[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU, HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NEOPHYTOS SOFRONIOU AND OTHERS,
Applicants,

and

THE MUNICIPALITY OF NICOSIA AND OTHERS,
Respondents.

(*Cases Nos.* 157/73, 198/73, 209/73, 218/73, 235/73, 240/73, 245/73, 246/73, 249/73, 257/73, 258/73, 259/73, 271/73, 279/73).

Streets and Buildings Regulation Law, Cap. 96 *section* 12—*Prohibition therein 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 Article* 23.3 *of the Constitution—Therefore said section* 12 *not unconstitutional as being inconsistent with Article* 23 *of the Constitution*—Thymopoulos and Others *v.* Municipal Committee of Nicosia (1967) 3 *C.L.R.* 588 followed. 5 10

Constitutional Law—Constitutionality of legislation—Section 12 *of the Streets and Buildings Regulation Law, Cap.* 96 *not unconstitutional as being contrary to Article* 23 *of the Constitution.*

Right of Property—Deprivation of property—Restrictions or limitations on the right of property—Article 23 *of the Constitution—Effect of street-widening scheme, prepared under s.* 12 *of the Streets and Buildings Regulation Law, Cap.* 96, *on the right of property.* 15

Constitutional Law—Right of Property—See under "Right of Property".

Street-widening Scheme—Alignment—Meaning and effect of such scheme—Section 12 *of the Streets and Buildings Regulation Law, Cap.* 96. 20

The applicants in these recourses challenged the validity of street-widening schemes which have been prepared by the respondent Municipalities under section 12* of the Streets and Buildings Regulation Law, Cap. 96.

5 Counsel for the applicants contended that the decisions complained of were contrary to the provisions of Article 23.2** and (4)*** of the Constitution and the Compulsory Acquisition of Property Law, 1962 (Law 15 of 1962) in that they amounted, as a matter of law, to a procedure or machinery of compulsory 10 acquisition and/or deprivation of the areas affected by the respective schemes, and as such they ought to have complied with the provisions and requirements of Article 23.4 of the Constitution and of Law 15/62.

Held, (per A. Loizou, J., Triantafyllides, P., Stavrinides and 15 *Malachtos, JJ. concurring and L. Loizou and Hadjianastassiou, JJ. dissenting)*:

(1) That by the publication of the scheme under section 12 of Cap. 96 there is a restriction imposed regarding the right to build on the area affected by the new alignment and no part of 20 the land is ceded to the public road until there is an application to obtain a building permit and the building permit is granted; that the owner continues to enjoy and own his land unfettered, save in so far as he cannot build and this is the only burden imposed by the scheme; that though the part affected by the 25 scheme will be ceded to the road, that will only take place in the future at an unknown time within five, ten, or hundred years or never; and that, accordingly, in view of the uncertainty as to when the new alignment will come into existence, it cannot be said that this is a procedure of compulsory acquisition which 30 leads inevitably to the deprivation of the owner of part of his property.

(2) That the reasoning in *Thymopoulos and Others* v. *Municipal Committee N'sia* (1967) 3 C.L.R. 588, to the effect that the prohibition in section 12 arising out of a street-widening scheme 35 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

* Quoted at p. 131 *post*.
** Quoted at p. 132 *post*.
*** Quoted at pp. 132–133 *post*.

town and country planning in the sense of paragraph 3 of Article 23 of the Constitution is fully adopted; that, therefore, section 12 is not unconstitutional as being inconsistent with Article 23.

Per curiam: Of course, there may be instances when the extent of the interference is such, through the scheme concerned, that it would result to a deprivation, but that is a matter to be examined on the facts and circumstances of each case. 5

(3) That viewing the relevant legislation and in particular section 12 in its pioper background, it is correct to say that it has always been used as conferring town planning powers of rudimentary nature on municipalities and other authorities throughout the years and which have been used for the purpose, pending the preparation or putting into force of elaborate town planning legislation, such as the Town and Country Planning Law of 1972, Law 10/72 which has not, as yet, come into force (see *Michael Theodossiou Co. Ltd.* v. *The Municipality of Limassol* (1975) 3 C.L.R. 195 at pp. 210–211); that the enactment of the law envisaged by Article 23. 3 of the Constitution, is undoubtedly, a matter to be considered by the appropriate organs of the State; that the imposition of such a restriction, as a rule, on the right of ownership, is absolutely necessary in the interest of town and country planning in the sence of paragraph 3 of Article 23 of the Constitution, and the gradual implementation of such a scheme does not change the situation; that on the contrary, it cannot be visualized how such development can be achieved, if the machinery of compulsory acquisition was the only available means to be resorted to in order to meet such situations; and that, accordingly, the preliminary objection that section 12 of the Streets and Buildings Regulation Law, Cap. 96 is unconstitutional, cannot stand. 10 15 20 25 30

Per Triantafyllides, P.:

(1) Today, nine whole years after the *Thymopoulos* case, (*supra*) I find myself still of the same view as the one which I have expressed in such case (see pp. 156–158 *post*) and, therefore, I am in agreement with the view of Mr. Justice A. Loizou that, in effect, section 12 of Cap. 96 can be applied on its own without contravening Article 23 of the Constitution; and I again leave open the issue of constitutionality relating to the mode of applying section 13 of Cap. 96. 35

(2) In my view the crucial issue to be determined in the present 40

proceedings has all along been not whether the application of section 12 of Cap. 96, through the publication of a street-widening scheme, results, normally, in compulsory acquisition of land in the theoretical or abstract legal sense, but whether it results in "deprivation" in the sense of paragraph 2 of Article 23 of the Constitution, and not only in the imposition of a "restriction or limitation" in the sense of the same paragraph of the said Article; the two notions being, as a rule, mutually exclusive. It is only in case of "deprivation" that compulsory acquisition, as envisaged under paragraph 4 of Article 23, has to be resorted to. That is why in, also, the *Thymopoulos* case, *supra*, I deemed it fit to construe the notion of "deprivation" in the context of Article 23 as a whole, and in relation, particularly, to the provisos to paragraphs 9 and 10 of such Article (see p. 606 of the *Thymopoulos* case).

(3) I regard paragraph 5* of Article 23 as another strong indication that it is an incorrect approach to treat a street-widening scheme, under section 12 of Cap. 96, as resulting in "deprivation" necessitating resort to compulsory acquisition under paragraph 4 of Article 23, because in such a case I fail to see how on earth the provisions of paragraph 5 of the said Article could conceivably be applied in relation to such a scheme.

Order accordingly.

