IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PHOTINI M. PAPADOPOULLOU AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
1. THE COUNCIL OF MINISTERS,
2. THE MINISTER OF COMMERCE AND INDUSTRY,

Respondents.

(*Cases Nos.* 51/71, 52/71, 54/71, 55/71, 60/71, 62/71 & 63/71).

Provisional Order—Suspending effect of an act or decision, subject matter of a recourse under Article 146 *of the Constitution—Principles upon which it may be granted—Rule* 13 *of the Supreme Constitutional Court Rules,* 1962 *and section* 17 *of the Administration of Justice (Miscellaneous Provisions) Law,* 1964 (*Law No.* 33 *of* 1964)*—Recourse against acquisition and requisition orders—Application for a provisional order restraining respondents from taking any steps in furtherance of such orders—mainly that of requisition—Until final determination of the recourse—No irreparable damage would result for the applicants from the refusal of such order—Applicants not residing themselves in the dwelling, the subject matter of the requisition, are not going to suffer any hardship—Considering, on the other hand, that the recourse against the acquisition order is obviously out of time and that, therefore, the said dwelling will be in due course compulsorily acquired—The applicants will, thus, have to give up the premises and, consequently, they would suffer no irreparable damage even if the respondents proceed to demolish the said premises acting under the said requisition order—Applicants' only desire appears to be to secure better terms of compensation—Finally, on the evidence, it is absolutely necessary for the respondents to proceed with the project (building hotels, bungalows etc.)—Therefore the granting of the provisional order would cause serious obstacles to the proper functioning of the administration—Provisional order refused—Principles laid down in* Pavlou and Another *v.* The Republic, *reported in this Part at p.* 120 ante, applied.

Requisition of immovable property (land with a dwelling house thereon)—Said property affected by an earlier acquisition order—Purpose of requisition being the construction of buildings on the said property—Whether such requisition is a valid one and compatible with the notion of requisition being of a temporaty nature—Whether such requisition frustrates applicants' rights of property safeguarded under Article 23.4(*c*) *of the Constitution—Cf. The Requisition of Property Law,* 1962 (*Law No.* 21 *of* 1962) *sections* 3(2), 6(2), 8(1)(*c*) *and* 11—*See also Article* 23.8 *of the Constitution.*

Requisition Order—Made by the Minister of Commerce to whom the Council of Ministers had delegated its powers under section 4(2) *of the aforementioned Law No.* 21 *of* 1962 *by virtue of a decision taken under section* 3(1) *of the Statutory Powers (Conferment of Exercise) Law,* 1962 (*Law No.* 23 *of* 1962)—*Consequently, such order of requisition was validly made.*

Compulsory Acquisition of Property Law, 1962, (*Law No.* 15 *of* 1962), *section* 10(*a*)—*Not unconstitutional in relation to Article* 23 *of the Constitution—Not contrary, either, to Article* 1 *of the Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ratified by the European Convention for the Protection of Human Rights (Ratification) Law,* 1962 *and, thus, forming part of our internal law under Article* 169.3 *of the Constitution).*

Compulsory Acquisition—Compensation—Time of payment—Article 23.4(*c*) *of the Constitution—"Just and equitable compensation" in Article* 23.4(*c*)—*It means the full and perfect equivalent of the property taken.*

Words and Phrases—"Just and equitable compensation" in Article 23.4(*c*) *of the Constitution—"On payment in cash and in advance of a just and equitable compensation"*—ibid.—*"Promptly" in Article* 23.8(*d*) *of the Constitution.*

The applicants in case No. 62/71, hereinafter referred to as " the applicants " (inasmuch as all the other six recourses (*supra*) have been withdrawn before judgment), seek by their recourse to challenge the validity of, *inter alia*, a requisition order affecting their property part of which is occupied by a dwelling house consisting of 4 rooms and all amenities. This requisistion order dated February 6, 1971 was made for a period of twelve months under the provisions of section 4

of the Requisition of Property Law, 1962 (Law No. 21 of 1962) for a purpose of public benefit *viz.* for the promotion or development of tourism of an area known as " Golden Sands " in Famagusta, which purpose is specially provided for in section 3(2)(*f*) of the said Law. It should be noted that in all seven cases (*supra*) the properties involved were also affected by an earlier order of compulsory acquisition dated March 28, 1969.

Simultaneously with the filing of their recourse the applicants applied under Rule 13 of the Supreme Constitutional Court Rules, 1962, for a provisional order suspending the effect of, *inter alia*, the said requisition order. It was contended on behalf of the applicants that unless the stay was granted they would suffer irreparable damage—" by the demolition of the said house and/or the construction of new building on the site, which is the presumed or declared intention of the respondents—, *whilst the respondents will suffer no substantial harm* by its granting with the consequential delay as all the facts and history of the case clearly point to *i.e.* the fact that the order of acquisition was made on March 28, 1969 and the order of requisition on February 6, 1971 ".

It is common ground that although no compensation has been paid either in respect of the acquisition or of the subsequent requisition, a notice in writing dated February 9, 1971 was served on the applicants calling upon them to evacuate and deliver vacant possession of their property because the requisitioning authority intended to start work for the accomplishment of the said project as from March 1, 1971.

Regarding the validity of the order of requisition it was argued on behalf of the applicants that it is illegal because it intends to serve not a case of urgency and of a temporary nature, but to serve a permanent purpose *viz.* the erection of buildings which is incompatible with the notion of requisition (see Article 23.8(c) of the Constitution and Kyriacopoulos, on Greek Administrative Law, 4th ed. Vol. III, at pp. 395–396). Article 23.8 of the Constitution reads as follows :

" 8. Any movable or immovable property may be requisitioned by the Republic or by a Communal Chamber for the purposes of the educational, religious, charitable or sporting institutions, bodies or establishments within its-

competence and only where the owner and the person entitled to possession of such property belong to the respective Community, and only—

(a) for a purpose which is to the public benefit and shall be specially provided by a general law for requisitioning 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 requisitioning authority and made under the provisions of such law stating clearly the reasons for such requisitioning ; and

(c) for a period not exceeding three years ; and

(d) upon the prompt payment in cash of a just and equitable compensation to be determined in case of disagreement by a civil court ".

The Court refused the provisional order applied for ; and going into the merits of the case, took the view that the submissions made by counsel on behalf of the applicants could not be sustained ; and, consequently, it dismissed the recourse.

Held : *As to the provisional order applied for under Rule* 13 *of the Supreme Constitutional Court Rules,* 1962 :

(1) In the light of the principles governing the matter, and which I have reiterated in my decision in the case *Manolis Pavlou and Another* v. *The Republic* (reported in this Part at p. 120, *ante*), I have reached the conclusion that the justice of this case does not require the making of a provisional order for the following reasons :—

(a) Because the aplicants in my view will not suffer irreparable damage, that is to say, harm which cannot be estimated adequately later on in terms of money, even if their house would be demolished in due course as a result of the order of requisition, particularly so, because their expert Mr. M. has already completed the assessment of compensation regarding the house in question ; and indeed the civil Court in assessing the compensation will find no difficulty in proceeding without viewing it.

(b) Since the applicants are not residing themselves in the said house but their licensees (the gardener etc.), they are not going to suffer any kind of hardship. Regrettable as this may be, since the gardener and his family have not been joined as parties, it is now too late for this Court in their absence to grant them a relief.

(c) The applicants gave me the impression that all along their only desire was to secure better terms of compensation from the respondents for their property.

