

[A. LOIZOU, J.]

1972
July 1

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

ANDREAS
PANAYIOTOU
AND OTHERS

ANDREAS PANAYIOTOU AND OTHERS

v.

Applicants,

REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases Nos. 304/71 and 336/71).

*Collective Organ—Composition, meetings and proceedings—
Public Service Commission—Meeting on two occasions
to decide on a promotion—Composition thereof at
second meeting not the same as the first through the
presence of a member who was not present at the first
meeting—Matter not examined ab initio at second
meeting—Consequently the sub judice decision has to
be annulled as being contrary to the principles of
administrative law governing the composition of a
collective organ when dealing with a process before it.*

Collective Organ—Composition and functioning—See supra.

*Collective Organ—Quorum—A collective organ is in quorum
if there are present at its meeting the minimum number
of members fixed by law—And it is immaterial that
all members do not participate at the voting.*

The facts sufficiently appear in the judgment of the learned Judge, annulling the *sub judice* decision of the respondent Public Service Commission for defective composition of such collective organ at the relevant meeting.

Cases referred to :

Vivardi v. The Vine Products Council (1969) 3 C.L.R.
486;

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Decisions of the Greek Council of State : Nos. 1753/1956,
103/1957, 1128/1958.

ANDREAS
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AND OTHERS

Recourse.

v.
REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

Recourse against the decision of the respondent to promote the interested party, Joseph Moussa, to the post of Accounting Officer, 1st Grade, in preference and instead of the applicants.

E. Lemonaris with *I. Typographos*, for the applicants.

N. Charalambous, Counsel of the Republic,
for the respondent.

The following judgment was delivered by :-

A. LOIZOU, J. : A number of Accounting Officers, 2nd Grade, eligible for promotion to the post of Accounting Officer, 1st Grade, filed these two recourses, complaining against the promotion of Joseph Moussa, the interested party, to the said post. As both recourses presented common questions of law and fact, apart from one ground of law in recourse No. 304/71 to the effect that the applicant in that case also complained that he was not at all considered for promotion although eligible for that purpose, it was directed by consent that these two recourses should be heard and determined together.

As it appears from the bundle of documents attached to the opposition, *exhibit 1*, this promotion was considered at two meetings of the respondent Commission. The first one took place on the 19th May, 1971, when, with the exception of Mr. Yiannakis Louka, all other members were present. The second meeting took place on the 27th July, 1971, when the Chairman was absent on leave, all other members being present. The deliberations of the respondent Commission regarding this promotion were not concluded at the first meeting. Its consideration was continued and concluded at the second meeting when "the Commission decided that Mr. J. Moussa (the interested party) who was placed on the waiting list at its meeting of the 19th May, 1971, be promoted to the permanent post of Accounting Officer, 1st Grade, with

effect from the 1st August, 1971". Mr. Yiannakis Louka abstained from voting as he was absent from the first meeting.

The main ground of complaint in both recourses is : (a) That the members of the Public Service Commission did not form a quorum as the decision was taken by three members, the Chairman being absent on leave and Mr. Yiannakis Louka abstaining; (b) that the deliberations of the respondent commission extended to two meetings and the composition of the organ was different at these meetings. Under section 4 of the Public Service Law 33/1967, the Public Service Commission consists of a Chairman and four other members. Under section 11(2) of the same Law "the Chairman and two other members at any meeting, or if the Chairman is not present, then four members present, form a quorum. No decision shall be valid unless taken by three votes."

The argument was that the absence of Mr. Yiannakis Louka at the first meeting and his abstention from voting at the second meeting prevented the existence of a quorum. This is not so in law, as a collective organ is in quorum if there are present at its meeting the minimum number of members fixed by law, and it is immaterial that all members do not participate in the voting. See Kyriakopoulos Administrative Law, 4th Ed. Vol. 2, p. 23. In respect of the second part of this ground of law, learned counsel for the respondent fairly and properly conceded that the deliberations extended to two meetings of the respondent Commission and that when the decision was taken at the second meeting the matter was not examined *ab initio*; there being a change in the composition of the respondent through the presence of a member who did not take part at a past meeting on the matter, the respondent could not take a valid decision. In this respect he referred me to the Conclusions of the Jurisprudence of the Greek Council of State 1929—1959, p. 112. The relevant principles of administrative law on the matter are stated to be in 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

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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. This exposition of the law, taken from a number of decisions of the Greek Council of State, namely, Decisions 1753/56, 103/57, 1128/58, was adopted in the case of *Vivardi v. The Vine Products Council* (1969) 3 C.L.R. 486. I find that these principles are applicable to the facts of the present case. In the circumstances, therefore, the *sub judice* decision is annulled.

Before concluding I would like to refer to the complaint of applicant in recourse No. 304/71, which arises from the fact that whereas in the minutes of the meeting of the respondent Commission of the 19th May, 1971, it is stated that "the Commission considered the merits, qualifications, seniority and experience of all officers holding the post of Accounting Officer, 2nd Grade..." in the list of Accounting Officers, 2nd Grade, considered for promotion to the post of Accounting Officer, 1st Grade, the name of this applicant was not included. This discrepancy is likely to lead to confusion as to whether he has in fact been considered for promotion or not. In view of the outcome of the recourse I need not say anything more about this complaint, except that it should be borne in mind that clarity in the minutes of proceedings of administrative organs is of the utmost importance.

In the result the *sub judice* decision is annulled with £15 costs against the respondent in each of the two recourses.

*Sub judice decision annulled;
order for costs as above.*