Cases referred to:

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

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

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

Holy See of Kitium and The Municipal Council of Limassol, 1 R.S.C.C. 15 at p. 28;

Anastassiadou and The Municipal Commission of Nicosia, 3 R.S.C.C. 111;

Nemitsas Industries Ltd., v. *The Municipal Corporation of Limassol and Another* (1967) 3 C.L.R. 134;

Michael Theodossiou Co. Ltd. v The Municipality of Limassol (1975) 3 C.L.R. 195 at pp. 210–211;

MucCullock v. *Maryland*, 17 U.S. 4 Wheat. 316, 407;

Gibbons v. *Ogden*, 22 U.S. 9 Wheat. 188;

* Quoted at pp. 161–162 *post*.

Hinds v. *The Queen* [1976] 1 All E.R. 353 (P.C.);

Evlogimenos and Others and The Republic, 2 R.S.C.C. 139 at p. 142;

Chimonides v. *Manglis* (1967) 1 C.L.R. 125;

Malliotis and Others v. *The Municipality of Nicosia* (1965) 3 C.L.R. 75; 5

Warren v. *Charleston*, 2 Gray 84;

Poindexter v. *Greenhow*, 114 U.S. 270, 304;

Board for Registration of Architects and Civil Engineers v. *Kyriakides* (1966) 3 C.L.R. 640; 10

Pollock v. *Farmers' Loan and Trust Co.*, 158 U.S. 601, 635;

Attorney-General for Alberta v. *Attorney-General for Canada* [1947] A.C. 503;

Antoniou v. *The Municipal Committee of Nicosia* (1968) 3 C.L.R. 437; 15

Attorney-General of the Republic v. *Ibrahim and Others*, 1964 C.L.R. 195 at p. 233;

Psaras v. *The Republic* (1968) 3 C.L.R. 353 at p. 363;

Matsis v. *The Republic* (1969) 3 C.L.R. 245 at p. 258;

Demetriades and Others v. *The Republic* (1971) 3 C.L.R. 218 at p. 228; 20

Xenophontos v. *The Police* (1971) 2 C.L.R. 279 at p. 286;

Hoppi v. *The Republic* (1972) 3 C.L.R. 269 at p. 275;

Demetriades v. *The Republic* (1974) 3 C.L.R. 246 at p. 270;

Commercial Company "Argozy" v. *The Republic* (1975) 3 C.L.R. 415 at p. 420; 25

Ansor Corporation v. *The Republic* (1969) 3 C.L.R. 325 at p. 338.

Recourses.

Recourses against the validity of three street-widening schemes regarding the widening and straightening of a number of streets in the towns of Nicosia, Limassol and Famagusta. 30

A. Panayiotou for the applicant in Case No. 157/73.

A. Dikigoropoullos, for the applicant in Case No. 198/73.

A. Michaelides, for the applicant in Case No. 209/73.

A. Panayiotou for *P. Poetis*, for the applicant in Case No. 218/73. 35

S. McBride with *V. Orphanou*, for the applicant in Case No. 235/73.

V. Tapakoudes, for the applicant in Case No. 240/73.

A. Anastassiades, for the applicant in Case No. 245/73.

S. McBride with *Chr. Mavrellis*, for the applicant in Case No. 246/73.

5 *R. Constantinides* for *L. Papaphilippou*, for the applicant in Case No. 249/73.

J. Kaniklides, for the applicant in Case No. 257/73.

A. S. Angelides for *G. Tornaritis*, for the applicant in Case No. 258/73.

10 *E. Markidou* (*Mrs.*) with *A. Markides*, for the applicant in Case No. 259/73.

Fr. Markides with *E. Markidou* (*Mrs.*), for the applicant in Case No. 271/73.

K. Talarides, for the applicant in Case No. 279/73.

15 *K. Michaelides*, for the respondents in Cases Nos. 157/73, 198/73.

J. Potamitis, for the respondents in Cases Nos. 235/73, 240/73, 245/73, 246/73, 249/73, 258/73, 259/73.

M. Papas, for the respondents in Cases Nos. 209/73, 218/73, 20 257/73, 271/73, 279/73.

L. Loucaides, Deputy Attorney-General of the Republic, on behalf of the Attorney-General of the Republic, as an amicus curiae.

Cur. adv. vult.

25 TRIANTAFYLLIDES, P.: There will be delivered two main judgments in these cases. The first by Mr. Justice A. Loizou, and the next by Mr. Justice Hadjianastassiou.

A. LOIZOU, J.: The validity of three street-widening schemes prepared and published by the respective appropriate Authorities 30 regarding the widening and straightening of a number of streets in the towns of Nicosia, Limassol and Famagusta, is the subject of these 14 recourses which were heard together by the Full Bench of the Court, regarding the issue of constitutionality of the *sub judice* schemes.

35 The plans in question were prepared by the respective respondents, under section 12 of the Streets and Buildings Regulation Law, Cap. 96, and notices of such plans, which will be hereinafter referred to as the street-widening schemes, were published

in the official Gazette of the 30th March, 1973, under Notification No. 612, in respect of Nicosia, in the official Gazette of the 4th May, 1973, under Notification No. 816, in respect of Limassol, and in the official Gazette of the 11th May, 1973 under Notification No. 858, in respect of Famagusta. 5

It has been contended that the decisions complained of are contrary to the provisions of Article 23. 2 and 4 of the Constitution and the Compulsory Acquisition of Property Law, 1962 (Law 15/62), in that, they amount, as a matter of law, to a procedure, or machinery of compulsory acquisition and/or deprivation of the areas affected by the respective schemes, and as such, they ought to have complied with the provisions and requirements of Article 23. 4 of the Constitution, as well as of Law 15/62. 10

It may be stated from the outset that this issue was raised in the case of *Thymopoulos and Others* v. *The Municipal Committee of Nicosia*, (1967) 3 C.L.R. 588 at p. 605, where it was held that – 15

> " 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. 20 25
>
> 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". 30 35

It will be useful to reproduce herein, the relevant statutory 40

provisions and Article 23 of the Constitution to the extent that is material, before dealing with the arguments advanced by counsel appearing in this case.

Section 12 of the Streets and Buildings Regulation Law reproduced with the modifications that have to be read into it due to the coming into operation of the Constitution and particularly of Articles 146 and 188 thereof, as well as what was stated in the case of *Pelides and The Republic*, 3 R.S.C.C. p. 13 at p. 19, 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 seventy five days from the date of the publication of the notice in the Gazette.

