

1986 April 19

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

CHARALAMBOS PHILIPPIDES AND SON LTD.,

*Applicants.*

v.

THE REPUBLIC OF CYPRUS AND/OR

1. THE MINISTRY OF EDUCATION,
2. THE DIRECTOR OF SECONDARY EDUCATION  
AND
3. THE DIRECTOR OF TECHNICAL EDUCATION,

*Respondents.*

(Case No. 578/84).

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*Administrative Law—Competence, exercise of—Regulations, absence of—Whether and in what circumstances absence of Regulations is fatal to the assumption of the power—Law 6/61 (Greek Communal Chamber), section 11.*

*Administrative Law—Competence vested in the Ministry and not in the Minister—Responsibility of Minister in such a case—Law 12/65, ss. 3(2)(3) and 6(2)(d)—Competence of Department of Education of the Greek Communal Chamber under s. 10(1) of Law 6/61 as regards choice of books transferred by said section of Law 12/65 to the Ministry of Education.* 5 10

*Administrative Law—Collective Organs—Where their composition is regulated by Law, adherence to the formalities laid down in the statute is an essential ingredient of the validity of a decision—This principle is not applicable to advisory Committees, but is confined to bodies vested with effective competence.* 15

*Administrative Law—Advisory Committees—Organ vested with*

*the decision making power free to attach any importance it thinks fit to the views of such Committee.*

*Constitutional Law—Constitution, Articles 19, 20 and 28.*

5 In response to an invitation the applicants submitted to the Ministry of Education "Je Parle Francais," a series of books for instruction in French language, written by an inspector at secondary schools. Two other series of books, namely "Sans Frontieres" and "Methode Orange," both published in France, were also submitted by the agents of the publishers in Cyprus.

10 A six-member purely advisory Committee was set up under the chairmanship of the Senior Educational Officer for the purpose of advising the Ministry on the choice of books best suitable for instruction in the said language at the level of 3rd, 4th, 5th and 6th classes of secondary schools.

A seventh member was added a short while later, apparently before the Committee began its deliberations.

20 The deliberations of the Committee were riddled with dissent. Different views were expressed by members of the Committee at different stages. Faced with the inconclusiveness of the deliberations, the Chairman invited members to make a personal evaluation that he attached to his report to the Director of Secondary Education, who attempted to solve the impasses by himself and finally recommended a solution, namely that "Je Parle Francais" to remain in use in Limassol and Paphos districts, "Sans Frontieres" to be used in Nicosia, Larnaca and Famagusta districts and "Methode Orange" to be introduced in those classes of the Lyceum where French was taught as a reinforced subject.

30 On the 3.7.84 the Minister approved of the said solution. The matter was, however, reconsidered and as a result by a decision dated 12.9.84 the decision of the 3.7.84 was amended as follows, namely that the replacement of "Je Parle Francais" in Nicosia and Larnaca should take place gradually and that "Je Parle Francais" would remain in use in the Limassol and Paphos districts in the

ensuing academic year subject to reassessment of the position for the following year.

The decision under review in these proceedings is not the decision of 3.7.84, but the one that amended it. Counsel for the applicant questioned the validity of the said decision on the following grounds: (a) Absence of Regulations, the enactment of which is under s. 11 of Law 6/61 (Greek Communal Chamber) a prerequisite to the exercise of the relevant power, (b) The alteration of the composition of the Advisory Committee, (c) The pressure exerted on members of the said Committee\*, (d) Subordination of the Minister's competence to the said Director and (e) Breach of Articles 19, 20 and 28 of the Constitution.

*Held*, dismissing the recourse: (1) Where the exercise of competence is tied to the prior exercise of a rule making power, the absence of regulations is fatal to the assumption of the power; but where the regulations are not postulated as a prerequisite to the exercise of the competence, but as a means of properly institutionalising its exercise, their absence does not disentitle the authority vested with the substantive power to exercise it. The latter is the effect of s. 11 of Law 6/61.

