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[TRIANTAFYLIDIS, J.]

DEMETRIOS
THYMOPOULOS
AND OTHERS
v.
THE MUNICIPAL
COMMITTEE
OF NICOSIA

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMETRIOS THYMOPOULOS AND OTHERS,

Applicants.

and

THE MUNICIPAL COMMITTEE OF NICOSIA,

Respondent.

(Cases Nos. 169/65, 170/65, 174/65).

Town Planning—Streets—Widening and straightening streets—The Streets and Buildings Regulation Law, Cap. 96, sections 12 and 13—Street-widening scheme prepared and published under section 12—Constitutionality—Constitutional validity of such scheme—Article 23, paragraphs 1, 2, 3 and 4 of the Constitution—Cfr. also, paragraphs 9 and 10 of that Article—Administrative validity of such scheme—Constitutionality—The issue of the Constitutionality of such street-widening scheme has to be decided by exclusive reference to section 12 of the said Law, Cap. 96 (supra), irrespective of the provisions of section 13 thereof and of anything arising out of the application of the latter section—Though sections 12 and 13 are related provisions, still they are sufficiently distinct from each other as to enable the constitutionality of any action taken under either of them to be determined independently—Section 12 and a street-widening scheme prepared thereunder results, as a rule, in the imposition of restrictions or limitations on the right of property which are absolutely necessary in the interest of town and country planning in the sense of paragraph 3 of Article 23 of the Constitution—Which restrictions or limitations – barring certain extreme cases – do fall short of deprivation of property in the sense of paragraphs 2 and 4 of that Article—Therefore section 12 of Cap. 96 and, as a rule, a street-widening scheme made thereunder, are not unconstitutional as being inconsistent with Article 23 of the Constitution—And in the present cases the sub judice street-widening scheme in view of its extent is such that no question of deprivation of property contrary to Article 23 arises—And such scheme results only in the imposition of restrictions or limitations within the ambit of paragraph 3 of Article 23 of the Constitution—The sub judice street-widening scheme, however, is null and void because it is the product of a defective exercise of the discre-

tionary powers of the Respondent Municipal Committee—See, also, herebelow under Administrative Law.

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Administrative Law—Administrative acts—Discretionary powers—Street-widening scheme prepared under section 12 of the Streets and Buildings Regulation Law, Cap. 96—The Court cannot substitute its own discretion regarding the desirability and requirements of such scheme, but has, however to decide whether it has been adopted by the appropriate authority through the exercise of its discretionary powers in the proper manner—In the present cases the sub judice scheme has been adopted without sufficient enquiry into, and consideration of, all material factors and it is, thus, the product of a defective exercise of the relevant discretionary powers—And it is, therefore, an act made contrary to law and in excess and abuse of powers—And it has, therefore, to be declared as a whole null and void—Because a street-widening scheme can only be prepared and considered as a whole.

Administrative act—Contrary to law and in excess and abuse of powers—See above under Administrative Law.

Discretion—Discretionary powers—Defective exercise—No sufficient enquiry into, or sufficient consideration of, material factors—See under Administrative Law, above.

Abuse and excess of powers—See above under Administrative Law.

Excess and abuse of powers—See above under Administrative Law.

Streets—Street-widening scheme—Alignment—See above under Town Planning ; Administrative Law.

Alignment—Streets—See above under Town Planning ; Administrative Law.

Constitutional Law—Deprivation of property—Restrictions or limitations on the right of property—Article 23, paragraphs 1, 2, 3, 4, 9 and 10 of the Constitution—See above under Town Planning.

Property—Right of property—Deprivation—Restrictions or limitations—Article 23 of the Constitution—Street-widening—Sections 12 and 13 of Cap. 96 (supra)—See above under Town Planning.

Deprivation of property—See above under Town Planning.

Limitation on the right of property—See above under Town Planning.

Restrictions on the right of property—See above under Town Planning.

Ecclesiastical property—Privileged position in regard to deprivation of, or restrictions or limitations on, such property under paragraphs 9 and 10 of Article 23 of the Constitution.

Vakf property—Privileged position in regard to deprivation of, or restrictions or limitations on, such property under paragraphs 9 and 10 of Article 23 of the Constitution.

Statutes—Constitutionality—Section 12 of the Streets and Buildings Regulation Law, Cap. 96—Not unconstitutional as being inconsistent with Article 23 of the Constitution.

Constitutionality—Constitutionality of statutes—Constitutionality of the application of a statute—See above under Town Planning.

Words and Phrases—“ Promptly ” in paragraph 3 of Article 23 of the Constitution, does not mean “ in advance ” — “ Deprivation ”, “ Limitation ”, “ Restrictions ” in Article 23 of the Constitution—See above under Town Planning.

Widening—Street-widening schemes—See above under Town Planning ; Administrative Law.

In these three recourses, which have been heard together as they involve the same subject-matter and common issues of law and fact, the Applicants challenge the validity of plans prepared by the Respondent under section 12 of the Streets and Buildings Regulation Law, Cap. 96 with the object of widening and straightening Heroes (Or Heroon) Street in Nicosia ; notice of such plans—hereinafter referred to as a “ street-widening scheme ”—was published in the official Gazette of the 1st July, 1965, under Notification 744.

One of the principal issues which has arisen in these cases is the constitutionality of the *sub judice* street-widening scheme ; it has been challenged as being incompatible with the provisions of Article 23 of the Constitution in that it amounts in fact to a deprivation of property otherwise than as permitted under such Article. On this issue of constitutionality the Court heard also arguments by counsel in case No. 175/65 *Malliotis and Others and the Municipal Committee of Nicosia** which is, for, a recourse against a street widening scheme.

* Counsel Appearing for the Applicants: Fr. Markides with
A. Triantafyllides ;

Counsel for the Municipality : K. Michaelides ; and counsel
representing the Attorney-General as *amicus curiae* :
K. Talarides.

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Apart from the issue of unconstitutionality, the *sub judice* street-widening scheme was challenged on the main ground of improper or defective exercise by the Municipal Committee of its discretionary powers.