(3) At the expiration of the period set out in subsection (2) the plans shall, subject to any decision by the Supreme Constitutional Court on a recourse 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".

Section 13 reads as follows:

"(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". 5

Article 23 of the Constitution, as far as material, reads as follows: 10

" 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. 15

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. 20 25

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. 30

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 – 53

(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

(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."

Before dealing with the arguments advanced, it should be pointed out, at this stage, that in view of differences that exist between the two official texts of Article 23.3, the English draft text thereof has to be resorted to in construing it. (See Article 180 of the Constitution and the case of *Ramadan and The Electricity Authority of Cyprus*, 1 R.S.C.C. p. 49 at p. 57).

It has been the case for the applicants that sections 12 and 13 should be read together as one entity, as setting out the procedure or machinery for the widening of a street by the eventual deprivation of the owner of the strip of land affected by the new alignment. The characteristic features of this procedure for the achievement of the object which is the widening or straightening of any street, is the preparation of plans their publication and their becoming thereafter binding on the Authority and all persons affected thereby. The result of this, is that no permit can be issued by the appropriate authority, save in accordance with such plans. (Section 12(3)). This procedure is completed by the space between the new and the old alignment becoming part of such street. Therefore, the legal characteristic of the whole procedure, is a mechanism, as learned counsel put it, of compulsory acquisition, subject to the deferment of the deprivation of property until the issuing of a permit, and the procedure does not cease to be a compulsory acquisition, merely because there is this deferment.

It was further argued that the deprivation of ownership that takes place upon the issuing of a building permit under section 13, is no different than the deprivation of property achieved under the process of compulsory acquisition for purposes of

public benefit, under the Compulsory Acquisition of Property Law, 1962 (Law No. 15/62).

The procedure under section 12 was assimilated to the notice of acquisition under section 4 of Law 15/62, as they both have legal consequences and they can both be the subject of a re- 5 course, being executory acts. It was argued that the notice under section 4 of Law 15/62, does not by itself constitute a deprivation, nor does the publication of the order of acquisition, under section 6 thereof, deprive the owner of its property, the subject of the order of acquisition, except upon the payment of 10 its price. But the notice of acquisition, is, though not a proprietary act, an executory act creating legal consequences, as those set out in section 19 of the Law.

In the same way, by the publication of the plan, under section 12, the acquisition of the property is irrevocably set in motion. 15 The strip of land affected thereby is earmarked for compulsory acquisition and automatically vests when the permit is issued.

In support of this proposition Mr. Markides has referred us to a number of decisions of this Court and gave his own interpretation to what was stated therein. I shall, in due course, 20 refer to those decisions.

Admittedly, there has been a long tradition behind this procedure. Its origin is to be found in sections 27 and 33 of a 1888 Law and to be carried throughout those years until it got its present form in Cap. 96. It was argued, however, that under 25 the provisions of Article 23 of the Constitution, the question arises whether this system is justified thereunder and in particular, under paragraph 3 thereof. If it is treated as a town planning matter, then, it should be found that it is absolutely necessary, a position not justified from its very nature, because the 30 street-widening scheme will not take place immediately, may never be completed or it may be completed after the lapse of many years and so, how can it be said that a street-widening scheme of such uncertainty is absolutely necessary?

Mr. Kaniklides took this argument further, by saying that this 35 undetermined and unspecified in time extent of the restriction imposed, renders same unreasonable. (See Bazu Commentary, Vol. 1, p. 573 and 586).

Mr. Anastassiades has argued that apart from any other considerations no law, as envisaged by Article 23.3 of the Consti- 40

tution, is in force. Such law, should provide for just compensation to be promptly paid for any such restrictions or limitations which materially decrease the economic value of such property. It may be argued, he said, that section 13 does make provision for compensation, but the very wording of section 13(1) is that "no compensation should be paid, except etc.... in case of hardship". His submission being that as soon as a street-widening scheme is published, damage accrues to the owner of immovable property affected and, therefore, in the law envisaged by the Constitution, there should be provision for the prompt payment of compensation for such permissible restrictions or limitations imposed thereunder.

Mr. Talarides, on the other hand, has stated that the Court will have to say to what extent a street-widening scheme is constitutional, as the degree of widening has bearing on the issue, section 12, providing for exceptional measure which has to be limited in extent in order to comply with the Constitution. A street-widening scheme cannot be legal if it is too wide, and he referred to the approach of the matter in France.

I have tried to sum up the very elaborate arguments of learned counsel, Mr. Markides, whose address has been adopted by the other counsel, though to some instances to which we shall refer, additional arguments were advanced, with the exception of Mr. Talarides who pursued a different line.

It is an inherent risk in every condensation not to do as much credit as one might wish to do, to counsel who have addressed the Court in such thorough and penetrating manner. I hope I shall be forgiven for not stating out more extensively what was said by counsel for the applicants.

The attack has been directed at the approach of the learned Judge in the *Thymopoulos* case (*supra*) that sections 12 and 13, though obviously related provisions are sufficiently separate from each other, as to enable the constitutionality of any account taken under either of them, to be determined independently. They provide, as it was said, for two distinct legal situations if and though the one under section 13 arises as a result of the pre-existence of the one under section 12.

The question posed in the *Thymopoulos* case and which is posed in the present one, is 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. In the case of the *Holy See of Kitium and The Municipal Council of Limassol*, 1 R.S.C.C., p. 15, it was held, at p. 28 that, "in each case, where a building permit is applied for, it is a question of effect and of degree depending upon the circumstances of the particular case, whether the decision of the appropriate authority thereon amounts to a 'deprivation' within the meaning of the above provisions and which can only be achieved under paragraph 4 of Article 23, or, whether it amounts to 'restriction or limitation' (within the meaning of the above provisions) which can only be imposed under paragraph 3 of the said Article".

The case of *Anastassiadou and The Municipal Commission of Nicosia*, 3 R.S.C.C. 111 has been invoked as assisting the case of the applicants in the sense that there is to be found in what was said therein and particularly at page 115, material from which to infer that the proprietary rights are finally affected when a street–widening scheme becomes binding. The two passages may be quoted here as relevant:

> " In the opinion of the Court the purpose of the above provision is to ensure that so long as no new building is to be erected on the plot in question the area affected by a street–widening scheme shall not become part of a street but shall continue to be enjoyed by the owner of such plot and it cannot be interpreted as intended to bring about the paradoxical, as above, state of affairs".