(2) The competence of the Department of Education of the Greek Communal Chamber as to the choice of books (s. 10(1) of Law 6/61) was transferred to the Ministry of Education (ss. 3(2)(3) and 6(2)(d) of Law 12/65), and not to the Minister. The latter's responsibility was to lay down the criteria for the exercise of the power and retain discretion to refuse the recommendations of the organs of the Ministry. In this case he exercised both powers. His discretion in a matter of choice of books is very wide.

(3) Where the composition of a body is regulated by law adherence to the formalities laid down in the Statute is an essential ingredient for the validity of a decision. This principle has no application to advisory bodies set up

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\* It should be noted that in his said recommendation to the Minister the Director noted that unbearable pressure had been brought to bear on members of the Committee.

to advise organs, as in this case, with effective decision-making power.

5                    Nor is there any substance in the submission that the Ministry subordinated its decision to the views of the Advisory Committee or that it was on that account guilty of deviation from the course earmarked by the Administration. The Ministry remained free to attach whatever importance it thought fit to the views of the Committee.

10                    (4) The rights guaranteed by Articles 19 and 20 of the Constitution do not come into play at all. As far as Article 28 is concerned, applicants were evidently given equal opportunities to the other contestants.

*Recourse dismissed.*  
*No order as to costs.*

15                    *Observations of the Court:* The authorities ought to have given further consideration to the allegation that unbearable pressure had been brought to bear on the members of the advisory committee. Public bodies must be allowed to function without outside interference in the  
20                    interest of their mission.

Cases referred to:

*Arsalides v. CYTA* (1983) 3 C.L.R. 510;

*Sophocleous v. E.A.C.* (1984) 3 C.L.R. 1089;

*Kofteros v. E.A.C.* (1985) 3 C.L.R. 394;

25                    *Petroudes v. E.A.C.* (1985) 3 C.L.R. 2245;

*Chrysochou Bros. v. CYTA* (1966) 3 C.L.R. 482;

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

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

30                    *Mikellidou v. The Republic* (1981) 3 C.L.R. 461.

**Recourse.**

Recourse against the decision of the respondent Ministry of Education specifying the books approved for instruction

in the French language at the third, fourth, fifth and sixth forms of secondary schools.

A. S. Angelides, for the applicants.

R. Vrahimi (Mrs.), for the respondents.

A. Papacharalambous, for the interested party.

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*Cwr. adv. vult.*

PIKIS J. read the following judgment. The delay in the preparation of judgment is due to the withdrawal by the respondents of some of the exhibits pending consideration of the judgment to facilitate them in their administrative tasks. As soon as they were returned on 29.3.1986, we went through the voluminous material before us in order to elicit the facts relevant to the sub judice decision and define the issues calling for resolution in their true factual perspective. Having completed the exercise I shall reproduce the relevant facts in chronological order. The pertinent decision, the one we are required to review in these proceedings, is a decision of the Ministry of Education of 12.9.1984, specifying the books approved for instruction in the French language at the third, fourth, fifth and sixth forms of secondary schools.

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*The Facts*

In December 1983 (1) the Ministry of Education decided to initiate a selection process for the choice of appropriate books of instruction at secondary schools in several subjects, including the French language. Publishers were invited to submit within a specified time publications suitable for instruction in French at the level of the third, fourth, fifth and sixth classes of secondary schools. The process was, as may be gathered from the material before me, intended to provide a basis for the review of the usefulness of books in views and elicit the availability of other books that might be used as aids for instruction. In response to the invitation the applicants, a publishing firm, submitted "Je Parle Francais", a series of books for instruction in the French language, written by Mr. Matsis, a

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(1) 21.12.1983

French language inspector at secondary schools. Two other series of books in the French language were submitted for consideration, namely, "Sans Frontieres" and "Methode Orange". The authors of the last two publications were  
5 French and the books were published in France. The books were submitted for consideration by the agents of the publishers in Cyprus.