The material parts of Article 23 of the Constitution (*i.e.* paragraphs 1, 2, 3 and 4 thereof) are fully set out *post* in the judgment of the Court. It should be noted that in view of material differences existing between the two official texts (Greek and Turkish) of paragraph 3 of Article 23, it is the English draft text thereof which has to be resorted to in construing it (see *Ramadan and The Electricity Authority of Cyprus*. 1 R.S.C.C. 49, at p. 57).

The street-widening scheme in question was made under section 12 of the Streets and Buildings Regulation Law, Cap. 96. which reads as follows :

“ 12 (1) Notwithstanding anything contained in this Law, an appropriate authority may, with the object of widening or straightening any street, prepare or cause to be prepared plans showing the width of such street and the direction that it shall take.

(2) When any plans have been prepared under sub-section (1), the appropriate authority shall deposit such plans in its office and shall also cause a notice to be published in the Gazette and in one or more local newspapers to the effect that such plans have been prepared and deposited in its office and are open to inspection by the public and such plans shall be open to the public for inspection, at all reasonable times, for a period of three months from the date of the publication of the notice in the Gazette.

(3) At the expiration of the period set out in sub-section (2), the plans shall, subject to any decision by the Governor in Council on appeal as in section 18 of this Law provided, become binding on the appropriate authority and on all persons affected thereby and no permit shall be issued by the appropriate authority save in accordance with such plans.”

Sub-sections (2) and (3) of section 12 have now to be applied modified in certain respects due to the coming into operation of the Constitution, and particularly in view of Article 146 thereof ; as a result the words “ three months ” in sub-section (2) are to be read “ seventy-five days ”, and the words “ Governor-

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in-Council on appeal” in sub-section (3) are to read “ Supreme Constitutional Court on a recourse ” (see *Pelides and The Republic*, 3 R.S.C.C. 13 at p. 19) ; and now the relevant competence of the Supreme Constitutional Court is exercised by this Court (the Supreme Court) under the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33 of 1964).

On the other hand, section 13 of the said same Law, Cap. 96 reads as follows :

“ 13. (1) Where a permit is granted by an appropriate authority and such permit entails a new alignment for any street, in accordance with any plan which has become binding under section 12 of this Law, any space between such alignment and the old alignment, which is left over when a permit is granted, shall become part of such street without the payment by the appropriate authority of any compensation whatsoever :

Provided that, if it is established that hardship would be caused if no compensation were paid, the appropriate authority shall pay such compensation as may be reasonable having regard to all the circumstances of the case.

(2) When a permit is granted under subsection (1) the District Lands Office shall, upon application by any interested party, cause the necessary amendments to the relative registrations to be effected and the amended registration shall be held final notwithstanding that any certificate relating thereto remains unaltered.”

In rejecting the submission as to the unconstitutionality of the street-widening scheme in question, but in annulling it on the ground of defective exercise by the Respondent Authority of its discretionary powers, the Court :

Held, I. As to the issue of constitutionality of the sub judice street-widening scheme :

(1) Much reference has been made in argument to analogous legal situations elsewhere—particularly in Greece and France. Such reference has enabled the Court to view the issue concerned against its proper judicial background. But after full consideration of the relevant Greek and French jurisprudence I have reached the conclusion that no decisive assistance could be derived therefrom in view of the fact that Article 23 of our

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Constitution is somewhat *sui generis* and in some very important respects different from what is applicable in Greece, France and elsewhere. (Note : Article 23 in its material parts is fully set out *post* in the judgment of the Court).

(2) (a) As it appears, at once, from an examination of the provisions of Article 23 of our Constitution (*infra*), it is not every interference with the right of property—as defined in paragraph 1 thereof—that may be considered as amounting to a deprivation, in the sense of paragraph 2 of the same Article, *infra* ; an interference may be such as to amount only to a restriction or limitation in the sense of paragraph 3 of the Article in question, *infra*.

(b) Were an express provision such as paragraph 3, not to be found in Article 23, then it might well have been the position that many an interference with the right of property would have to be treated as amounting to a deprivation and nothing else.

(c) When does an interference with the right of property amount only to a restriction or limitation in the sense of paragraph 3 of Article 23, and falls short of being a deprivation ? The answer would largely depend on the nature of each particular case and in certain circumstances it may be only a question of degree (see *The Holy See of Kitium and The Municipal Council of Limassol*, 1 R.S.C.C. 15).

(d) Thus, in the present cases it has to be decided whether the *sub judice* street-widening scheme results only in the imposition of restrictions or limitations, or whether it results in deprivation of property, in which latter case such scheme would be obviously unconstitutional.

(3) (a) In the present Cases we are only concerned with the validity of a street-widening scheme prepared and published under section 12 of the Streets and Buildings Regulation Law, Cap. 96 (*supra*) and with the consequences of this scheme under that section. We are not concerned in any way in the present cases with anything arising out of the application of section 13 of Cap. 96 (*supra*).

(b) I have come to the conclusion that though sections 12 and 13 (*supra*) are obviously related provisions, they are sufficiently separate from each other as to enable the constitutionality of any action taken under either of them to be determined independently ; they provide for two distinct legal situations, even though the one under section 13 (*supra*) arises as a result of the pre-existence of the one under section 12 (*supra*).

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(c) The situation under section 12—and particularly under sub-section (3) thereof—arises at the instance of the municipal administration concerned, through the preparation and publication of a street-widening scheme, and it results in preventing the issue of a building permit which is not in accordance with such scheme ; in other words, the owner of such a property can, for example, obtain a building permit to repair, or add to, a building standing thereon, provided that such repairs or additions relate to a part of the building not affected by the relevant scheme. On the other hand the situation under section 13—and particularly sub-section (1) thereof, *supra*—cannot arise at all at the instance of the municipality, but it arises only at the instance of the owner of the affected property when he decides to apply for a permit entailing the new alignment laid down by the street-widening scheme concerned.

(4) It is correct that both sections 12 and 13 of Cap. 96 (*supra*) contain provisions relevant to the achievement of the object of a street-widening scheme. But even assuming—and I am leaving this point entirely open—that section 13 were to be found to provide, in effect, for a deprivation of property otherwise than as envisaged under Article 23 of the Constitution (*infra*) (in which case such section would either have to be applied modified, or to be replaced by a new provision, in accordance with the said Article), it would not at all follow that what is provided for under section 12, in relation to a street-widening scheme, is necessarily unconstitutional, too, only because of anything to be found in section 13.