(d) Because this recourse so far as the relevant order of acquisition challenged thereby is concerned is bound to fail because it is out of time under the provisions of Article 146.3 (cf. The principle laid down in the case *Cleanthis Georghiades* (No. 1) v. *The Republic* (1965) 3 C.L.R. 392).

(e) On the evidence adduced it becomes absolutely necessary for the respondents to proceed with the building of a hotel, bungalows, swimming pools etc., and therefore the making of the provisional order would have caused serious obstacles to the proper functioning of the administration.

(f) Finally, when the compensation for the compulsory acquisition will be paid to the applicants, they will have to give up their premises ; I cannot, therefore, accept the argument advanced by councel for the applicants that they will suffer irreparable damage if the decision to demolish their premises consequent upon the requisition order is not prevented from taking effect before the final determination of the present proceedings. Cf. *Kouppas* v. *The Republic* (1966) 3 C.L.R. 765, at pp. 768–769

(2) In view of the foregoing, I would dismiss the application for a provisional order.

Held : *Regarding the validity of the aforesaid requisition order dated February* 6, 1971 :

After disposing of the first and second propositions advanced by counsel for the applicants (*see post in the judgment*). *The learned Judge went on to deal with the third proposition, which was to the effect that the order of requisition in question is illegal because it intends to serve not a case of urgency and of*

a temporary nature, but a case of a permanent object or purpose viz. *the erecting of buildings, which is incompatible with the notion of requisition.* The Court disposed of this proposition as follows :

(1) The matter of requisition of property is governed by Article 23.8 of the Constitution (*supra*) and the Requisition of Property Law, 1962 (Law No. 21 of 1962). There is no doubt that our Constitution differentiates between the compulsory acquisition of property and the requisition of property with which it deals in paragraph 8 of Article 23 (*supra*). Under this paragraph (*supra*) a requisition may be made for the same reasons and under the same conditions as a compulsory acquisition, except that the requisition cannot exceed three years, and the compensation to be paid need not be paid in advance, but " prompty ". (As to the meaning of " promptly " see *Thymopoulos and Others* v. *The Municipal Committee of Nicosia* (1967) 3 C.L.R. 588, at p. 606 ; *Hadjikyriakou and Others (No. 1)* v. *The Council of Ministers* (1968) 3 C.L.R. 1, at p. 9).

(2)—(*a*) Moreover, the distinction between a requisition and an acquisition is that under a requisition order only possession of the property is taken, the ownership remaining in the owners, whilst under an acquisition order the ownership is transferred. On the other hand under section 6(2) of the Requisition of Property Law, 1962 (Law No. 21 of 1962), when possession of any property is taken by virtue of the said Law, such property may be used by the requisitioning authority ; and such authority may do in relation to the same property anything which any person having an interest therein would be entitled to do by virtue of such interest.

(*b*) In my view, these concluding words are strong words, and could only be construed as meaning that the requisitioning authority could step into the shoes of the owner and carry out or do anything in connection with the public benefit utility, including any kind of building or other erection on the requisitioned land.

(*c*) I think I am fortified in this view from the wording of section 8(1)(c) of the said Law No. 21 of 1962 (see the text *post* in the judgment).

(3) Having gone through the various sections of the aforesaid statute, I have reached the view that the construction of

buildings on the requisitioned land of the applicants does not in any way conflict, nor it is incompatible with the notion of requisition, because it is not intended to be of a permanent nature, but only of a limited period in order to serve the needs of the requisitioning authority for such period which is specified in the order of requisition and, in any event, not exceeding a period of three years.

(4) That this view is correct and that the requisition order will not frustrate the rights of the applicants under Article 23.4 of the Constitution I find support from the decision in the case of *Aspri* and *The Republic*, 4 R.S.C.C. 57 in which case it was stated that the mere fact that the purpose for which the compulsory acquisition has been decided upon is being pursued *pro tempore* by means of a requisition upon payment of compensation, cannot reasonably be said to frustrate the said rights of the applicant under Article 23.4(c) of the Constitution, because the ownership continues to vest in the applicant in the meantime.

(5) For the above reasons, I have reached the conclusion that the third proposition of counsel (*supra*) is not right and I am of the opinion that the *sub judice* requisition order is neither contrary to any provision of the Constitution or of any law, nor was it made in excess or abuse of powers vested in the requisitioning authority. In view however of the nature of these cases, particularly regarding the delay of the acquiring authority, there will be no order as to costs.

Recourse dismissed. No order as to costs.

Cases referred to :

Cleanthis Georghiades (No. 1) v. *The Republic* (1965) 3 C.L.R. 392 ;

Kouppas v. *The Republic* (1966) 3 C.L.R. 765, at pp. 768–769 ;

Moti and Another v. *The Republic* (1968) 1 C.L.R. 102 ;

Thymopoulos and Others v. *The Municipal Committee of Nicosia* (1967) 3 C.L.R. 588, at p. 606 ;

Hadjikyriakou and Others (*No.* 1) v. *The Council of Ministers and Another* (1968) 3 C.L.R. 1, at p. 9 ;

Aspri and *The Republic*, 4 R.S.C.C. 57 ;

Manolis Pavlou and Another v. *The Republic* (reported in this Part at p. 120 *ante*) ;

Vassiliades v. *The Republic* (1966) 3 C.L.R. 708.

Recourses.

Recourses against the validity of orders of compulsory acquisition and requisition affecting property of the applicants situated at Famagusta.

J. Kaniklides, for the applicant.

L. Loucaides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment** was delivered by :—

HADJIANASTASSIOU, J. : Since I am now reading my reserved judgment on the merits of the seven remaining Golden Sands cases (which have been heard together because they involve the same factual and legal issues) I entertain some doubts whether I ought to have dealt in this decision with the question of the provisional order in Case No. 62/71. The application for a provisional order proceeded and was heard by me because the respondents refused (after a lot of negotiations) to agree to pay to the applicants the same amount of compensation on the terms reached in a similar case, No. 55/71, after the delivery of my decision* on April 6, 1971, regarding the value of a house and the part of land on which it stands.

1. The application for a provisional order :

On March 2, 1971, the applicants in recourse No. 62/71 simultaneously with the filing of this case, applied under Rule 13 of the Supreme Constitutional Court Rules, 1962, and section 17 of the Administration of Justice (Miscellaneous Provisions) Law 1964, for a provisional order restraining the respondents from taking any steps in furtherance of the acquisition of their property situate at Ayios Memnon or of the requisition order affecting the same property until the final determination of the case.

The facts relied upon in support of the application for the provisional order appear in the sworn affidavit dated February 26, of Mr. Koumis J. Hadjimichael of Famagusta.

> " 1. I am one of the registered owners in undivided shares (1/3 share) of property Reg. 2138, plot 284, plan/sheet XXXIII. 21.5.IV. 6.III. 29.2.II 3.1, Ayios Memnon, Famagusta, of an extent of 1 donum 3 evleks and 184 sq. feet.

---

* Reported in this Part at p. 120 *ante*.

** For final judgment on appeal see (1973) 1 J.S.C. 19 to be reported in due course in (1972) 3 C.L.R.

2. The remaining shares are registered in the names of the other applicants in undivided shares.

3.

4. A small part of the property mentioned in para. 1 above is occupied by a house consisting of 4 rooms and all amenities.

5. I am advised that the hearing of this case will not be concluded by the 9.3.71 the time limit set by a letter sent to me and/or the other applicants that I should vacate and deliver the vacant possession of the property.