Advisory Committees were set up to evaluate the worth of the rival publications and their suitability as textbooks  
10 for instruction at school<sup>(1)</sup>. A six-member Committee was set up for the purpose under the chairmanship of Mr. Serghis, Senior Educational Officer. Its members were five educationalists, including teachers of the French language. A seventh member was added a short while later, apparently  
15 before the Committee embarked on its deliberations, again a teacher of French. The Committee was a purely advisory body, as may be gathered from its terms of reference, charged to advise the Ministry of Education on the choice of the books best suitable for instruction in the  
20 French language.

The deliberations of the Committee were riddled with dissent, a fact that made impossible a unanimous or a positive recommendation on the part of the Committee. This emerges from the report of the Chairman of the Committee summarizing the proceedings and reporting on their  
25 effect (2). If the report is accurate in its details and nothing before me suggests otherwise, differing views were expressed by members of the Committee at different stages of the proceedings (See the results of the three counts taken on  
30 the preference of the members). Faced with the inconclusiveness of the deliberations of the Committee, the Chairman invited members to make a personal evaluation that he attached to his report to the Director of Secondary Education. Reflection on the content of these reports shows the  
35 magnitude of differences among members and the impossibility of deriving firm guidance therefrom.

<sup>(1)</sup> See decision of 2.3.1984 embodied in exh 6

<sup>(2)</sup> See Blues 246-248, exh. 4.

Confronted as he was with a most difficult task, the Director of Secondary Education followed what was in the circumstances a reasonable course. He derived whatever assistance he could from the individual reports and attempted to resolve the impasse by himself trying to come to a conclusion as to the series best suitable for use at secondary schools. In his recommendation to the Minister of Education that followed<sup>(1)</sup> he noted with alarm that unbearable pressure had been brought to bear on members of the Committee to influence their decision. It was a serious charge to which the authorities ought to have given further consideration. Public bodies must be allowed to function without outside interference in the interest of their mission. In the opinion of Mr. Koullis "Je Parle Francais" ought to be replaced as a book for instruction at schools. Conceivably he was echoing dissatisfaction of the Educational Authorities with the value of the aforementioned series as an aid for instruction. It had been in use at schools for some time.

The final recommendation of the Director of Secondary Education was, as may be inferred, a compromise solution reflecting to an extent the conflicting strands of opinion expressed by members of the Committee. He recommended the introduction of all three publications at schools presumably to test their usefulness in the coming academic year. Thus "Je Parle Francais" would remain in use in the Limassol and Paphos districts; "San Frontieres" would be used in the Nicosia, Larnaca and Famagusta districts; and "Methode Orange" would be introduced in those classes of the Lyceum where French was taught as a reinforced subject. The recommendation was accepted by the Minister of Education who signified his approval on 3rd July, 1984 (see note 14, exh. 4). Applicants protested at the decision as soon as they learned of its contents<sup>(2)</sup>. The Ministry of Education rejected their objections as unfounded<sup>(3)</sup>.

For reasons that cannot be precisely identified from the material before me, the Educational Authorities felt the

<sup>(1)</sup> 27th June, 1984—Blues 256-260, part of exh 4.

<sup>(2)</sup> See Blue 50, exh 5.

<sup>(3)</sup> See letter of the Director-General of the Ministry dated 30.7.1984.

need to give the matter of the choice of French books fresh consideration before the commencement of the ensuing academic year. Probably they felt uneasy about the events preceding and surrounding the decision and in that vein  
5 reconsidered the matter. A meeting was held under the chairmanship of the Minister; the other participants were the Director-General of the Ministry, the Director of Secondary Education, Mr. Serghis, who chaired the Advisory Committee and one of the members of the Committee Mr.  
10 Persianis, an Inspector of Secondary Education. At the meeting it was decided to amend the decision of 3rd July, 1984, as follows:-

- (a) The replacement of "Je Parle Francais" in the schools  
of the Nicosia and Larnaca districts should take place  
15 gradually. Consequently, book 1 of the "Sans Frontieres" series would be introduced as aid for instruction in the third form and book 2 of the same series in the fifth form. "Sans Frontieres" should be introduced in all classes in the succeeding academic year.
- 20 (b) "Je Parle Francais" would remain in use in the Limassol and Paphos districts in the ensuing academic year subject to a reassessment of the position for the following academic year.
- 25 (c) The decision with regard to the introduction of "Methode Orange" remained unchanged.