(5) (a) In my opinion, the prohibition in section 12, arising out of a street-widening scheme prepared thereunder, results, as a rule, in the imposition of restrictions or limitations on the right of property—and particularly on the use of such property for purposes of building development—which are absolutely necessary in the interest of town and country planning in the sense of paragraph 3 of Article 23 of the Constitution (*infra*), and which do fall short of deprivation in the sense of the said Article ; therefore, section 12 of Cap. 96 (*supra*) is not unconstitutional as being inconsistent with Article 23.

(b) There might, of course, arise a case in which a street-widening scheme, prepared under the said section 12, would, by virtue of the provisions of that section, affect a property, as for example a not yet built upon building plot, to such an extent as to render it totally unsuitable for the ordinary, in the circumstances, use of such property ; in such a case one might

be inclined to say that the application of the prohibition in section 12, through the scheme concerned, would result in deprivation, and not merely in a restriction or limitation, and it would have to be examined then if the said scheme is unconstitutional as bringing about a deprivation of property in a manner otherwise than as permitted under Article 23 of the Constitution (*infra*).

(c) In the present cases, however, on the material before me I am quite satisfied that the extent to which the properties of the Applicants are affected by the *sub judice* street-widening scheme is such that no question of deprivation contrary to Article 23 arises and such scheme results only in the imposition of restrictions or limitations within the ambit of paragraph 3 of Article 23 of the Constitution (*infra*).

(6) That street-widening scheme is to be regarded for the purposes of Article 23 as imposing, in the normal course, only restrictions or limitations, and not as resulting in deprivation, may be derived from the fact that though paragraphs 9 and 10 of Article 23 of the Constitution provide that no deprivation, restriction or limitation may affect ecclesiastical or vakf properties without the written consent of those in control of such properties, however, "restrictions or limitations for the purposes of town and country planning under the provisions of paragraph 3" of Article 23 are expressly exempted from the operation of the aforesaid paragraphs 9 and 10; it could hardly be reasonably maintained that though on the one hand the constitution obviously does not intend to allow the privileged status of ecclesiastical and vakf properties to stand in the way of town and country planning, on the other hand the proper construction of the relevant provisions of Article 23 is such as to lead to holding that a street-widening scheme, one of the main means of town planning, does result, even on the basis only of the provisions of section 12 of Cap. 96 (*supra*), in deprivation for purposes of town planning—which is not exempted from the operation of paragraphs 9 and 10 of Article 23 (*supra*)—and does not amount only to the imposition of restrictions or limitations, under paragraph 3 of Article 23 for purposes of town planning—which restrictions or limitations are exempted from the operation of the said paragraphs 9 and 10.

(7) It has been submitted on behalf of the Applicants that in any case such street-widening scheme is unconstitutional even if it imposes only restrictions or limitations under

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paragraph 3 of Article 23, because no compensation for such restrictions etc. had been paid in advance of its taking effect ; it has been argued that this is what is required to be done by the term “ promptly ” in paragraph 3 of Article 23 (*infra*). I can find no merit in the argument ; the term “ promptly ” has to be given its own ordinary meaning and cannot be construed, especially if one compares the said paragraph 3 with paragraph 4 of the same Article (*infra*), as meaning “ in advance ” of the taking of effect of the relevant restriction or limitation.

(8) For all the foregoing reasons I find that the *sub judice* scheme has to be held to be constitutional in so far as it is a scheme entailing the consequences provided for by section 12 of Cap. 96 (*supra*), under which such scheme has been prepared and published.

Held, II. As to the validity of the sub judice street-widening scheme as an administrative act :

(1) (a) This Court in examining the validity, as an administrative act, of the *sub judice* street-widening scheme, cannot substitute its own discretion, in the place of that of the Municipal Committee, as regards the desirability of the scheme for town planning purposes or as regards the form to be given to such scheme in order to meet the requirements arising out of such purposes.

(b) But this Court has still to examine and decide whether or not the said scheme has been adopted by the Municipal Committee—the appropriate authority for the purposes of section 2 of Cap. 96, *supra*, because it was appointed after the enactment, on the 1st December 1964, of the Municipalities Law 1964 (Law No. 64 of 1964)—, through the exercise of its discretionary powers in the proper manner.

(2) (a) With the exception of the Chairman of the Municipal Committee, the remaining members of the Committee—which had to act as a collective organ—had no real opportunity, through access to any written record, other than the relevant survey map, to study in advance the merits of the scheme concerned. Their examination of the matter was limited only to what transpired at the meeting of the 16th August, 1965, at which eleven street-widening schemes, including the one *sub judice*, were considered during two-and-a-half to three hours only.

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(b) It is quite clear, thus, that the examination made by the Municipal Committee, as such, of the scheme in question could not have been a really thorough one ; this fact may not, perhaps, be by itself a sufficient reason for the annulment of the said scheme but it is a factor to be borne in mind in evaluating the significance of other elements relevant to the manner the Municipal Committee decided on the matter at its relevant meeting.

(3) (a) At that meeting of the 16th April, 1965 (*supra*) the Town Planning officer, C. I., was present and gave to the members of the Committee necessary explanations regarding the street-widening schemes for Heroes Street and the other ten such schemes which were adopted on that occasion.

(b) Unfortunately no record at all has been made in the minutes of the said meeting of the 16th April, 1965, regarding the explanations given in relation to the *sub judice* scheme by the said Officer, or regarding the reasons for which it was adopted by the Committee.

(c) So in order to discover such reasons, one has to fall back on the evidence given before the Court by the said Officer, C.I., regarding the considerations which led him to prepare the said scheme in its present form, and which considerations he presumably explained, in whole or in part, in the short time available for the purpose at the aforesaid meeting of the Respondent Municipal Committee of the 16th April, 1965.