The second passage relevant to our case, is the following:

> " Coming now to contention (b) of the Applicants the Court is of the opinion that the decision of Respondent does not amount to direct or indirect compulsory acquisition of the scheme area, after the coming into operation of the Constitution, so as to be relevant at all to the constitutionality of Respondent's actions. Having regard to the provisions of section 12 of Cap. 96 the Court is of the opinion that the proprietary rights of Applicants were finally affected in 1955 when the street–widening scheme in question came into force and since then the Applicants' property was subject to the burden created by such scheme which burden was merely given effect to by means of the refusal of Respondent to grant the building permit applied for by Applicants".

In both passages hereinabove set out, it appears that so long as no new building is to be erected on the plot in question, the area affected continues to be enjoyed by the owner of such plot and that the property affected by a street-widening scheme is only subject to the burden created by such scheme and that if any restriction were imposed upon the property of the applicant and that, if anything, the street-widening scheme did impose restrictions.

The case of *Nemitsas Industries Ltd., v. The Municipal Corporation of Limassol and Another* (1967) 3 C.L.R. 134, has been invoked together with the *Anastassiadou* case (*supra*) as supporting the view that a street-widening scheme amounts to direct or indirect compulsory acquisition, but because of the fact that the street-widening scheme in the *Nemitsas* case as in the *Anastassiadou* case became a final administrative act before the coming into operation of the Constitution, the result was different. In the *Nemitsas* case, again, the question in issue was the validity of an endorsement made on a building permit, that is to say, an administrative act purporting to be done on the authority of section 13 and not a street-widening scheme as said, under section 12.

By the publication of the scheme under section 12, there is a restriction imposed regarding the right to build on the area affected by the new alignment. No part of the land is ceded to the public road, until there is an application to obtain a building permit and the building permit is granted. The owner continues to enjoy and own his land unfettered, save in so far as he cannot build. That is to say, subject to the scheme. This is the only burden imposed by it. It is a fact that the part affected will be ceded to the road, but that is only to place in the future at an unknown time which, as it has been put in support of the argument that the scheme in question could not be considered as a town planning measure, it may take place in five, ten, or hundred years or never. Therefore, in view of this uncertainty as to when the new alignment will come into existence, it cannot be said that this is a procedure of compulsory acquisition which leads, inevitably to the deprivation of the owner of part of his property. Unlike the case of procedure under the Compulsory Acquisition of Property Law, where soon after the disposal of objections to a notice of acquisition there follows the publication of the order of acquisition and within a foreseeable time the agreement as to the price to be paid or the assessment thereof by the competent Court.

I am of the view and I adopt fully the reasoning in the *Thymopoulos* case, in this respect, that the prohibition in section 12 arising out of 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. Therefore, section 12 is not unconstitutional as being inconsistent with Article 23. Of course, there may be instances when the extent of the interference is such, through the scheme concerned, that it would result to a deprivation, but that is a matter to be examined on the facts and circumstances of each case.

That a street-widening scheme, generally speaking and without reference to the particular extent of interference, is to be regarded, for the purposes of Article 23 as imposing only restrictions or limitations and not as resulting in deprivation, may be derived, as pointed out in the *Thymopoulos* case, 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 those 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.

Viewing the relevant legislation and in particular section 12 in its proper background, it is correct to say that it has always been used as conferring town planning powers of rudimentary nature on municipalities and other authorities throughout the years and which have been used for the purpose, pending the preparation or putting into force of elaborate town planning legislation, such as the Town and Country Planning Law of 1972, Law 90/72 which has not, as yet, come into force. (See *Michael Theodossiou Co. Ltd.* v. *The Municipality of Limassol* (1975) 3 C.L.R. 195 at pp. 210–211). The enactment of the law envisaged by Article 23. 3 of the Constitution, is, undoubtedly, a matter to be considered by the appropriate organs of the State. The imposition of such a restriction, as a rule, on the right of ownership, is absolutely necessary in the interest of town and country planning in the sense of paragraph 3 of Article 23 of the Constitution, and the gradual implementation of such a scheme

does not change the situation. On the contrary, I cannot visualize how such development can be achieved, if the machinery of compulsory acquisition was the only available means to be resorted to in order to meet such situations.

5 For all the above reasons, the preliminary objection that section 12 of the Streets and Buildings Regulation Law, Cap. 96 is unconstitutional, cannot stand.

HADJIANASTASSIOU, J.: In these fourteen recourses which have been heard together by the full Court of the Supreme Court
10 in its original jurisdiction under the provisions of s. 11 of the Administration of Justice (Miscellaneous Provisions) Law 1964, (No. 33/64), all the applicants challenge the validity of the decisions or acts of the three Municipalities, of Nicosia, Limassol and Famagusta, published in the Official Gazette of March 30,
15 1973, under notification No. 612 in respect of Nicosia, May 4, 1973, under notification No. 816 in respect of Limassol, and on May 21, 1973 under notification No. 858 in respect of Famagusta, seeking a declaration that the scheme for the widening and/ or straightening of certain streets is null and void and of no
20 effect whatsoever.

Although there were a number of grounds of law in support of these applications, only the issue of constitutionality of the said street widening scheme was argued before us, and it was alleged
25 that the said decisions are contrary to the provisions of Article 23. 2 & 4 of the Constitution and the Compulsory Acquisition of Property Law, 1962, (No. 15/62) because in effect they amount to deprivation of the areas affected by the said scheme, and that they ought to have complied with Article 23. 2 & 4
30 and Law 15/62.

The plans in question were prepared by each of the three Municipalities, showing the width of such street, and the direction that it shall take, exercising their powers under the provisions of section 12 of the Streets and Buildings Regulation Law, Cap. 96.
35 I propose reading section 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
40 that it shall take.

(2) When any plans have been prepared under sub-se-

ction (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 the 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".

I should have added that subsections 2 and 3 of section 12 have to be applied modified due to the coming into force of the Constitution and particularly of Article 146 thereof: See *Pelides and The Republic, (Council of Ministers) and Another*, 3 R.S.C.C. 13.

Then section 13 says:-

" (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".

I think that I should state at the outset that the provisions of sections 12 and 13 of Cap. 96 must be borne in mind as I take my

considerations further, because those provisions clearly show what was thought to be the concept of property during the colonial days imposing obligations on the individual for the benefit of the society.

5 There is no doubt that the concept of property has undergone through the ages many changes, and in many countries, including the United States of America, the right to private property was recognized as a natural individual right by the various Bills of Rights and the Fifth Amendment of the Constitution.