6. I am advised and verily believe that I have a good case on the merits.

7. Unless a provisional order is made restraining the respondent/s from taking any steps in furtherance of the acquisition of the property in question or of the requisition order affecting the same property the applicants shall suffer irreparable damage—by the demolition of the said house and/or construction of new buildings which is the presumed and/or declared intention of the respondent/s—whilst respondent/s will suffer no substantial harm by its granting with the consequential delay as all the facts and history of the case clearly point to, *i.e.* the fact that the order of acquisition was made on the 28.3.69 and the order of requisition 23 months later on the 6.2.71.

8. ."

It is to be observed that in all seven cases in paragraphs 1 & 2 of the relief sought by all applicants, the said properties are affected by an order of acquisition and an order of requisition. The first order was published in supplement No. 3 to the Official *Gazette* on March 28, 1969, under notification No. 202, and the second on February 6, 1971, under notification 94. See *exhibits* 2 & 3 respectively. The said order of requisition was made for a period of twelve months under the provisions of section 4 of the Requisition of Property Law 1962 (No. 21 of 1962) for a purpose of public benefit *viz.*, for the promotion or development of tourism of an area known as Golden Sands in Famagusta, which purpose is specially provided by section 3 (2) (*f*) of the said Law.

It is common ground that although no compensation has been paid either in respect of the acquisition or of the requisition, on February 9, 1971, a notice in writing was

served on the applicants to evacuate and deliver vacant possession of their property because the requisitioning authority intended to start work for the accomplishment of the said project as from March 1, 1971.

2. The motion for relief :

By the motion for relief in these proceedings, all the applicants mainly seek a declaration that both the orders of acquisition and requisition are null and void and of no effect whatsoever.

On April 28, 1971, the oposition of the respondents was filed, and the grounds of substance are (1) that the recourse is out of time regarding the order of acquisition ; (2) that both orders of acquisition and requisition have been issued in accordance with the law after all circumstances of substance have been taken into consideration ; (3) that in any event, an offer of compensation has been made to the applicants in accordance with the provisions of section 10 of Law 15 of 1962, which are not contrary to the Constitution or Law 39 of 1962.

In the meantime, (after taking the list of all the cases which originally were dealt with by Mr. Justice Triantafyllides as he then was) on May 12, 1971, (a date fixed for hearing regarding the provisional order) counsel on behalf of the applicants withdrew all other applications except those in cases Nos. 55/71 and 62/71 but regarding the latter, he limited the effect of the withdrawal to the land only.

Moreover, counsel made this statement :—

> " In view of the fact that I have all my clients today in Court, and we have agreed with my learned friend to renew our efforts for an out of Court settlement, and because today the Court has been dealing with the question of interim orders only and we have succeeded with most of them being withdrawn, and as the Court is sitting at 11.30 at a meeting of Judges, I would apply for an adjournment sometime in June, in order to explore all the possibilities of an out of Court settlement."

The cases then were fixed for hearing on the merits on May 26, and the applications for a provisional order on May 28. On May 26, during the hearing of these seven cases, counsel stated that the application for a provisional order regarding case No. 55/71 was abandoned because a settlement as to compensation was reached between the parties

regarding the house of the applicants and a piece of land of an area of 12,576 sq. ft. After concluding the hearing of those cases, judgment was reserved.

On May 28, the hearing of the application in case No. 62/71 regarding the provisional order was also concluded and counsel for the respondents, after adopting his previous argument in case No. 55/71, further argued (*a*) that because the order of acquisition has not been challenged before this Court within the proper time provided by Article 146.3 of the Constitution, the provisional order was not justified ; and (*b*) that the persons now residing in the said house of the applicants have not been joined in this case in any capacity and were not entitled to the protection of this Court.

Having had the advantage of hearing full argument by both counsel, and in the light of all documentary and other material, as well as the evidence of Mr. Philippou which is before me, I would state that in deciding whether to grant or refuse a provisional order, I have in mind the principles governing this question which I have reiterated in my decision* of April 6, 1971, and which I would adopt and apply in this judgment. It is perhaps convenient, however, to add that in Greece a provisional order is considered as a very exceptional measure to grant, because it prevents the administration from carrying out effectively its administrative functions under the law. See the well-known textbook by Kyriacopoullos on the Greek Administrative Law, 4th edn., Volume 'Γ', at pp. 146–148.

3. Conclusion on the provisional order :-

In the light of these principles, I have reached the view that the justice of this case does not require the making of a provisional order for the following reasons :—

(*a*) Because the applicants in my view will not suffer irreparable damage, that is to say, harm which cannot be estimated adequately later on in terms of money, even if their house would be demolished in due course because of the order of requisition, particularly so, because their expert Mr. Mavroudis has already completed the assessment of compensation regarding the house in question ; and indeed the trial Court in assessing the compensation would not find any difficulty without viewing it.

(*b*) Since the applicants are not residing themselves in the said house and they are not going to suffer any kind

* Reported in this Part at p. 120, *ante*.

of hardship. I would indeed at this stage express my surprise, because nothing was mentioned in the affidavit about this particular fact. I would, further add that, the way paragraph 5 of the affidavit was drafted, one would be inclined to think that the affiant was in possession of the said house and that he had difficulty to vacate it and deliver the possession of the said house to the respondents ; see also paragraph VII of the grounds of law referring to the said house as a " family house ".

(*c*) That all along during the negotiations between the parties regarding compensation, the applicants in Court gave me the impression that their only desire was to secure better terms of compensation from the respondents for their property, particularly so on the terms agreed upon in Case No. 55/71. Indeed, nothing was said or disclosed that the said house was occupied by a gardener and his family, either as a tenant or by the leave or licence of their deceased relative (from whom they have inherited the said property), until the last moment, because, apparently, they knew or were convinced that if they did agree to a satisfactory amount of compensation they would have seen that the gardener would have moved away from the said house. Moreover, regrettable as it is, since the gardener and his family have not been joined as parties, it is too late now for this Court (I repeat in their absence) to grant them a relief.

(*d*) Because this recourse No. 62/71, (as well as the rest of the recourses) regarding the acquisition of the property is not bound to succeed in accordance with the principle formulated in *Cleanthis Georghiades* (No. 1) v. *The Republic* (1965) 3 C.L.R. 392, particularly so, because the applicants have not challenged the validity of the order of acquisition and that, therefore, the recourse is out of time in view of the provisions of Article 146.3 of the Constitution ;

(*e*) In view of the evidence (given in Case No. 55/71) it becomes absolutely necessary for the respondents to proceed with the building of a hotel, bungalows, swimming pools etc., in compliance with the needs of the public benefit project, and therefore, the making of a provisional order would have caused serious obstacles to the proper functioning of the administration.

(*f*) Finally, as I said earlier (because the applicants have not challenged the validity of the order of compulsory acquisition) when the compensation for the compulsory acquisition will be paid by the respondents to them, they would have to give up their premises and that they would

not suffer irreparable harm even if the decision of the respondents is to demolish their premises. I would, therefore, reiterate clearly that I cannot accept the argument of counsel that they will suffer irreparable harm even if the decision to demolish their premises taken consequent upon the requisition is not prevented from taking effect before the final determination of the present proceedings. Cf. *Kouppas* v. *The Republic* (*Council of Ministers*) (1966) 3 C.L.R. 765 at pp. 768–769. In view of all these reasons, I would dismiss the application for a provisional order.