(d) According to him when a street-widening scheme is to be prepared the main considerations which are taken into account are the communications needs, the road traffic safety requirements, the aesthetic aspects and the financial consequences of the scheme for the Municipality in terms of compensation to be paid by it in relation thereto ; he has laid stress mostly on the communications needs.

(4) (a) Regarding the street-widening scheme, subject-matter of this recourse, the said Town Planning Officer has told the Court that he had prepared it in 1961 in the form it was later adopted in April, 1965 ; he said that in doing so he had, *inter alia*, envisaged Heroes Street (*supra*) as a connecting link between the centre of Nicosia town and a projected, at the time, new trunk road which would join up with the main Nicosia-Morphou road. But it appears from the evidence before the Court of this Officer that as late as May, 1966, when he was testifying

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before the Court, such project had yet to be approved by the Planning Commission, if it were to be executed at all in future.

(b) Thus, in April, 1965, when the Respondent Municipal Committee, adopted the *sub judice* street-widening scheme, this scheme was based, to a material extent, on a projected new trunk road towards Morphou which was nothing more yet than an idea which might never coincide with reality. Nor does there appear that any effort has been then made to ascertain the actual fate of the new trunk road project.

(c) In my opinion either this project was not mentioned at the relevant meeting of the Respondent Committee of the 16th April, 1965, in which case it obviously took action in the matter of the scheme concerned without sufficient knowledge and consideration of the full facts, or it was mentioned, in which case it ought not to have taken action until the fate at that time of the project had been investigated ; in either case the Municipal Committee has to be found to have adopted the said street-widening scheme in a manner not sufficiently compatible with the essentials of the proper exercise of its relevant discretionary powers.

(5) (a) The aforesaid Town Planning Officer has told the Court that when he prepared the *sub judice* scheme in 1961 (*supra*) a survey had been carried out to find the existing buildings on either side of Heroes street.

(b) It is common ground, on the other hand, that the stage of building development at a particular street, at the time when a street-widening is to be adopted in relation thereto, is a material consideration in determining the width for such street to be laid down by the scheme.

(c) Yet, between 1961 when the *sub judice* scheme was prepared and 1965 when it was adopted no further study of the matter was made as no recent survey of the building development in Heroes Street appears to have been carried after 1961.

(d) Thus, I am driven to the conclusion once again that the street-widening scheme in question was adopted through a defective exercise of the discretionary powers of the Respondent Municipal Committee, in that it relied, or was led to rely, on a most material factual aspect as it existed five years earlier in 1961, and not as it existed in 1965.

(6) Finally, I am of the view that no sufficient study of the financial consequences of the *sub judice* scheme commensurate

to a proper exercise of the relevant discretion, was made by the Respondent Committee prior to the adoption of such scheme.

(7) (a) For all the foregoing reasons I have reached the conclusion that the *sub judice* street-widening scheme has been adopted without sufficient enquiry into, and due consideration of, all material factors and it is, thus, the product of a defective exercise of the relevant discretionary powers ; it is, therefore, an act made contrary to law and in excess and abuse of powers.

(b) In the circumstances I have decided to declare it, as a whole, null and void and of no effect whatsoever ; as it has been very correctly conceded by the Respondent a street-widening scheme can only be prepared and considered as a whole.

Sub judice scheme declared null and void.

Cases referred to :

Ramadan and the Electricity Authority of Cyprus, 1 R.S.C.C. 49 at p. 57 :

The Holy See of Kitium and The Municipal Council of Limassol, 1 R.S.C.C. 15 :

Pelides and The Republic, 3 R.S.C.C. 13 at p. 19 :

Maliotis and The Municipality of Nicosia (1965) 3 C.L.R. 75.

Recourse.

Recourse against the validity of plans prepared by the Respondent under section 12 of the Streets and Buildings Regulation Law Cap. 96 with the object of widening and straightening Heroes Street in Nicosia.

Ch. Ioannides, for Applicant in case 196/65.

C. Myrianthis, for Applicants in case 170/65.

L. Clerides, for Applicants in case 174/65.

K. Michaelides, for Respondent.

Cur. adv. vult.

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The following Judgment was delivered by:

TRIANTAFYLIDIS, J.: In these three recourses, which have been heard together as they involve the same subject-matter and common issues of law and fact, the Applicants challenge, in effect, the validity of plans prepared by the Respondent under section 12 of the Streets and Buildings Regulation Law (Cap. 96) with the object of widening and straightening Heroes (or Heroon) street in Nicosia; notice of such plans—which will be hereinafter referred to as a “street-widening scheme”—was published in the official Gazette of the 15th July, 1965, under Not. 744.

Case 174/65 has been heard in these proceedings only in part, namely, in so far as it relates to the street-widening scheme in question; therefore, it will be determined by this Judgment to that extent only and will be heard further regarding the remaining claims therein.

One of the principal issues which has arisen in these Cases is the constitutionality of the *sub judice* scheme; it has been challenged as being incompatible with the provisions of Article 23 of the Constitution in that it amounts in fact to a deprivation of property otherwise than as permitted under such Article.

On this issue I have heard also arguments by counsel in Case 175/65 which is, too, a recourse against a street-widening scheme; in that Case counsel representing the Attorney-General appeared as *amicus curiae* and addressed the Court on the issue of constitutionality.

The hearing of Case 175/65 on the said issue was a rather protracted one and took quite some time to complete; thus, unfortunately, the delivery of the Judgment in the present Cases has had to be delayed, accordingly, so that the issue concerned could be decided on the basis of all possibly relevant considerations.

Much reference has been made in argument to analogous legal situations elsewhere—particularly in Greece and France. Such reference has enabled the Court to view the issue concerned against its proper juridical background. But after lengthy perusal of relevant Greek and French jurisprudence I have reached the conclusion that no decisive assistance could be derived therefrom in view of the fact that Article 23 of our Constitution is somewhat *sui generis* and in some very important

respects different from what is applicable in Greece, France and elsewhere.

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Our Article 23, in its material parts, provides as follows.

"1. Every person, alone or jointly with others, has the right to acquire, own, possess, enjoy or dispose of any *movable or immovable property and has the right to respect for such right*

The right of the Republic to underground water, minerals and antiquities is reserved.