10 This individualistic approach, however,—and I lay stress on these words—to the right of property has changed today. The right of property instead of being considered as a natural individual right, inviolable, sacrosanct and imprescriptible, which every individual brings with him at birth, is looked upon as a
15 social function imposing obligations also on the individual for the benefit of the society of which he is a member. Although under this new concept, in many countries, the right of property is created and regulated by law for the social benefit, nevertheless, I would point out that in Cyprus for reasons which I do not
20 think are necessary for me to state in this judgment, the property guaranteed by the Constitution of the Republic is still an individual prerogative and not, I would repeat, a social function imposing obligation towards the society.

I propose, therefore, to approach the arguments and con-
25 tentions of counsel appearing in these cases with this in mind. Although I am inclined to have all the sympathy and understanding to those who continue to advocate that we should interpret the constitutional provisions of Article 23 liberally in order to make it workable, nevertheless, I have no alternative in con-
30 struing it but to follow the trend of the authorities which lay down that the purpose of interpretation is to do justice to the framers of the Constitution, who clearly in my view, intended to adopt in our Constitution the individualistic concept of property irrespective of the many difficulties, of which no doubt, the con-
35 stitutional drafters must have had in mind.

If further evidence is needed in support of my own construction, that the property guaranteed by the Constitution of the Republic of Cyprus represents the individualistic concept of property, one may look, *inter alia*, at the privileges and rights of
40 the Church and other religious corporations and the vakf which are preserved; and that property belonging to them cannot be

compulsorily acquired except with the written consent of the appropriate authority being in control of that property.

Because the right of property is secured, no deprivation of this right can be effected except through the constitutional machinery of the compulsory acquisition of property and in compliance with the conditions and guarantees laid down in the Constitution. Anyone, I think, who has been dealing with compulsory acquisitions would agree with me that some of those conditions—especially the requirement of payment of compensation in advance and in cash excluding payments by bonds in kind and/or by exchange for other property is a handicap to many development programmes. But once again, I would state that because that was the wish of the Constitutional drafters, I do not think that anyone should be allowed by interpretation to undermine the constitutional guarantee of the right of property. It would, perhaps have been better if the Constitution had followed the new concept that the right of property should be regulated by law for the social benefit, but this is not a reason justifying in law a departure from the true interpretation of the Constitution.

The very nature of the Constitution, as observed by Chief Justice Marshall, "requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves". Later on he added:– "In considering this question, then, we must never forget that it is a constitution we are expounding". (*McCullock* v. *Maryland*, 17 U.S. 4 Wheat. 316, 407 (4 : 579, 601)).

The words of the Constitution are to be taken in their obvious sense and to have a reasonable construction. In *Gibbons* v. *Ogden*, 22 U.S. 9 Wheat. 188 (6 : 68), Chief Justice Marshall, again with his usual felicity, said:–

> " As men, whose intentions require no concealment, generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said".

In the recent case of *Hinds* v. *The Queen*, [1976] 1 All E.R.

353, P.C., Lord Diplock, delivering his opinion regarding the construction of the Constitution of Jamaica, said at p. 359:-

> "A written constitution, like any other written instrument affecting legal rights or obligations, falls to be construed in the light of its subject-matter and of the surrounding circumstances with reference to which it was made ...... In seeking to apply to the interpretation of the Constitution of Jamaica what has been said in particular cases about other constitutions, care must be taken to distinguish between judicial reasoning which depended on the express words used in the particular constitution under consideration and reasoning which depended on what, though not expressed, is nonetheless a necessary implication from the subject matter and structure of the constitution and the circumstances in which it had been made ... Nevertheless all these constitutions have two things in common which have an important bearing on their interpretation. They differ fundamentally in their nature from ordinary legislation passed by the parliament of a sovereign state".

With this in mind, I turn now to Article 23 of our Constitution, which guarantees the right of property in Cyprus. Paragraph 1 is in these terms:-

> "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

(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".

What is the right to property? Unfortunately, our Constitution does not define the right guaranteed under paragraph 1 of Article 23, but as has been pointed out by the Supreme Constitutional Court in *Evlogimenos* and *Others* and *The Republic*, 2 R.S.C.C. 139 at p. 142:–

" Further, the Court in examining the provisions of Article 23 of the Constitution has proceeded on the well-settled principle that the right to property safeguarded by an Article such as this is not a right in abstracto but a right as defined and regulated by the law relating to civil law rights in property and the word 'property' in paragraph 1 of Article 23 has to be understood and interpreted in this sense".

Then the Court, dealing with paragraph 2 of the same Article continued:–

" Paragraph 2 of Article 23, in the opinion of the Court, protects the aforesaid right to property from deprivation or

restriction or limitation effected in the interests of the State or public bodies and not merely under a law regulating civil law rights in property".

See also *Chimonides* v. *Manglis* (1967) 1 C.L.R. 125, affirming 5 the principle formulated in *Evlogimenos* case *supra*. .

It is to be added that the requirement of applying for a building permit under s. 3 of Cap. 96 is connected with the right to property safeguarded by paragraph 1 of Article 23, which includes the right to possess and enjoy property. I would, therefore, 10 make it quite clear, once again, that as from the date of the Constitution coming into force, the relevant legislation of Cap. 96 has to be read subject to the Constitution and specifically to Article 23, and to be applied with the necessary modifications.

What is the true interpretation of Article 23? I think that it 15 is necessary to review first some of the cases decided by the Courts in interpreting Article 23, particularly as to what amounts to a deprivation or restriction or limitation.

In *Holy See of Kitium and the Municipal Council of Limassol*, 1 R.S.C.C. 15, the Supreme Constitutional Court, dealing with 20 the question as to whether the decision of the appropriate authority amounted to a deprivation under paragraph 2 of Article 23, said at pp. 28–29:-

> " In each case where a building permit is applied for it is a question of fact and of degree, depending upon the circum- 25 stances of the particular case whether the decision of the appropriate authority thereon amounts to a 'deprivation' (within the meaning of the above provisions) and which can only be achieved under paragraph 4 of Article 23, or whether it amounts to 'restriction or limitation' (within the me- 30 aning of the above provisions) which can only be imposed under paragraph 3 of the said Article, and in the particular case of an owner such as the Applicant, only under the proviso to paragraph 9 thereof".