*Legal Aspects of the Sub Judice Decision*

The subject of review in these proceedings, as indicated, is the validity of the decision of 12.9.1984, a decision interwoven with the one it amended of 3rd July, 1984. By  
30 its very nature the decision cannot be extricated from the one it amended, consequently the recourse puts at issue the entire background to the decision. What we are reviewing in these proceedings is not the decision of 3rd July, 1984, itself an executory decision, but the one that  
35 amended it. In so far as the background to both decisions is the same, necessarily we must examine the entire circumstances preceding the decision.

Counsel for the applicants questioned the validity of the



decision for lack of proper form, abuse and excess of power. To begin, no power vested in the Educational Authorities to make a choice of books in the absence of regulations, allegedly a condition precedent to the exercise of their powers with regard to the choice of books as aids for instruction. It is the case of the applicant that s. 11, Law 6/61. (Greek Communal Chamber Legislation), postulates as a prerequisite to the exercise of the relevant powers the enactment of regulations governing the choice of books of instruction. In support of his submissions counsel referred us to a number of cases establishing that where the exercise of a power is dependent on the prior enactment of regulations, assumption of power in their absence is wholly ineffective for lack of competence or excess of power<sup>(1)</sup>. The other grounds on which the nullification of the decision is sought are:-

- (a) The alteration of the composition of the Advisory Committee by the addition of a seventh member.
- (b) The pressure exerted on members of the Advisory Committee with a view to influencing their opinion.
- (c) Subordination of the competence of the Minister to an inferior organ, namely, the Director of Secondary Education. If power vested in any one, according to this submission, the vestee was the Minister who merely approved the recommendations of the Director of Secondary Education thereby failing to exercise the competence entrusted him by law.

In sum, the submission is that the procedure followed for the choice of books for instruction in French was defective and the ultimate decision, provided one could be taken in the absence of regulations, abortive on the ground of lack of competence.

Counsel for the respondents supported the decision arguing it was taken within the framework of the powers given thereto by law and exercised in the context of the wide dis-

<sup>(1)</sup> *Arsalides v. CY.T.A.* (1983) 3 C.L.R. 510; *Sophocleous v. E.A.C.* (1984) 3 C.L.R. 1089; *Kofteros v. E.A.C.* (1985) 3 C.L.R. 394; *Petroudes v. E.A.C.* (1985) 3 C.L.R. 2245.

cretion vested in the Educational Authorities to choose suitable books for instruction at schools. She refuted the submission that any of the powers of the Ministry were delegated to the Advisory Committee or that this Committee  
5 was anything other than a consultative body. She maintained the Ministry of Education remained by the terms of reference of the Advisory Committee the final arbiter of the choice to be made in exercise of the competence vested them by law.

10 *Absence of Regulations.*

Where the exercise of competence is tied to the prior exercise of a rule-making power, the absence of regulations is fatal to assumption of the power. The Authorities cited by counsel, earlier referred to, establish this principle be-  
15 yond any doubt. On the other hand, where the regulations are not postulated as a prerequisite to the exercise of the competence but as a means of properly institutionalising its exercise, their absence does not disentitle the authority vested with the substantive power to exercise it. The latter  
20 is in my view, the effect of s. 11 of Law 6/61 directing the enactment of regulations as a step best conducive to the exercise of the power; but not as an indispensable requisite for the exercise of the power.