4. The decision on the merits of these recourses :—

Regarding the property rights of the applicants, I take the view that, the property guaranteed by the Constitution of the Republic of Cyprus, represents the individualistic concept of property and the right of property is an individual prerogative and not a social function imposing obligations towards society. Moreover, it has to be stressed that the right of property is secure, and no deprivation of this right can be effected except by the constitutional machinery of the compulsory acquisition of property, provided it is done in compliance with the conditions and guarantees laid down in the Constitution. Our Constitution, though in other respects adopted the now prevailing views of the socialization of the individual rights, in this respect lagged behind following the provisions of the then Constitution of Greece which was based on that of 1864, probably because of the realities existing also in Cyprus regarding the property rights. Article 23.4 provides that any immovable property may be compulsorily acquired by the Republic 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 ". Section 10 (1) of Law 15 of 1962 made pursuant to the provisions of Article 23 provides that the provisions of paragraph (*a*) shall not affect the assessment of compensation for any other matter not directly based on the value of the property acquired.

The matter of " just and equitable compensation " came up for consideration by our Supreme Court in *Moti and Another* v. *The Republic* (1968) 1 C.L.R. 102. It was found that such compensation means the full and perfect equivalent of the property taken. Mr. Justice Josephides had this to say at p. 296 :—

> " Construing section 10 (1) of our Law in the light of the provisions of Article 23.4 of our Constitution, which provides for the payment of 'just and equitable

compensation' we are of the view that the owner of land is entitled to the payment of compensation for the loss arising directly out of the delay in the sanctioning of the acquisition, such as the delay which occurred in the present case. As usual, the enunciation of such a principle is easy enough, but its application to varying facts is apt to be difficult."

There is no doubt that some of these provisions, and especially the requirements of payment of compensation in advance and in cash (excluding payment by bonds or by exchange for other property) appears to be a handicap to many development programmes. In Cyprus, save for the consent of the owner, no compensation otherwise than in cash can be paid, although regarding this project some owners agreed to accept part payment by receiving government land. In India, it seems to be settled that under Article 31 (2), compensation may be paid in bonds or in kind. See Basu at p. 223.

Under the provisions of section 7 (2) of our Compulsory Acquisition of Property Law, 1962, formerly Rule 6 of section 2 of the English Acquisition of Land (Assessment of Compensation) Compensations Act 1919, the acquiring authority had one year's grace within which to sanction the acquisition or not, and under section 9, " if within one month of the publication of the order of acquisition, no agreement as in section 8 has been reached, the acquiring authority or any person interested may apply to the Court for the determination of the compensation payable for the acquisition of the property .... ". In my view, therefore, under the provisions of our law, it was also open to the applicants on April 27, 1969, to apply to a civil Court to determine thé compensation payable to them. The mere fact that they have not exercised their rights under the law means that they have themselves also to blame besides the Republic for such a delay. Be that as it may, I am informed by counsel for the respondents that the acquiring authority has applied to the District Court of Famagusta on May 6, 1971, for the determination of the compensation of the properties of the applicants.

Regarding the question of payment, I am of the view that from the way paragraph 4 of Article 23 of our Constitution is worded, *viz.*, " any movable or immovable property or any right over or interest in such property " it follows that such payment should be made not only before the acquisition of the ownership, but also before taking possession of the properties. I, therefore, find mysclf in

agreement with counsel that the respondents were not entitled to take possession of the properties (if that was the case) under the acquisition order unless the compensation was paid to the owners in advance. Cf. *Saripolos* on the Greek Constitutional Law, 2nd edn., vol. II at p. 488 et *seq.* regarding Article 17.

Regarding the further complaint of counsel for the applicants (which is the crux of the whole matter) that the provisions of section 10 (*a*) of the Compulsory Acquisition Law, 1962, are unconstitutional because they contravene both the provisions of Article 23 of the Constitution and of the Convention for the Protection of Human Rights and Fundamental Freedoms, I find myself with due respect to counsel, unable to agree, because the Constitution leaves the determination of compensation to the judicial authority to the exclusion of legislative and administrative authorities, which according to *Saripolos*, op. cit. at pp. 491–494, is a bigger guarantee for the protection of the right of property. Cp. *Basu* on *Commentary of the Constitution of India*, 5th edn., vol. II at p. 223. But, of course, there is nothing preventing the legislature to provide for the general principles according to which compensation is to be assessed. Cf. *Saripolos* on the System of Constitutional Law of Greece, 4th edn., vol. III at p. 216 under note 1. See also *Sgouritsa* on the Constitutional Law, 1964, Vol. II at p. 176, under note 2 ; also cp. the Constitution of India, Article 31 (2) (as amended). Such principles, as I said earlier, are now contained in section 10 of our law, under which the Republic apparently was negotiating with the applicants to pay them compensation, but it was rejected by them.

Regarding the further argument, I am in agreement with counsel for the applicants that, the right to property in the Republic of Cyprus is also guaranteed by Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. But, with respect, I disagree that the provisions of section 10 (*a*) of Law 15 of 1962, which deal with the general principles of assessment of compensation that the value of the property shall be the market value of such property on the date of the publication of the relevant notice of acquisition, are contrary to the said convention, because there is nothing in that convention which in any way prevents the legislature to provide for the general principles according to which compensation is to be assessed by a civil Court. Article 1 of the Protocol of the said Convention is in these terms :—

> " Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be

deprived of his possessions except in the public interest and subject to the provisions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

This protocol was acceded to by the Republic under a decision of the Council of Ministers, and was ratified by the European Convention for the Protection of Human Rights (Ratification) Law, 1962, and having been published in the Official *Gazette* constitutes a part of our law, and under Article 169.3 of our Constitution it has superior force to any municipal law.

In the light of these reasons, I have reached the view that paragraph (*a*) of section 10 of Law 15 of 1962 is not unconstitutional. Moreover, as I am of the opinion that the order of acquisition is not contrary to our law, and for the reasons I have explained earlier at length, I would dismiss this contention of counsel.

5. Requisition :—

The next question which is posed is whether the order of requisition is valid or not. The order of requisition was published on February 6, 1971, and was made by the Council of Ministers, the Republic being the requisitioning authority. The submission made appears in a document (*exhibit* 5) and so far as relevant, is in these terms in Greek :—

*«2. Ὡρισμέναι ἀκίνητοι ἰδιωτικαὶ ἰδιοκτησίαι ἔχουν ἀπαλλοτριωθῆ δυνάμει Διοικητικῆς Πράξεως ὑπ' ἀρ. 202 τοῦ 1969 διὰ τὴν τουριστικὴν ἀξιοποίησιν τῆς Χρυσῆς Ἀμμουδιᾶς (Golden Sands) παρὰ τὴν Ἀμμόχωστον. Ἐπειδὴ οἱ ἰδιοκτῆται τῶν ἐν λόγῳ ἰδιοκτησιῶν δὲν ἀπεδέχθησαν τὴν πρὸς αὐτοὺς προσφερθεῖσαν ἀποζημίωσιν ὑπὸ τοῦ Κτηματολογίου καὶ ἐπειδὴ αἱ διαδικασίαι συμφώνως πρὸς τὴν κειμένην νομοθεσίαν θὰ ἀπαιτήσουν ἀρκετὸν χρόνον μέχρις ὅτου ἐγγραφοῦν τὰ κτήματα ἐπ' ὀνόματι τῆς Κυβερνήσεως παρίσταται ἀνάγκη ὅπως ἐκδοθῆ Διάταγμα Ἐπιτάξεως δυνάμει τοῦ ἄρθρου 4 τοῦ περὶ Ἐπιτάξεως Ἰδιοκτησίας Νόμου Ἀρ. 21 τοῦ 1962, ἵνα

* An English translation of this text appears at pp. 340–341 *post*.