In *Maria Anastassiadou and 2 others and the Municipal Com-* 35 *mission of Nicosia*, 3 R.S.C.C. 111, the Supreme Constitutional Court, dealing with ss. 12 and 13 of the Streets and Buildings Regulation Law, Cap. 96, and Article 23 of the Constitution, had this to say regarding the first contention of counsel for the applicants as to the purpose of sub-section 1 of section 13 at 40 p. 115:-

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"In the opinion of the Court the purpose of the above provisions is to ensure that so long as no new building is to be erected on the plot in question the area affected by a street widening scheme shall not become part of a street but shall continue to be enjoyed by the owner of such plot and it cannot be interpreted as intended to bring about the paradoxical, as above, state of affairs. 5

Furthermore, the provision in the said section 13 about compensation in cases of hardship is also a clear indication that the area to be taken into consideration for building permit purposes is what results after deducting any part affected by a street-widening scheme". 10

Then the Court, dealing with the second contention of counsel that the decision in question of the respondent amounts in effect to indirect compulsory acquisition of the scheme area, said at pp. 115-116:- 15

"... the Court is of the opinion that the decision of Respondent does not amount to direct or indirect compulsory acquisition of the scheme area, after the coming into operation of the Constitution, so as to be relevant at all to the constitutionality of Respondent's action. Having regard to the provisions of section 12 of Cap. 96, the Court, is of the opinion that the proprietary rights of Applicants were finally affected in 1955 when the street-widening scheme in question came into force and since then the Applicants' property was subject to the burden created by such scheme which burden was merely given effect to by means of the refusal of Respondent to grant the building permit applied for by Applicants". 20 25

Is a street-widening scheme a legislative act? In *Christos Malliotis and Others* v. *The Municipality of Nicosia*, (1965) 3 C.L.R. 75, the Court, dealing with street-widening schemes under s. 13 of Cap. 96, made these observations as to the nature of a street-widening scheme at p. 84:- 30

"Though there is some division of opinion among Courts in other countries and learned writers as to whether a street-widening scheme is a legislative or an administrative act, in Cyprus the matter appears to have been well settled by the judgment in *Pelides and The Republic* (above)*. 35

* 3 R.S.C.C. 13.

There, such a scheme was clearly treated as being an administrative act, and not a legislative one. The same view has been adopted in Greece where street-widening schemes are treated as being subject to recourse to the Council of State under the competence of such Council corresponding to our Article 146.

A street-widening scheme is an administrative act of general application—as distinguished from an individual act—and, as stated also in the judgment in *Anastassiadou and The Municipal Commission of Nicosia* (3 R.S.C.C. p. 111), it creates a burden on a property affected by it.

Such a scheme can be challenged by recourse, under Article 146, as soon as it has been properly published, under section 12(2) of Cap. 96, (See *Pelides and The Republic*, above, at p. 20)".

In *Nemitsas Industries Ltd. and The Municipal Corporation of Limassol and Another*, (1967) 3 C.L.R. 134, the Court, dealing with the validity of an endorsement made by the respondents on a building permit granted to applicants, made these observations at p. 143:-

" First, I am of the opinion that in dealing with the validity of such endorsement I am not entitled to examine the validity of the scheme itself—as being a factor decisive for the validity of the endorsement—because the scheme is not a legislative act, but an administrative one; only if it were a legislative act could its invalidity have led to the invalidity of an act based thereon (as in *Christodoulou and The Republic*, 1 R.S.C.C. p. 1). Nor can it be said, in this respect, that the said scheme and the building permit in question form together a 'composite administrative action' so that the invalidity of part of such action—such as the scheme—could lead to the invalidity of the culmination of such action—*i.e.* the building permit. The scheme and permit are acts separate and independent of each other; though a scheme is a factor which, when it exists, restricts the exercise of the power to grant a building permit, it is not a step taken in the administrative process of granting such a permit.

Secondly, the attempt made towards implementation of the 1955 street-widening scheme for Chiflikoudhia road, by

means of the endorsement complained of, cannot, in any sense, be said to amount to a compulsory acquisition made after the 16th August, 1960—so that Article 23.4 could be applicable to it—because as it is to be derived from *Anastassiadou and The Municipal Commission of Nicosia* (3 R.S.C.C. p. 111, at p. 116) a scheme which came into force in 1955 cannot, when relied upon by a Municipal Authority after the coming into operation of the Constitution on the 16th August, 1960, be held to amount to direct or indirect compulsory acquisition taking place after the coming into operation of the Constitution."

The case of *Demetrios Thymopoulos and Others* v. *The Municipal Committee of Nicosia* (1967) 3 C.L.R. 588 was criticized by all counsel for applicants—except one—that it was wrongly decided. In that case, one of the main issues was the constitutionality of the street-widening scheme prepared by the Municipal Committee under the provisions of s. 12 of Cap. 96. That scheme was attacked as being irreconcilable with Article 23 of the Constitution because it resulted in deprivation of property otherwise than was permitted under that Article.

The Court, having also referred to ss. 12 and 13 of Cap. 96, rejected the submission of counsel as to the unconstitutionality of the street-widening scheme, but it annulled it on the ground of defective exercise by the respondent of its discretionary powers. The question posed in that case by the learned Justice was this:

"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."

Then, the learned Justice, answered the question posed by him in these terms:-

"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.

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."

There is not doubt that the Streets and Buildings Regulation Law, Cap. 96, gave the appropriate authority ample power to

lay out streets and to deal with erection of buildings, and also to prepare plans with the object of widening or straightening streets and at the expiration of the period required under sub-section 2 of s. 12, the proprietary rights of the applicants are finally affected when the said street widening scheme in question becomes binding on the said authority and on the owner and after that date, the applicants' property becomes subject to the burden created by such scheme, and as a result no permit shall be issued by the said authority save in accordance with the said plans.

I must point out that those strong words "no permit shall be issued" indicate in my view that an owner of land is prevented from obtaining a permit to develop his whole land because this is the object of that section. That this was the object of that section is made abundantly clear also in s. 13 of the law which introduces section 12 into it, and says that if the owner of the property decides to exercise his rights to develop his land, a permit shall be granted to him on condition—once his property was subject to the burden under section 12—that "any space between such new alignment and the old alignment, which is left over when a permit is granted, shall become part of such street". This in my view clearly shows that the burden created by such scheme is put into effect by means of granting a building permit, and to make it even worse that section provides that in spite of the fact that that part of the land shall become part of the public street, no compensation whatsoever would be paid to the owner of the property by the appropriate authority unless he establishes a hardship which is unacceptable under the present constitutional guarantees once the owner is deprived of that part of his property.

Having heard elaborate arguments on behalf of all counsel appearing in these recourses on the question of the constitutionality of the street-widening schemes in question, I must try to summarise at least the contentions of Mr. Markides, whose arguments were adopted by all counsel for applicants except Mr. Talarides.