2 No deprivation or restriction or limitation of any such right shall be made except as provided in this Article.

3. Restrictions or limitations which are absolutely necessary in the interest of the public safety or the public health or the public morals or the town and country planning or the development and utilization of any property to the promotion of the public benefit or for the protection of the rights of others may be imposed by law on the exercise of such right

Just compensation shall be promptly paid for any such restrictions or limitations which materially decrease the economic value of such property, such compensation to be determined in case of disagreement by a civil court

4 Any movable or immovable property or any right over or interest in any such property may be compulsorily acquired by the Republic or by a municipal corporation or by a Communal Chamber for the educational, religious, charitable or sporting institutions, bodies or establishments within its competence and only from the persons belonging to its respective Community or by a public corporation or a public utility body on which such right has been conferred by law, and only--

- (a) for a purpose which is to the public benefit and shall be specially provided by a general law for compulsory acquisition which shall be enacted within a year from the date of the coming into operation of this Constitution, and
- (b) when such purpose is established by a decision of the acquiring authority and made under the provisions of such law stating clearly the reasons for such acquisition, and

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(c) upon the payment in cash and in advance of a just and equitable compensation to be determined in case of disagreement by a civil court”.

As it appears, at once, from an examination of the provisions of Article 23, it is not every interference with the right of property—as defined in paragraph 1—that may be considered as amounting to a deprivation, in the sense of paragraph 2 of the same Article; an interference may be such as to amount only to a restriction or limitation in the sense of paragraph 3 of the Article in question—and it is convenient to point out, at this stage, that in view of material differences existing between the two official texts of Article 23.3, it is the English draft text thereof which has to be resorted to in construing it (see *Ramadan and The Electricity Authority of Cyprus*, 1 R.S.C.C. p. 49, at p. 57).

Were an express provision, such as paragraph 3, not to be found in Article 23, then it might well have been the position that many an interference with the right of property would have to be treated as amounting to a deprivation and nothing less.

When does an interference with the right of property amount only to a restriction or limitation in the sense of Article 23.3, and falls short of being a deprivation?

The answer would largely depend on the nature of each particular case and in certain circumstances it may be only a question of degree. (See *The Holy See of Kitium* and *The Municipal Council of Limassol*, 1 R.S.C.C. p. 15).

Thus, in these Cases it has to be decided whether the *sub judice* street-widening scheme results only in the imposition of restrictions or limitations or whether it results in deprivation of property. Such scheme has been made under section 12 of Cap. 96 which reads as follows:

“12. (1) Notwithstanding anything contained in this Law, an appropriate authority may, with the object of widening or straightening any street, prepare or cause to be prepared plans showing the width of such street and the direction that it shall take.

(2) When any plans have been prepared under subsection (1), the appropriate authority shall deposit such plans in its office and shall also cause a notice to be published in the Gazette and in one or more local newspapers to

the effect that such plans have been prepared and deposited in its office and are open to inspection by the public and such plans shall be open to the public for inspection, at all reasonable times, for a period of three months from the date of the publication of the notice in the Gazette

(3) At the expiration of the period set out in sub-section (2), the plans shall, subject to any decision by the Governor in Council on appeal as in section 18 of this Law provided, become binding on the appropriate authority and on all persons affected thereby and no permit shall be issued by the appropriate authority save in accordance with such plans".

Sub-sections (2) and (3) of section 12 have to be applied modified in certain respects due to the coming into operation of the Constitution, and particularly of Article 146 thereof; as a result the words "three months" in sub-section (2) are to read "seventy-five days", and the words "Governor-in-Council on appeal" in sub-section (3) are to read "Supreme Constitutional Court on a recourse" (see *Pelides and The Republic*, 3 R.S.C.C p. 13 at p 19); and now the relevant competence of the Supreme Constitutional Court is exercised by this Court under the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64)

In the present Cases we are not in any way concerned with anything arising out of the application of section 13 of Cap 96, which reads as follows -

"13 (1) Where a permit is granted by an appropriate authority and such permit entails a new alignment for any street, in accordance with any plan which has become binding under section 12 of this Law, any space between such alignment and the old alignment, which is left over when a permit is granted, shall become part of such street without the payment by the appropriate authority of any compensation whatsoever

Provided that, if it is established that hardship would be caused if no compensation were paid, the appropriate authority shall pay such compensation as may be reasonable having regard to all the circumstances of the case.

(2) When a permit is granted under sub-section (1), the District Lands Office shall, upon application by any

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interested party, cause the necessary amendments to the relative registrations to be effected and the amended registration shall be held final notwithstanding that any certificate relating thereto remains unaltered”.

We are only concerned with the validity of a street-widening scheme prepared and published under section 12 of Cap. 96 and with the consequences of this scheme under such section.

But I have had to consider whether or not I should, in deciding on the validity of the said street-widening scheme, regard the provisions of sections 12 and 13 as being so interconnected and inseparable as to render it necessary for me to pronounce in these proceedings on the constitutionality of the said scheme not only in the light of section 12, but, also, in the light of section 13 as well.

I have come to the conclusion that though sections 12 and 13 are obviously related provisions, they are sufficiently separate from each other as to enable the constitutionality of any action taken under either of them to be determined independently; they provide for two distinct legal situations, even though the one under section 13 arises as a result of the pre-existence of the one under section 12.

The situation under section 12—and particularly sub-section (3) thereof—arises at the instance of the municipal administration concerned, through the preparation and publication of a street-widening scheme, and it results in preventing the issue of a permit which is not in accordance with such scheme; it is not all permits, in relation to a property affected by a scheme, which are prohibited, but only those which are not in accordance therewith; in other words, the owner of such a property can, for example, obtain a building permit to repair, or add to, a building standing thereon, provided that such repairs or additions relate to a part of the building not affected by the relevant scheme.

On the other hand, the situation under section 13—and particularly sub-section (1) thereof—cannot arise at all at the instance of the municipal administration by way of execution of a street-widening scheme which has come into force, but it arises only at the instance of the owner of an affected property when he decides to apply for a permit entailing the new alignment laid down by the scheme.