25 *Competent organ for the choice of books for instruction at schools.*

In accordance with s. 10(1), Law 6/61 (Greek Communal Chamber, the Department of Education of the Greek Communal Chamber was entrusted with competence for the choice of books for instruction at schools. This power  
30 was transferred to the Ministry of Education functioning under the Minister of Education by virtue of sections 3(2) (3) and 6(2) (d) of Law 12/65. The power did not vest in the Minister personally but in the Ministry over which he presided. His responsibility was to lay down the criteria  
35 for the exercise of the power as the policy making authority of the Ministry and retain discretion to refuse, if he thought fit, the recommendations of the appropriate organs of the Ministry. The Minister exercised both powers. A policy decision was taken regarding the procedure to be  
40 followed in choosing books and reserved ultimate power for

himself to approve the choice to be made. Necessarily the discretion of the Ministry in a matter of choice of books for instruction is very wide, something that cannot be overlooked in reviewing the legality of the sub judice decision.

### *The Advisory Committee*

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Where the composition of a body is regulated by law, adherence to the formalities laid down in the statute is an essential ingredient for the validity of the decision taken(1).

The application of this principle is confined to bodies vested with effective competence, the composition of which is regulated by law. They have no application to advisory bodies set up to advise organs, as in this case, with effective decision-making power. A body vested with power to decide, unless constrained by law, may seek advice from any quarter that may throw light on the subject under review. The Committee set up in this case by the Educational Authorities was a purely advisory body, the strength of which was meant to be enhanced by the addition of a seventh member.

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Nor is there substance in the submission that the Ministry of Education subordinated in any way its decision to the views of the Advisory Committee or that it was on that account guilty of deviation from the course earmarked by the Administration(2). The Ministry of Education remained free to attach whatever importance it thought fit to the view and recommendations of the Advisory Committee and this is what ultimately happened in fact. No blame can be attached to the Ministry of Education for the ineffectiveness of the Committee. It was open to the Ministry of Education, no doubt, to set up another Advisory Committee to advise them on the value of the rival series of books proffered for choice, but they were not bound to do so. It was equally open to the Ministry to follow the course they did, that is, to derive whatever assistance they could from the views of

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(1) *Chrysochou Bros v. C.Y.T.A.* (1966) 3 C.L.R. 482;  
*Papadopoulos v The Republic* (1985) 3 C.L.R. 154;  
*J. N. Chrisofides Trading Ltd. v The Republic* (1985) 3 C.L.R. 548.

(2) *Mikellidou v The Republic* (1981) 3 C.L.R. 461.

members of the Advisory Committee and make a final choice themselves.

*Constitutionality of the Decision.*

5 A faint suggestion was made that the decision and the procedure leading thereto breached the constitutional rights of the applicants safeguarded by Article 19, the right of freedom of expression and dissemination of views; Article 20, safeguarding freedom of education and Article 28 entrenching equality before the Administration. I find the  
10 submissions wholly untenable. I fail to see in what way the rights guaranteed by Articles 19 and 20 come into play at all. As far as Article 28 is concerned, applicants were evidently given equal opportunities to the other contestants.

15 *Conclusion*

For the reasons indicated above, the application must be dismissed. The dismissal of the recourse should in no way lead anyone to assume that the enactment of regulations governing the choice of books of instruction is not a matter  
20 of urgency. The existence of proper statutory criteria for the exercise of discretionary powers is not only conducive to their proper exercise, but also a safeguard against abuse of power.

Before concluding the judgment I consider it advisable  
25 to note that in my view it is desirable, in view of the inconclusiveness of the deliberations of the Advisory Committee, that a new committee be set up to look into the matter and make a comprehensive evaluation of the educational needs for books of instruction in the French language. One can only hope that such body will be left free  
30 of interference to pursue its task in the interest of education.

In the result the recourse fails, it is dismissed, accordingly. Let there be no order as to costs.

35 *Recourse dismissed.*  
*No order as to costs.*