It was said:

(a) that in *Thymopoulos* case (*supra*), the trial Judge wrongly decided that he could pronounce in those proceedings on the constitutionality of the street-widening scheme in question relying only on the provi-

sions of s. 12 of Cap. 96, once he came to the conclusion that both sections 12 & 13 were obviously related provisions;

(b) that the full Court in these cases in deciding the constitutionality of the present *sub judice* decisions, should read as a whole both sections 12 and 13, because both are so essential, interconnected and inseparable, and because they set in motion a procedure or the machinery of compulsory acquisition which finally results in the deprivation of the applicants of that part of their property which is included in the scheme area;

(c) that once under the combined effect of sections 12 and 13 there is a deferment of the deprivation of property until the issuing of a permit, such procedure still remains in effect a compulsory acquisition because it finally results in deprivation of property;

(d) that once the two sections are one entity and should be read together, the procedure envisaged by sections 12 and 13 is completed and finalized by the severance of that part of the adjacent private properties and its incorporation into the public street. This shows that it is a composite act, and that in substance the street–widening scheme is compulsory acquisition conditional upon the issue of a building permit. The condition does not affect the substance and in law the condition does not alter the substance which is compulsory acquisition;

(e) that once the land is automatically transferred to the acquiring authority upon the issuing of a building permit, it shows that the street–widening scheme, being a composite act, amounts to a deprivation and not a restriction. The said scheme area is irrevocably ear–marked for compulsory acquisition and the right to develop the whole area is taken away from its owner; and

(f) that the procedure followed under sections 12 and 13 is similar or at least not different from the deprivation of property achieved under the constitutional process of compulsory acquisition for purposes of public benefit under the Acquisition of Property Law, 1962 (No. 15/62). Counsel having further compared the

procedure of section 12 with that of section 4 of Law 15/62, argued that both sections have the same legal consequences and can become the subject of a recourse once they are executory acts. Furthermore, it was said that the notice under section 4 of Law 15/62 has the same effect as section 12 and section 13 with the same legal consequences as those in section 19 of Law 15/62.

Are sections 12 and 13 dependent on each other? The answer to this problem is not free from authority and I think the rule laid down by Chief Justice Shaw in *Warren* v. *Charleston,* 2 Gray 84, is applicable, that "if the different parts are so mutually connected with and depended on each other, as conditions, considerations or compensations for each other, as to warrant a belief that the legislature intended them as a whole, and that, if all could not be carried into effect, the legislature would not pass the residue independently, and some parts are unconstitutional, all the provisions which are thus dependent, conditional or connected must fall with them".

Moreover, as the point is put by Mr. Justice Matthews in *Poindexter* v. *Greenhow,* 114 U.S. 270, 304: "It is undoubtedly true that there may be cases where one part of a statute may be enforced as constitutional, and another be declared inoperative and void, because unconstitutional; but these are cases where the parts are so distinctly separable that each can stand alone, and where the Court is able to see and to declare, that the intention of the Legislature was that the part pronounced valid should be enforceable even though the other part should fail. To hold otherwise would be to substitute for the law intended by the Legislature one they may never have been willing by itself to enact".

If further authority is needed, I think the *Board for Registration of Architects and Civil Engineers* v. *Christodoulos Kyriakides,* (1966) 3 C.L.R. 640 is in line with the approach I have indicated earlier, and Josephides, J., in dealing with the constitutionality of sections 7 and 9 of Law 41/62 viz–a–vis Article 25. 2 has quoted with approval the case of *Pollock* v. *Farmers' Loan and Trust Co.*, 158 U.S. 635, and said at p. 655:–

> " In cases involving statutes, portions of which are valid and other portions invalid, the Courts will separate the valid from the invalid and throw out only the latter unless such portions are inextricably connected".

In *Attorney-General For Alberta* v. *Attorney-General For Canada*, [1947] A.C. 503, Viscount Simon, delivering the judgment of their Lordships in the Privy Council said at p. 518:-

5 "There remains the second question, whether when Part II has been struck out from the Act as invalid what is left should be regarded as surviving, or whether, on the contrary, the operation of cutting out Part II involves the consequence that the whole Act is a dead letter. This sort of question arises not infrequently and is often raised (as in 10 the present instance) by asking whether the legislation is intra vires 'either in whole or in part', but this does not mean that when Part II is declared invalid what remains of the Act is to be examined bit by bit in order to determine whether the legislature would be acting within its powers if 15 it passed what remains. The real question is whether what remains is so inextricably bound up with the part declared invalid that what remains cannot independently survive or, as it has sometimes been put, whether on a fair review of the whole matter it can be assumed that the legislature 20 would have enacted what survives without enacting the part that is ultra vires at all".

This dictum of Viscount Simon at p. 518 was applied in *Hinds* v. *The Queen*, [1976] 1 All E.R. 353 at p. 373.

So, in deciding whether the provisions of ss. 12 and 13 when 25 read together are inconsistent with Article 23 of our Constitution, I think I must point out that this Court should not be concerned with the propriety or expediency of the law impugned. Furthermore, we should not be concerned whether a street-widening scheme is or is not desirable, not whether such a 30 scheme would enable an appropriate authority to improve and widen the streets. Our concern should be solely whether those provisions, however reasonable and expedient, are of such a character that they conflict with the constitutional provision of Article 23. Once, therefore, we can reach the conclusion that 35 sections 12 and 13 violate the Constitution, we must so declare it irrespective of any economic burdens which it would entail on the appropriate authorities: See also *Hinds* v. *The Queen* (*supra*) at p. 361.

In the light of the authorities, and once, in my view, both 40 sections 12 and 13 are mutually connected with and dependent on each other, as considerations and conditions for each other,

and/or both sections are so inextricably connected, in deciding the constitutionality of the street-widening scheme in question, I think I must read both sections as a whole or as one entity. In doing so, with respect, having considered the elaborate and careful judgment of the learned Judge in *Thymopoulos* case (*supra*) I find myself unable to agree with that part of the reasoning that those two sections are sufficiently separate from each other as to enable the constitutionality of any section or decision taken under either of them to be determined independently. The reason is, as I said earlier, that both sections 12 & 13 read together constitute in my view one entire street-widening scheme which results by a composite act in the deprivation of property of the scheme in question and not in the imposition of restrictions or limitations on the right to property once such property is within the new alignment, with the obvious result that the owner is prevented, contrary to Article 23 of the Constitution from exploiting his whole land in the most possible and profitable way for building on his whole land. I think, therefore, that I will reiterate once again that under s. 12, the proprietary rights of the owner were finally affected when the street-widening scheme came into force and once his property was subject to the burden created by such scheme, such burden would be given effect to by means of either the granting or refusing of a permit for building purposes, and no doubt it supports the view that both sections should be read together; and that the inevitable result that the decision of the appropriate authority cannot but amount to a direct or indirect compulsory acquisition of the scheme area.