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It is correct that both sections 12 and 13 contain provisions relevant to the achievement of the object of a street-widening scheme. But even *assuming*—and I am leaving this point entirely open—that section 13 were to be found to provide, in effect, for a deprivation otherwise than as envisaged under Article 23 (in which case such section would either have to be applied modified, or to be replaced by a new provision, in accordance with the said Article) it would not at all follow that what is provided for under section 12, in relation to a street-widening scheme, is necessarily unconstitutional, too, only because of the unconstitutionality of anything to be found in section 13; the constitutionality of a street-widening scheme, to the extent in which the provisions of section 12 are involved, does depend on whether or not such provisions contravene themselves the Constitution, and particularly Article 23 thereof with which we are concerned in the present Cases.

In my opinion, the prohibition in section 12, arising out of a street-widening scheme prepared thereunder, results, as a rule, in the imposition of restrictions or limitations on the right of property—and particularly on the use of such property for purposes of building development—which are absolutely necessary in the interest of town and country planning in the sense of paragraph 3 of Article 23, and which do fall short of deprivation in the sense of the said Article; therefore, section 12 is not unconstitutional as being inconsistent with Article 23.

There might, of course, arise a case in which a street-widening scheme, prepared under section 12, would, by virtue of the provisions of such section, affect a property, as for example a not yet built upon building plot, to such an extent as to render it totally unsuitable for the ordinary, in the circumstances, use of such property; in such a case one might be inclined to say that the application of the prohibition in section 12, through the scheme concerned, would result in deprivation, and not merely in a restriction or limitation, and it would have to be examined then if the said scheme is unconstitutional as bringing about a deprivation in a manner otherwise than as permitted under Article 23.

In the present Cases, however, on the basis of the material before me as established by evidence which I accept, I am quite satisfied that the extent to which the properties of the Applicants are affected by the *sub judice* street-widening scheme is such

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that no question of deprivation contrary to Article 23 arises and such scheme results only in the imposition of restrictions or limitations within the ambit of paragraph 3 of Article 23.

That a street-widening scheme is to be regarded, for the purposes of Article 23 as imposing, in the normal course, only restrictions or limitations, and not as resulting in deprivation, may also be derived from the fact that though paragraphs 9 and 10 of Article 23 provide that no deprivation, restriction or limitation may affect ecclesiastical or vakf properties without the written consent of those in control of such properties, "restrictions or limitations for the purposes of town and country planning under the provisions of paragraph 3" of Article 23 are exempted expressly from the operation of the said paragraphs 9 and 10; it could hardly be reasonably maintained that though on the one hand the Constitution obviously does not intend to allow the privileged status of ecclesiastical and vakf properties to stand in the way of town and country planning, on the other hand the proper construction of the relevant provisions of Article 23 is such as to lead to holding that a street-widening scheme, one of the main means of town planning, does result, even on the basis only of the provisions of section 12 of Cap. 96, in deprivation for purposes of town planning—which is not exempted from the operation of paragraphs 9 and 10 of Article 23—and does not amount only to the imposition of restrictions or limitations, under paragraph 3 of Article 23 for purposes of town planning—which are exempted from the operation of the said paragraphs 9 and 10.

Before concluding with the issue of the constitutionality of the street-widening scheme, the subject-matter of these proceedings, I may deal shortly with a submission made by counsel for Applicants to the effect that in any case such scheme is unconstitutional, even if it only imposes restrictions or limitations under paragraph 3 of Article 23, because no compensation for such restrictions or limitations has been paid in advance of its taking effect; it has been argued that this is what was required to be done by the term "promptly" in paragraph 3 of Article 23.

I can find no merit in this argument; in my opinion, the term "promptly" has to be given its ordinary meaning and cannot be construed, especially if one compares the said paragraph 3 with paragraph 4 of the same Article, as meaning "in advance" of the taking of effect of the relevant restriction or limitation.

For all the foregoing reasons I find that the *sub judice* scheme has to be held to be constitutional in so far as it is a scheme entailing the consequences provided for by section 12 of Cap. 96, under which such scheme has been prepared and published.

What would be the effect, vis-a-vis the Constitution, of anything to be done in future under section 13 of Cap. 96, or any other provision of Law, as a result of the *sub judice* street-widening scheme, is a matter which I need not decide in the present proceedings and which I leave entirely open for future determination as and when such a matter would arise.

I shall deal next with the question of the validity of the said scheme as an administrative act.

It was adopted at a meeting of the Municipal Committee of Nicosia held on the 16th April, 1965 (see the minutes *exhibit* 9). It is common ground that such Committee was first appointed after the enactment, on the 1st December, 1964, of the Municipalities Law (Law 64/64), and that it was in the circumstances the appropriate authority for the purposes of section 12 of Cap. 96.

According to the evidence given by the Municipal Engineer of the Nicosia Municipality, Mr. L. Demetriades, the said scheme had been adopted twice before in the same form as it was adopted on the 16th April, 1965—at meetings of the previously existing Municipal Committee of Nicosia, on the 13th January, 1961 and the 9th March, 1962 (see the minutes *exhibit* 11); such Committee was an entirely differently constituted body from the one which adopted the scheme on the 16th April, 1965.

As a result of the decisions taken, as above, in January, 1961 and March, 1962, notice of the scheme was published in the official Gazette on the 12th May, 1961 and the 26th July, 1962, respectively.

Then, according to the evidence of Mr. Demetriades, as a result of a Court decision given on the 27th February, 1965—*Malliotis and The Municipality of Nicosia*, (1965) 3 C.L.R. 75—the street-widening scheme for Heroes Street was treated as not being validly in force and the matter, therefore, was considered afresh by the new Municipal Committee, as aforesaid, on the 16th April, 1965; notice of the scheme was published in the official Gazette on the 15th July, 1965.

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It is not in dispute that the meeting of the 16th April, 1965, was the first and only occasion on which the matter of such scheme was considered by the said new Municipal Committee.

This Court in examining the validity, as an administrative act, of the *sub judice* street-widening scheme, cannot substitute its own discretion, in the place of that of the Municipal Committee, as regards the desirability of the scheme for town planning purposes or as regards the form to be given to such scheme in order to meet the requirements arising out of such purposes.