οὕτω δυνηθῆ ἡ Δημοκρατία νὰ ἐπέμβη ἐπὶ τῶν ἐν λόγῳ κτημάτων, τὸ ταχύτερον πρὸς ἐπίτευξιν τοῦ σκοποῦ δι' ὃν ἀπαλλοτριεῖ. Σημειωτέον ὅτι δυνάμει σχετικῆς συμφωνίας οἱ Ἐργολάβοι οἱ ὁποῖοι ἀνέλαβον τὴν ἀνέγερσιν τοῦ ἔργου ὠφείλουν νὰ ἀρχίσουν ἐργασίαν ἀπὸ τῆς 1ης Μαρτίου ,1971.»

Counsel for the applicants put forward this proposition : That the order of requisition was illegal because the Minister of Commerce and Industry acted under a misconception respecting the factual position, *viz.*, particularly with regard to a passage referred to in *exhibit* 5 at p. 2 of the said submission. With due respect to counsel, after reading the said submission, that proposition is not right because negotiations were going on between the Government and the applicants regarding the amount of compensation, but it is clear in my mind that the applicants were not willing to accept the amount of compensation offered to them orally based on the value of their lands as in 1968. However, I would go further and say, even if that statement is not entirely or substantially correct, (see paragraph 10 of the opposition) in the absence of any evidence before me, I have no doubt as to the true meaning of that document, and I am not prepared to interfere by annulling the order of requisition ; because the real issue in these cases is that all negotiations on the question of compensation failed because the applicants are demanding to be paid the value of their lands with much bigger prices, because as they claim in their applications, the value of their lands has increased by many thousands of pounds since the notice of acquisition in the year 1968.

The second proposition was that, the order of requisition was contrary to the provisions of section 4 (2) (*a*) of Law 21 of 1962, because it was made by the Minister of Commerce and Industry and not by the Council of Ministers. That proposition is right (if that was the case) because when the requisitioning authority is the Republic, the Council of Ministers is the appropriate organ to make such an order. However, it appears that under the provisions of section 3 (1) of Law 23 of 1962, the Council of Ministers was empowered to authorise the said Minister to exercise such statutoty functions on their behalf subject to such conditions, exceptions and qualifications as the said Council of Ministers may in such decision prescribe. In fact, on February 13, 1965, the Council of Ministers exercising their powers under the aforesaid law, in its decision No. 4401, conferred to the said Minister the making of an order of requisition under section 6 of Law No. 15 of 1962. (See *exhibit* 1

which is a circular No. 34). In the light of this *exhibit*, I have reached the view that the said order of requisition is not contrary to the provisions of section 4 (2) (*a*) of our law.

The third proposition was that, the order of requisition is illegal because it intends to serve not a case of urgency and of a temporary nature, but of a permanent purpose, *viz.*, the erecting of buildings, which is incompatible with the notion of acquisition. He relies on Kyriacopoulos on the Greek Administrative Law, 4th edn., Vol. III at pp. 395 and 396. Having had the advantage of perusing a number of Greek textbooks on the question of requisition, I shall proceed to examine first this question in the light of our own Article 23 and Law 21 of 1962 before referring to the position prevailing in Greece on this issue. There is no doubt that our Constitution differentiates between the compulsory acquisition of property and the requisition of property with which it deals in paragraph 8 of Article 23. Under this paragraph a requisition may be made for the same reasons and under the same conditions as a compulsory acquisition, except that the requisition cannot exceed three years, and the compensation to be paid need not be paid in advance, but promptly. In *Thymopoulos and Others* v. *Municipal Committee of Nicosia* (1967) 3 C.L.R. 588 at p. 606, the Court dealing with the meaning of the expression " promptly " had this to say :—

> " . . 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 terms ' 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."

In *Hadjikyriakou and Others* (No. 1) v. *The Council of Ministers and Another* (1968) 3 C.L.R. 1 at p. 9 the Court, dealing in a case of requisition of premises, had this to say regarding the expression " prompt payment of compensation " :—

> " In this connection I have to comment, too, on the fact that respondents have not acted yet in a manner

commensurate with the constitutional obligation (under Article 23) to effect prompt payment of compensation in respect of the order of requisition. It is correct that by letters of the 16th November, 1967 (see *exhibit* 6) respondent No. 2 called upon all the five applicants to negotiate regarding the compensation payable to them ; but nothing has as yet been agreed upon, nor have any references been filed before the competent Court, either by the applicants or by respondents, for the assessment of such compensation. My understanding of the obligation for prompt payment of compensation is that when the exceptional measure of requisition is resorted to the authority concerned should be then in a position to make an offer, at once, to the person affected, and if such offer is not accepted then a reference to Court should be made without delay. Procrastination in the matter on the part of the person affected is no excuse for the authority concerned ; the duty to pay compensation is cast upon such authority and it has to be discharged by it *promptly*. In all the present cases it does not appear that any formal offer of compensation has been made to the applicants till this day."

Moreover, the distinction between a requisition and an acquisition is that under a requisition order only possession of the property is taken, the ownership remaining in the owner, whilst under an acquisition order the ownership is transferred. Cf. section 6 of the Requisition of Property Law, 1962. Under sub-section 2, when possession of any property is taken by virtue of this law, such property may be used by the requisitioning authority for which such possession is retained, or do in relation to the same property anything which any person having an interest in such property would be entitled to do by virtue of that interest. In my view, these concluding words are strong words, and could only be construed as meaning that the requisitioning authority could step into the shoes of the owner and carry out or do anything in connection with the public benefit utility, including any kind of building or other erection on the requisitioned land. Moreover, I think I am fortified in this view, from the wording of section 8, which deals with the question of compensation payable to the owner of the requisitioned property. Sub-section 1 (*c*) reads as follows :—

" a sum equal to any diminution in the value of such property resulting either from the presence on or in or over such property of any building or other erection, structure or fixture erected, constructed or affixed

by the requisitioning authority, or from any damage occasioned to such property during the period for which possession of the property is retained by virtue of the order of requisition, no account being taken of fair wear and tear or of any damage made good by the requisitioning authority."

The position, of course, in Greece is different in my view, and the question of requisitions created—to use the words of Prof. Kyriacopoulos—a lot of confusion regarding their legal nature not only among the Greek textbook writers, but also of foreign authors on this topic. The late Prof. N. Saripolos, who took the view that requisition of property is considered a compulsory acquisition for a public benefit purpose, within Article 17 of the then Constitution of Greece 1864/1911, thus described the position in his textbook on the System of Greek Constitutional Law, 1923, 4th edn. Vol. 3 at pp. 225–228 :—

