory body. The test to determine whether

(1) (1985) 3 C.L.R. 154.

(2) (1985) 3 C.L.R. 546.

a formality is essential or inessential is this: Is observance of the formality in question a factor ordinarily consequential for the content of the decision? If the answer is in the affirmative the formality is inevitably regarded as essential. In the opposite case it is not. Non-observance of an inessential formality does not of necessity vitiate the decision of the body. An objective test is applied to determine whether as formality is essential or inessential.

Considering the mission and duties of the Committee, the conditions of tenure in office of its members are among the fundamental statutory safeguards for the independence of members of the body. Appointments for two and four-month periods constituted breaches of the statutory criteria for the independence of members of the Committee. The Greek Council of State took a similar view of the implications of breaches of statutory conditions designed to ensure the independence of members of a statutory body. Departure from the statutory safeguards intended to secure the tenure in office of members, it was held, invalidated its decisions inasmuch as it removed fundamental safeguards for the independence and impartiality of its members (1). The ground upon which the learned trial Judge distinguished the above case is, to my mind, untenable. The view was taken that the provisions of subsections 5 of s. 4 empowering the President to make short duration appointments during temporary absence of members, reduced the effect of the provisions of subsection 3 for security of tenure to an inessential formality, noncompliance with which did not vitiate the decisions of the body. If subsection 5 adds anything to the law, it is to reinforce the need to keep the numerical strength of the Committee at the statutory level of five as a condition for the validity of its actions. In no way does it reduce the importance of security of tenure of permanent members of the Committee as a condition for the validity of their decisions.

For the reasons given above, the Public Educational

(1) Decision 3369/75—See also decision of the Greek Council of State in Case 267/54.

Service Committee was, at the material time, ill-composed and its decisions lacked the force of law. I would, therefore, be disposed to allow the appeal and set aside the decision impugned without going into its merits.

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*Appeal dismissed by majority.
No order as to costs.*