But the Court has still to examine and decide whether or not the said scheme has been adopted by the Municipal Committee through an exercise of its discretionary powers in the proper manner.

A lot of material has been placed before the Court in this connection. To avoid undue prolixity I shall mention briefly only what has, in my opinion, to be referred to for the purposes of deciding these Cases; and what is referred to hereinafter should be taken to have been established to my satisfaction:

As it appears from the relevant minutes (*exhibit 9*) the said scheme was adopted by the Municipal Committee at its meeting of the 16th April, 1965, together with another ten street-widening schemes. It was a meeting which lasted for five hours. According to the evidence of the Town Clerk, Mr. Koutas, the consideration of the eleven street-widening schemes lasted in all only about two-and-a-half to three hours.

According to the evidence of Dr. O. Ioannides, the Chairman of the Municipal Committee, he himself had studied the scheme in question, in the presence of Mr. C. Ioannides—the Town Planning Officer of the Planning and Housing Department of Government, who had prepared the scheme—and of the Municipal Engineers, some time before the meeting of the 16th April, 1965.

As stated, however, by counsel for Respondent no relevant file of the Municipality exists in relation to the *sub judice* or any other street-widening scheme; all that there exists is a survey map on which the scheme is marked; and no written report in relation to the street-widening scheme in question had been placed before the Municipal Committee.

So, with the exception of the Chairman of the Municipal Committee, the remaining members of the Committee—which had to act as a collective organ—had not real opportunity,

through access to any written record, other than the relevant survey map, to study in advance the merits of the scheme concerned. Their examination of the matter was limited only to what transpired at that one meeting of the 16th April, 1965.

It is quite clear, thus, that the examination made by the Municipal Committee, as such, of the scheme could not have been a really thorough one; this fact may not, perhaps, be by itself a sufficient reason for the annulment of the said scheme but it is a factor to be borne in mind in evaluating the significance of other elements relevant to the manner in which the Municipal Committee decided on the matter at its relevant meeting.

At such meeting the aforementioned Town Planning Officer, Mr. C. Ioannides, was present, and he gave to the members of the Committee necessary explanations regarding the street-widening scheme for Heroes Street and the other ten street-widening schemes which were adopted on that occasion.

Unfortunately no record at all has been made in the minutes of the meeting of the 16th April, 1965 (*exhibit 9*) regarding the explanations given in relation to the *sub judice* scheme by Mr. C. Ioannides, or regarding the reasons for which it was adopted by the Committee.

So, in order to discover such reasons, one has to fall back on the evidence given by Mr. C. Ioannides regarding the considerations which led him to prepare the said scheme in its present form, and which considerations he presumably explained, in whole or in part, in the short time available for the purpose, at the meeting of the Municipal Committee of the 16th April, 1965.

According to him when a street-widening scheme is to be prepared the main considerations which are taken into account are the communications needs, the road traffic safety requirements, the aesthetic aspects and the financial consequences of the scheme for the Municipality, in terms of compensation to be paid by it in relation thereto; he has laid stress mostly on the communications needs.

Regarding the scheme in question he has told the Court that in 1961 he had prepared it in the form in which it was adopted in 1965; he said that in doing so he had, *inter alia*, envisaged Heroes Street as a connecting link between the centre of Nicosia town and a projected, at the time, new trunk road which would be constructed in future, to the north of the area through which

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runs Heroes Street, and which would join up with the main Nicosia–Morphou road (Heroes Street appears as part of the road marked AB on the survey map, *exhibit* 10, and the projected new trunk road appears on the same map marked as road CBD and then in dotted lines leading up to the Nicosia–Morphou road).

The said project of the new trunk road leading out of Nicosia towards Morphou was conceived, according to the evidence of Mr. C. Ioannides, about ten years ago, when he himself was not serving in the relevant Department, and so he could not say if it had then been approved by Government in principle. It appears from his evidence that as late as May 1966, when he was testifying before the Court, such project had yet to be approved by the Planning Commission, if it were to be executed at all in future.

Thus, in April, 1965, when the Municipal Committee adopted the street-widening scheme concerned, it was based, to a material extent, on a projected new trunk road towards Morphou which was nothing more yet than an idea which might never coincide with reality. Nor does there appear to have been made then any effort to ascertain the actual fate of the new trunk road project. In my opinion either this project was not mentioned at the meeting of the Municipal Committee of the 16th April, 1965, in which case it obviously took action in the matter of the scheme concerned without sufficient knowledge and consideration of the full facts, or it was mentioned, in which case it ought not to have taken action until the at that time fate of the project had been investigated; in either case the Municipal Committee has to be found to have adopted the said scheme in a manner not sufficiently compatible with the essentials of the proper exercise of its relevant discretionary powers.

Mr. C. Ioannides has told the Court that when he prepared the scheme in 1961 a survey had been carried out to find the existing buildings on either side of Heroes Street; and that he visited himself Heroes Street for the purpose.

As it is to be derived from the evidence of the Municipal Engineer Mr. Demetriades the stage of building development at a particular street, at the time when a street-widening scheme is to be adopted in relation thereto, is a material consideration in determining the width for such street to be laid down by the scheme. Thus, he told the Court, that, in view of the relevant building development at the time, the street-widening schemes

for Nikis Street and Passiadou Street laid down a width of 42 feet for these two streets, and the street-widening scheme for Hilon Street laid down a width of 45 feet for such street; and all these three schemes were adopted at the meeting of the 16th April, 1965 together with the scheme which is the subject-matter of these proceedings.

Yet, between 1961 when the *sub judice* scheme was prepared and 1965 when it was adopted no further study of the matter was made; no recent survey of the building development in Heroes Street appears to have been carried out prior to the adoption in April 1965 of the said scheme which laid down a 50 feet width for such street, the same width as envisaged in 1961. Mr. C. Ioannides has admitted very candidly that between 1961 and 1965 he may have passed through Heroes Street to have a look around, but he did not actually conduct any survey of the street, on the spot, for town planning purposes.