*«Αἱ ἐπιτάξεις ἀποτελοῦσιν ἀπαλλοτρίωσιν διὰ δημοσίαν ὠφέλειαν· κατ' ἀκολουθίαν ἐφαρμόζονται καὶ εἰς ταύτας αἱ διατάξεις τοῦ ἄρθρου 17 τοῦ συντάγματος, αἱ ἀφορῶσαι ἰδίως εἰς τὸν καθορισμὸν τῆς ἀποζημιώσεως διὰ τῆς δικαστικῆς ὁδοῦ καὶ εἰς τὴν προηγουμένην ἀποζημίωσιν. Οὐδ' εἶνε ἀληθὲς ὅτι ἡ ἐφαρμογὴ τῶν διατάξεων τούτων εἶνε ἀδύνατος ἐν τοῖς πράγμασι προκειμένου περὶ ἐπιτάξεων· διότι αὐτὸ τὸ ἄρθρον 17 τοῦ συντάγματος ὁρίζει ὅτι 'ἐν περιπτώσει ἐπειγούσῃ ἡ ἀποζημίωσις δύναται καὶ προσωρινῶς νὰ ὁρισθῇ δικαστικῶς', ὑπὸ δικαστικῆς τινος ἀρχῆς, π.χ. ὑπὸ τοῦ προέδρου τῶν πρωτοδικῶν, ἢ ὑπὸ τοῦ εἰρηνοδίκου. Ἄλλως ἐν Γαλλίᾳ π.χ. καὶ ἐν Βελγίῳ, ἐν περιπτώσει ὡρισμένων στρατιωτικῶν ἢ ναυτικῶν ἐπιτάξεων (requisitions militaires), ἡ ἀποζημίωσις, ἥτις ἀληθῶς δὲν εἶνε 'προηγουμένη', ὁρίζεται εἴτε ὑπὸ τοῦ εἰρηνοδίκου (juge de paix) εἴτε ὑπὸ τοῦ πρωτοδικείου (tribunal civil), ἀναλόγως τοῦ ποσοῦ τῆς ἀποζημιώσεως. Αἱ ἐπιτάξεις διὰ τὰς ἀνάγκας τοῦ στρατοῦ τῆς ξηρᾶς ἢ τῆς θαλάσσης, αἱ στρατιωτικαὶ (ἐν τῇ γενικῇ τῆς λέξεως σημασίᾳ) ἐπιτάξεις, καὶ οὐ μόνον αὗται, ἀλλ' αἱ ἐπιτάξεις ἐν γένει, ὑπάγονται εἰς τὰς διατάξεις τοῦ ἄρθρου 17 τοῦ συντάγματος, ὡς οὖσαι 'ἀπαλλοτριώσεις διὰ δημοσίαν ὠφέλειαν', καθόσον ἀποτελοῦσιν 'ἀφαίρεσιν ἰδιοκτησίας', ἐν τῇ ἐννοίᾳ τοῦ ὅρου τούτου ἐν τῷ ἄρθρῳ 17 τοῦ συντάγματος, δηλ. τῆς κυριότητος (π.χ. ἵππων, ἡμιόνων κ.λ.π.) ἢ τῆς χρήσεως καὶ καρπώσεως (π.χ. πλοίων), διὰ 'δημοσίαν ὠφέλειαν', πρὸς ἐξυπηρέτησιν ἀναγκῶν τοῦ στρατοῦ τῆς ξηρᾶς καὶ τῆς θαλάσσης. Ἐπειδὴ δ' αἱ ἐπιτάξεις εἶνε 'ἀφαίρεσις ἰδιοκτησίας' κινητῶν ἢ ἀκινήτων πραγμάτων

* An English translation of this text appears at pp. 341–342 *post*.

διὰ 'δημοσίαν ὠφέλειαν', κατὰ τὴν ἐπικρατοῦσαν καὶ ἐν τῇ ἀλλοδαπῇ ἐπιστήμῃ γνώμην, ἣν καὶ ἡμεῖς ἐδιδάσκομεν ἐν ταῖς προηγουμέναις ἤδη ἐκδόσεσι τοῦ ἀνὰ χεῖρας ἔργου, ὀρθῶς ἀπεφήνατο τὸ πρωτοδικεῖον Ἀθηνῶν, διὰ τῶν ὑπ' ἀριθ. 785 καὶ 800 ἀποφάσεων αὐτοῦ τῆς 20 καὶ 21 Δεκεμβρίου, 1913, ὅτι δέον νὰ ὁρίζηται ἡ ἀποζημίωσις 'διὰ τῆς δικαστικῆς ὁδοῦ', καὶ οὐχὶ διὰ 'διοικητικῶν δικαστηρίων', ὡς ὥρισε, προκειμένου περὶ ναυτικῶν ἐπιτάξεων, παρὰ τὸ ἄρθρον 17 τοῦ συντάγματος, ὁ ΔΡΟΒ' νόμος τοῦ 1913, ὃν δὲν ἐφήρμοσεν ἀντισυνταγματικὸν ὄντα, τὸ πρωτοδικεῖον, ἀπορρῖψαν τὴν περὶ ἀναρμοδιότητος τοῦ δικαστηρίου ἔνστασιν τοῦ ἐναγομένου δημοσίου.»

On the other hand, Prof. Kyriacopoulos thus described the same position on the same topic in his textbook op. cit. at pp. 394–396, including notes 10 and 11 :—

*«2. Ὅσον ἀφαρᾷ εἰς τὴν νομικὴν φύσιν τῶν ἐπιτάξεων, κρατεῖ μᾶλλον σύγχυσις. Μεταξὺ τῶν συγγραφέων, ὄχι μόνον παρ' ἡμῖν ἀλλὰ καὶ ἀλλαχοῦ, δὲν ἐπετεύχθη εἰσέτι ὁμοφωνία. Ἡ ἐπίταξις, κατ' ἄλλους μέν, συνιστᾷ θεσμὸν ἰδίας φύσεως, ξένον πρὸς τὸν τῆς ἀπαλλοτριώσεως. Ἐθεωρήθη δηλαδὴ ἢ δημόσιον βάρος ἢ ἀναγκαστικὴ μίσθωσις ἢ γενικώτερον μέτρον, τὸ ὁποῖον ἐπιβάλλουσιν ἔκτακτοι ἀνάγκαι τοῦ κράτους, ἰδίᾳ ἐν καιρῷ πολέμου. Καὶ αἱ τρεῖς αὗται ἐκδοχαὶ εὗρον ἀπήχησιν ἐν τῇ νομολογίᾳ. Κατ' ἄλλους, πάλιν, ἡ ἐπίταξις εἴτε ἐμφανίζει μεγάλην ἀναλογίαν πρὸς τὴν ἀπαλλοτρίωσιν καὶ δὲν διαφέρει ταύτης οὐσιωδῶς, εἴτε εἶναι αὐτόχρημα ἀπαλλοτρίωσις, ὑπαγομένη, διὰ τοῦτο, εἰς τὰς διατάξεις τοῦ ἀριθ. 17 τοῦ συντάγματος.

Ἡ διαφωνία δὲν ἔχει ἁπλῶς θεωρητικὴν σημασίαν, ἀλλά, κατ' ἐξοχήν, πρακτικὴν σπουδαιότητα. Διότι, ἂν μὲν ἡ ἐπίταξις ἐν γένει εἶναι ἀπαλλοτρίωσις, ὑπάγεται εἰς τὰς διατάξεις τοῦ ἀριθ. 17 παρ. 1 τοῦ συντ. καί, κατ' ἀκολουθίαν, δὲν χωρεῖ ἐπίταξις ἄνευ δημοσίας ὠφελείας καὶ προηγουμένης ἀποζημιώσεως, ὁριζομένης ὑπὸ τῶν τακτικῶν δικαστηρίων· ἀντιθέτως δέ, ἐὰν ἡ ἐπίταξις δὲν εἶναι ἀπαλλοτρίωσις, οὐδαμῶς τυγχάνουσιν ἀντισυνταγματικὰ τὰ κατὰ τὸν νόμον περὶ ἐπιτάξεων διοικητικὰ δικαστήρια, ὅπως καθορίζωσι τὴν ὀφειλομένην ἀποζημίωσιν.

Τὴν λύσιν τοῦ ζητήματος ἐπεζήτησεν ὁ συνταγματικὸς νομοθέτης τοῦ 1927 διὰ τῆς προσθήκης ἐν ἄρθ. 19 παρ. 3 εἰδικῆς διατάξεως, ἥτις ἐπέτρεπε παρέκκλισιν ἀπὸ τῆς ἀρχῆς τοῦ 'ἀπαραβιάστου τῆς ἰδιοκτησίας'. Ἀλλ' ἀκριβῶς ἡ προσθήκη ἐκείνη ἐπιμαρτυρεῖ πόσον, καὶ κατὰ τὸν συνταγματικὸν νομοθέτην, ἡ ἐπίταξις ταυτίζεται, πολλάκις, πρὸς τὴν

* An English translation of this text appears at pp. 342–344 *post*.

ἀπαλλοτρίωσιν, ὥστε νὰ παρίσταται ἀνάγκη ρητῆς ἐν τῷ συντάγματι ἐξαιρέσεως ἐκ τῆς γενικῆς ἀρχῆς τοῦ 'ἀπαραβιάστου τῆς ἰδιοκτησίας'. Ἡ περὶ ἧς ὁ λόγος διάταξις, ἥτις δὲν περιείχετο εἰς τὸ ἄρθ. 17 τοῦ συντ. 1864/1911, περιελήφθη καὶ ἐν τῷ ἰσχύοντι. Ἡ παρ. 4 τοῦ ἄρθ. 17 ὁρίζει:

Εἰδικοὶ νόμοι ρυθμίζουσι τὰ τῶν ἐπιτάξεων διὰ τὰς ἀνάγκας τῶν ἐνόπλων δυνάμεων εἰς περίπτωσιν πολέμου ἢ ἐπιστρατεύσεως, ἢ πρὸς θεραπείαν ἀμέσου κοινωνικῆς ἀνάγκης, δυναμένης νὰ θέσῃ εἰς κίνδυνον τὴν δημοσίαν τάξιν ἢ ὑγείαν.

3.—Παρὰ τὴν ἔλλειψιν ἀναλόγου διατάξεως ἐκ τοῦ προϊσχύσαντος συντάγματος, τὰ δικαστήρια παρεδέχοντο, ὅτι ἡ ἐπίταξις ἀκινήτου, ὡς ἐπιβάλλουσα ὑπὸ 'ἁπλοῦν περιορισμόν', ἐπιτρεπτὸν κατὰ τὸ σύνταγμα, τὸ ἐπὶ τοῦ ἀκινήτου δικαίωμα κυριότητος ἐκ λόγῳ δημοσίου συμφέροντος, καὶ μὴ στεροῦσα 'τὸν κύριον τῶν ἐκ τῆς κυριότητος ὠφελειῶν εἰμὴ ἐν μέρει μόνον', δὲν συνιστᾷ ἀπαλλοτρίωσιν οὔτε, ἑπομένως, ἀντίκειται εἰς ἄρθ. 17 τοῦ συντ. 'Ἀλλ' ἡ ἐπίταξις ὑπαγορευομένη ἐκ λόγων ἐξαιρετικῶν δημοσίας ἢ κοινωνικῆς ἀνάγκης, δικαιολογεῖται μόνον ἐκ τοῦ προσωρινοῦ αὐτῆς χαρακτῆρος· διὸ καὶ δὲν δύναται νὰ διατηρῆται πέραν εὐλόγου χρόνου, περὶ οὗ ἀποφαίνεται τὸ δικαστήριον, κρῖνον κατὰ τὰς ἑκάστοτε συντρεχούσας περιστάσεις καὶ ἐν συναρτήσει πρὸς τὴν ἀνάγκην, ἥτις ὑπηγόρευσε τὴν ἐπιβολὴν τῆς ἐπιτάξεως. Ἡ ἐπὶ μακρὸν χρόνον δηλαδὴ διάρκεια τῆς ἐπιτάξεως ἀκινήτου συνιστᾷ ἔμμεσον παραβίασιν τῆς περὶ προστασίας τῆς ἰδιοκτησίας διατάξεως τοῦ συντάγματος. 'Επίταξις ἀκινήτου δι' ἀνάγκην οὐχὶ προσωρινὴν καὶ ἔκτακτον τῆς δημοσίας ὑπηρεσίας ἀλλὰ μόνιμον, δυναμένην, διὰ τοῦτο, νὰ θεραπευθῇ διὰ μέτρου μονίμου χαρακτῆρος, ὡς εἶναι ἡ ἀπαλλοτρίωσις, δὲν εἶναι συνταγματικῶς ἐπιτετραμμένη, ἐφ' ὅσον διαρκεῖ πέραν εὐλόγου χρόνου. Κατ' ἀκολουθίαν, δημιουργεῖται διὰ τὴν διοίκησιν ὑποχρέωσις, ὅπως προβῇ εἰς τὴν ἄρσιν τῆς ἐπιτάξεως.

Τὸ θεωρητικὸν τοῦτο ἐπίτευγμα τῆς νομολογίας, συνιστῶν λογικὴν καὶ ἀναμφισβητήτως ὀρθὴν ἑρμηνείαν τῶν θεσμῶν τῆς ἀπαλλοτριώσεως καὶ ἐπιτάξεως, δέον νὰ γίνῃ ἀποδεκτὸν καὶ ὑπὸ τὸ ἰσχῦον σύνταγμα ὡς πρὸς τὴν ἐφαρμογὴν τῶν διατάξεων τῶν παρ. 1 καὶ 4 τοῦ ἄρθ. 17. Διότι, διάφορος ἐκδοχὴ ὡς πρὸς τὴν ἔννοιαν τοῦ θεσμοῦ τῆς ἐπιτάξεως, θὰ ὡδήγει εἰς τὸ ἄτοπον συμπέρασμα, ὅτι ὁ συνταγματικὸς νομοθέτης διὰ τῆς παρ. 4 ἀπέβλεψεν εἰς τὴν καταδολίευσιν τῆς διὰ τῆς παρ. 1 διασφαλισθείσης ἀρχῆς τοῦ 'ἀπαραβιάστου τῆς ἰδιοκτησίας'.»

Regarding the distinction between a permanent and a temporary requisition, provided by Law 4442/1929, see Kyriacopoulos op. cit. at pp. 393–394, and under note 1 of the latter page.

As I have said earlier in this judgment, irrespective of the reasons given before me regarding the delay (admittedly a long delay) between the order of acquisition and the order of requisition, I am convinced that the latter order was made and is purported to serve a case of urgency, in view of the magnitude of the project, which no doubt would serve the economic goals of the industry of tourism to the benefit of this country as a whole. In view, however, of the difference of our own law regarding the question of requisition, I am of the opinion that the dispute in Greece regarding the payment of compensation and whether it ought to be made before the taking of the possession of the property, is of no practical importance in Cyprus. I feel, therefore, that in order to decide the third proposition of counsel I must do so in the light of our own law of requisition.

Having had the occasion to go through the various sections of our law, I have reached the view that the construction of buildings on the requisitioned land of the applicants does not in any way conflict, nor is it incompatible with the notion of acquisition, because it is not intended to be of a permanent nature, but only of a limited period in order to serve the needs of the requisitioning authority for such period which is specified in the order of requisition and, in any event, not exceeding a period of three years. That this view is correct and that the requisition order will not frustrate the rights of the applicants under Article 23.4 of the Constitution I find support from the decision of the Supreme Constitutional Court in the case of *Evridiki Aspri* and *The Republic*, 4 R.S.C.C. 57, in which case it was stated that the mere fact that the purpose for which the compulsory acquisition has been decided upon is being pursued *pro tempore* by means of requisition upon payment of compensation, cannot reasonably be said to frustrate the said rights of applicant under sub-paragraph (*c*) of paragraph 4, because the ownership continues to vest in the applicant in the meantime. Cp. *Manolis Panteli Pavlou* and *Another* (reported in this Part at p. 120 *ante* ; see also *Vassiliades* v. *The Republic* (1966) 3 C.L.R. 708, and Symplyroma Nomologias, (1935–1952) of Zacharopoulou, vol. 1 at p. 367 paragraph 136. In any event, the net result in these cases is that the acquiring authority have not *exhibited* an urgency to determine the just and equitable amount of compensation payable to the applicants with regard to the acquisition of their lands before taking possession under the Requisition of Property Law, a fact for which I cannot but express my regret for such a delay to safeguard the interest of a citizen. Regarding, however, the question of

compensation, under the provisions of section 8 of Law 21 of 1962 for their requisitioned land, section 11 is in these terms :—

> " If, within three months of the date on which any compensation for requisition has accrued due, no agreement as in section 10 has been reached, or if, notwithstanding that the said period of three months has not elapsed, no such agreement can in the circumstances be foreseen, the requisitioning authority or any person interested may apply to the Court for the determination of such compensation."