Thus, I am driven once again to the conclusion that the street-widening scheme in question was adopted through a defective exercise of the discretionary powers of the Municipal Committee, in that it relied, or was led to rely, on a most material factual aspect as it existed five years earlier in 1961, and not as it existed—having never been properly investigated then—in 1965; and it is a cardinal principle of Administrative Law that an administrative act or decision has to be based on the material facts existing at the time when it is reached, and a sufficient enquiry for the ascertainment of such facts should be made.

Coming, next, to the matter of the financial consequences of the street-widening scheme for the Municipality, counsel for Respondent has called an expert witness, Mr. A. Pantazis, who has given evidence regarding the extent to which properties at Heroes Street will be affected by the scheme.

I shall not express a view on this as it is a matter directly connected with the issue of compensation which may be claimed by any one of the Applicants under Article 23.3 of the Constitution and which will have to be pronounced upon by a civil Court.

There remains the fact, none the less, that Mr. Pantazis has made a full study of the matter, as a valuer, on the basis of which the financial consequences entailed by the scheme for the Municipality—as seen by him—might be assessed.

But, as counsel for Respondent has stated, Mr. Pantazis has studied the matter *after* the adoption of the street-widening

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scheme and with a view to giving evidence in these proceedings. I fail to see how the Municipal Committee could have adopted the scheme in question with a sufficient examination of its financial consequences without the benefit of a study such as that made by Mr. Pantazis; and had such a study been made before the adoption of the scheme by any one else, and relied upon for the purpose by the Municipal Committee, surely the relevant report would have been produced or the author thereof would have been called to testify instead of Mr. Pantazis, who would not have had to study the matter *ex post facto*. Thus, I am necessarily driven to the conclusion that no sufficient study of the financial consequences of the *sub judice* scheme, commensurate to a proper exercise of the relevant discretion, was, or could be, made by the Municipal Committee prior to the adoption of such scheme.

The matter of the financial consequences is, in the present Cases, directly and vitally related to the proposed, under the scheme, 50 feet width for Heroes Street;

According to Respondent's witness Mr. Pantazis, himself, the property of Applicant in Case 169/65 (see plot 156 on the map *exhibit* 3), which lies half-way down the length of Heroes Street, will be prejudicially affected by the scheme; as the pillars of the existing ground-floor structure, standing at present on such property, are constructed a great part of the area which could otherwise be used for the building of further storeys will no longer be so usable and, therefore, it will be necessary to alter structurally the ground-floor, through the erection of new pillars for the support of any further storeys to be built in accordance with the new alignment laid down by the scheme.

The extent to which the property on plot 156 is to be affected has been explained at length in evidence by the Applicant in Case 169/65, who is himself a qualified architect, and it is shown on relevant plans which he has produced (see the *exhibits* 5, 6(a) and 6(b)). It is clear therefrom that some of the pillars of the structure which were intended to be used for the support of further storeys cannot be so used due to the fact that they fall within the area of the property affected by the scheme.

According to the aforesaid relevant plans and to the conclusions to be drawn from the evidence of Applicant in Case 169/65 and of Mr. A. Michaelides, another qualified architect who has been called as a witness by this Applicant, much of the prejudicial effect to the property on plot 156—and consequently

of any compensation payable therefor by the Municipality—would be avoided if the width of Heroes Street were to be planned by the scheme as 40–45 feet, instead of as 50 feet; and the father of the scheme, the Town Planning Officer, Mr. C. Ioannides, has himself stated in evidence that, if it were too expensive for the Municipality to adopt the scheme with a 50 feet width for the street concerned, it could be prepared on the basis of a smaller width but this would be less satisfactory; as he has put it, “a width of less than 50 feet would not have been as satisfactory as 50 feet”.

As it has transpired during the proceedings, though the ground-floor structure on plot 156 has existed since 1960 and though Mr. C. Ioannides, as well as Dr. O. Ioannides, the Chairman of the Municipal Committee, were aware of the fact that the scheme in question would affect the said property, neither of the two were aware of the relevant structural aspects of the matter up to and after, even, the adoption of the scheme in April 1965; as Mr. C. Ioannides frankly admitted he came to know of them during the present proceedings.

Yet the relevant plans of the structure built on plot 156 were *all along in the possession of the appropriate Municipal Services* (see *exhibit 4*); had a proper study of the financial consequences of the scheme, such as that by Mr. Pantazis, been made in time, before its adoption, the question of the prejudicial effect of the scheme on the property on plot 156 would have been given due weight and the relevant plans would have been called for and examined. Thus, a decision as to the width of Heroes Street under the scheme would have been taken after having weighed properly, with adequate knowledge of all relevant facts, the town planning requirements in relation to the financial cost thereof; as things have actually turned out one of the most material facts, namely, the cost of the scheme arising due to its effect on the structural set up of the property on plot 156 was never even considered, because it was not at the time within the contemplation of those responsible for preparing, and deciding on, the scheme.

For all the foregoing reasons I have reached the conclusion that the *sub judice* scheme has been adopted without a sufficient enquiry into, and due consideration of, all material factors and it is, thus, the product of a defective exercise of the relevant discretionary powers; it is, therefore, an act made contrary to law and in excess and abuse of powers.

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In the circumstances I have decided to declare it, as a whole, null and void and of no effect whatsoever; as Mr. C. Ioannides has very correctly told the Court a street-widening scheme can only be prepared and considered as a whole; also, in the present Cases, even if his view were not to be accepted as correct—and I do accept it as correct—the circumstances are such that the scheme as a whole has to be annulled; it has to be reconsidered afresh as a whole in the light of all material considerations.

I must, before concluding, stress that the contents of this Judgment should not be taken as reflecting, in the least, criticism by the Court against the Municipal Committee concerned; it has acted in all good faith but it has found itself in the unenviable position of continuing a past practice in relation to the adoption of street-widening schemes, without the preparation first of the necessary studies and reports, which are required nowadays by the principles of proper administration governing the matter in a modern State such as ours.

Regarding costs I have decided to make no order as to costs—the Applicants having lost on the issue of constitutionality—except an order for £70 towards costs in favour of Applicant in Case 169/65 who had to bear a much heavier burden in establishing the vital aspect relating to the effect of the scheme on his property, plot 156.

*Sub judice scheme declared
null and void.*

Order for costs as aforesaid.