For the reasons I have endeavoured to explain at length, I have reached the conclusion that the third proposition of counsel is not right, and in view of all the material before me, I am of the opinion that the order of requisition made by the requisitioning authority is neither contrary to any of the provisions of the Constitution or of any law, nor was it made in excess or in abuse of powers vested in such organ. In view, however, of the nature of these cases, particularly regarding the delay of the acquiring authority, I would not make an order as to costs against the applicants.

Applications dismissed.
No order as to costs.

TRANSLATION

This is an English translation of the Greek text appearing at pp. 332–333 *ante*, as prepared by the Registry.

> " 2. Certain immovable private properties have been acquired by virtue of Administrative Act No. 202/1969 for the tourist development of ' Golden Sands ' near Famagusta. As the owners of the said immovable properties have not accepted the compensation which has been offered to them by the Lands Office and as the formalities for the registration of the lands in the name of the Government would, according to existing legislation, take considerable time to be completed it is considered necessary for an order of requisition to be made under s. 4 of the Requisition of Property Law No. 21 of 1962, in order to enable the Republic to interfere with these lands at the earliest so as to achieve the purpose of the acquisition. It should be noted that by virtue of the relevant agreement the contractors

who have undertaken the erection of the project are bound to commence work with effect from the 1st March, 1971."

TRANSLATION

This is an English translation of the Greek text appearing at pp. 336–337 *ante*, as prepared by the Registry.

" Requisitions of property constitute acquisition for a public benefit purpose ; consequently the provisions of Article 17 of the Constitution, particularly those relating to the assessment of compensation by the Court and the payment in advance of compensation, apply to these as well. Nor is it true that the application of these provisions is practically impossible in the case of requisitions ; because this Article 17 of the Constitution provides that ' in a case of an urgent nature compensation may even provisionally be assessed by the Court ' by a Judicial Authority, *e.g.* by the President of the Court of First Instance or by a Justice of the Peace. Otherwise in France, for example, and in Belgium, in the case of certain military or naval requisitions (' requisitions militaires '), the compensation, which in reality is not an ' advance compensation ', is either assessed by a Justice of the Peace (*juge de paix*) or by the Court of First Instance (tribunal civil) in accordance with the amount of the Compensation. Requisitions for the needs of the Land or Sea Army, the military (within the general meaning of the word) requisitions, and not only these, but requisitions in general, come within the provisions of Article 17 of the Constitution as being ' acquisitions for a public benefit purpose ' ; because they amount to ' deprivation of property ', within the meaning of this term as appears in Article 17 of the Constitution, that is to say, of the ownership (*e.g.* horses, mules etc.) or the use and enjoyment (*e.g.* ships) for ' a public benefit ', in order to serve the needs of the Land and Sea Army. And because requisitions amount to ' deprivation of property ' in movable or immovable chattels for a ' public benefit ', according to the current opinion accepted in the jurisprudence in other countries, which theory we had been expounding in the already published editions of this text book, a Court of Athens of First Instance rightly decided in its judgments

Nos. 785 and 800 dated the 20th and 21st December, 1913, that the Compensation ought to be assessed by a 'Civil Court', and not by 'Administrative Tribunals', as was provided, in the case of naval requisitions, and contrary to Article 17 of the Constitution, by a Law of 1913, which was not applied, as being unconstitutional, by the Court of First Instance which overruled the objection of the defendant public authority regarding the competence of the Court."

TRANSLATION

This is an English translation of the Greek text appearing at pp. 337–338 *ante*, as prepared by the Registry.

" 2. Regarding the legal nature of the requisitions it does rather exist a confusion. Text book writers were not of unanimous opinion, not only in this country, but elsewhere. The question of requisition according to other writers constitutes an institution of its own nature unconnected with the acquisition. It was, in other words, considered by them a public burden or compulsory lease or a measure of a general nature, which is imposed by urgent needs of the state, particularly at war times. All these three theories have been echoed in case-law. According to other text book writers again, requisition either presents a great similarity with acquisition and does not materially differ therefrom, or it is entirely in substance an acquisition, falling, thus, within the provisions of Article 17 of the Constitution.

The disagreement is not simply of a theoretical meaning, but it is particularly of a practical importance. Because, if requisition is generally considered as an acquisition, it falls within the provisions of Article 17 paragraph 1 of the Constitution, and, consequently an acquisition is not justified in the absence of a public benefit and advance payment of compensation, assessed by the ordinary Courts ; on the contrary, however, if requisition does not amount to acquisition, the Administrative Courts, set up under the Requisition Law, to assess the Compensation, should by no means be considered as being unconstitutional.

The constitutional legislator of 1927 sought to solve the problem by the addition of a special provision to Article 19 permitting a deviation from the principle of 'inviolability of property'. But it is significant that this addition confirms how, according also to the constitutional legislator, requisition is in many respects identical with acquisition, so that an express provision exempting from the general principle of the 'inviolability of property' was deemed necessary to be inserted in the Constitution. The said provision which was not included in Article 17 of the 1864/1911 Constitution was included in the present Constitution. Paragraph 4 of Article 17 of the Constitution provides 'Special Laws govern matters relating to requisitions for the needs of the armed forces in case of war or mobilisation, or for the remedy of a social need of an urgent nature, which would endanger public order or health'.

3. In spite of the lack of a similar provision in the pre-existing Constitution Courts accepted that the requisition of immovable property by imposing under a 'simple restriction', allowed by the Constitution, the right of ownership to the immovable property on grounds of public interest, and thus not depriving 'the owner from the benefits of ownership except in part only' does not constitute an acquisition, nor does it, therefore, contravene Article 17 of the Constitution. But a requisition dictated by exceptional grounds of public or social necessity, is justified only by virtue of its temporary nature ; and it should not thus be kept in force beyond a reasonable time, which is determined by the Court, judging according to the circumstances prevailing from time to time and by taking into consideration the needs which dictated the requisition. In other words the long duration of the requisition of immovable property constitutes an indirect contravention of the Constitutional provision concerning the protection of the right to property. Requisition of immovable property for the needs of the public service which are not temporary and extraordinary, but permanent, being thus capable of being remedied by means of a permanent nature, such as the acquisition, is not constitutionally permitted, so long as it lasts beyond a reasonable time. Consequently it creates an obligation on the administration to abandon the requisition.

This theoretical achievement of case law which commends a reasonable and no doubt a correct interpretation of the rules relating to acquisition and requisition ought to be accepted by the existing constitution regarding the application of paragraphs 1 and 4 of Article 17. Because a different construction of the meaning of the law of requisition would lead to the impertinent conclusion, that the Constitutional Legislator, by paragraph 4, intended to defraud the principle of ' inviolability of property ' which was safeguarded by paragraph 1."