With this in mind, and having reviewed once again the *Thymopoulos* case (*supra*) I have no difficulty to say that one finds there observations which indicate (though the point was left open) that the learned Judge was of the view that in effect s. 13 of Cap. 96 provides for a deprivation of the property which is between the old alignment and the new alignment. That I am right in this view I find further support in the very words of the learned Judge who says regarding s. 13 that "were to be found to provide, in effect, for a deprivation otherwise than as envisaged under Article 23 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".

For these reasons, and because s. 12 is not severable from, but

on the contrary is wholly dependent on s. 13, and because there is such a necessary connection between those two sections as to furnish cogent evidence that the legislator did not intend to enact s. 12 without s. 13, I do not find it possible to agree with 5 the majority of this Court that *Thymopoulos* case was rightly decided because both sections are sufficiently separate from each other as to enable the constitutionality of any action taken under either of them to be determined independently.

On the contrary, for the reasons I have given at length, both 10 sections have to stand together and in effect they provide not for restrictions or limitations, but for deprivation of that part of the property of the applicant; and once such permit is granted that part does not only become part of such street, but at the same time the District Lands Office, upon application by any inter- 15 ested party, shall cause the necessary amendments to the relative registrations to be effected and the amended registrations shall be held final notwithstanding that any certificate relating thereto remains unaltered. I would, therefore, declare that ss. 12 & 13 are unconstitutional, as being contrary to Article 23 of our 20 Constitution. In the result, the street-widening schemes in question are declared also void.

I think I ought not to conclude this judgment without saying how much I owe in the preparation of it to all counsel appearing in these cases in assisting me to reach the decision that the street- 25 widening schemes in question are invalid because in my view it turns the property of the individual guaranteed under the Constitution into a social function imposing obligations towards society, where in fact and reality our Constitution accepts the individualistic concept of property.

30 TRIANTAFYLLIDES, P.: At the present stage of the proceedings in all these fourteen cases—(another one, case No. 248/73, was withdrawn after judgment was reserved)—we are dealing with an issue common to them all, namely whether section 12 of the Streets and Buildings Regulation Law, Cap. 96, under 35 which the *sub judice* street-widening schemes have been published by the respondent Municipalities, is unconstitutional as contravening the provisions of Article 23 of the Constitution, in that, allegedly, its application entails compulsory acquisition of land effected in a manner other than the one prescribed in the 40 said Article 23.

The relevant legislative provisions—(sections 12 and 13 of

Cap. 96)—as well as the relevant paragraphs—(1 to 4)— of Article 23 have already been quoted in the two main judgments just delivered, and I will not reproduce them in my judgment once again.

I have had the privilege and the benefit of reading in advance the said two judgments, delivered by Mr. Justice A. Loizou and Mr. Justice Hadjianastassiou, and after, indeed, full consideration of everything stated therein, I find myself in agreement, on the whole, with the former, and in disagreement with the latter.

In these proceedings we have been invited, in effect, to consider, at the level of the Full Bench of this Court, the validity of the approach adopted by me as regards the constitutionality of section 12 of Cap. 96 when I dealt with such issue at first instance (and there was no appeal) in *Thymopoulos and Others* v. *The Municipal Committee of Nicosia*, (1967) 3 C.L.R. 588. In that case I stated the following (at pp. 604, 605):-

" 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 the 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 subsection (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 pro-

perty 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.

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 5 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 depri- 10 vation in a manner otherwise than as permitted under Article 23".

Later on, in *Antoniou* v. *The Municipal Committee of Nicosia*, (1968) 3 C.L.R. 437 I stated the following (at pp. 442, 443):–

" It has been laid down, in *Thymopoulos* v. *The Municipal* 15 *Committee of Nicosia*, (1967) 3 C.L.R. 588, that when a street–widening scheme does not affect a building site to such an extent as to render it unsuitable for use as a building site, it does not amount to anything more than the imposition of restrictions or limitations, in the sense of Article 20 23. 3 of the Constitution; and this is so in the present case, in view of the quite limited extent to which the new alignment affects plot 370.

Any prejudice which the Applicant will suffer as a result of the protrusion of the building on plot 367, is a matter 25 relevant to the issue of compensation that may, possibly, arise under Article 23. 3 of the Constitution; and it is a factor to be borne in mind, also, in case the Applicant applies in future for a relaxation of the relevant provision of the Streets and Buildings Regulations so as to be enabled 30 to build nearer the new alignment than 10 feet, as the owner of plot 367 has done".

All counsel for the applicants (except one, Mr. Talarides) have disagreed with the approach adopted in the *Thymopoulos* case, *supra*; on the other hand, all counsel for the respondents 35 have supported it.

I have reconsidered the whole issue ab initio, in the light of the able and lengthy arguments advanced by counsel for the parties, and I have discussed it with my learned brothers on the Bench.

In considering such issue I have duly borne in mind that (a) a 40

statutory provision is presumed to be constitutional until the contrary is proved beyond reasonable doubt (see, *inter alia*, *The Attorney-General of the Republic* v. *Ibrahim and Others*, 1964 C.L.R. 195, 233, *The Board for Registration of Architects* 5 *and Civil Engineers* v. *Kyriakides*, (1966) 3 C.L.R. 640, 654, *Psaras* v. *The Republic*, (1968) 3 C.L.R. 353, 363, *Matsis* v. *The Republic*, (1969) 3 C.L.R. 245, 258, *Ansor Corporation* v. *The Republic*, (1969) 3 C.L.R. 325, 338, *Demetriades and Others* v. *The Republic*, (1971) 3 C.L.R. 218, 228, *Xenophontos* v. *The* 10 *Police*, (1971) 2 C.L.R. 279, 286, *Hoppi* v. *The Republic*, (1972) 3 C.L.R. 269, 275, *Demetriades* v. *The Republic*, (1974) 3 C.L.R. 246, 270, and *Commercial Company "Argozy"* v. *The Republic*, (1975) 3 C.L.R. 415, 420), that (b) if at all possible the Courts should construe a statute so as to bring it within the Constitu- 15 tion (see, *inter alia*, *The Board etc.*, *supra*, 655, *Ansor*, *supra*, 339, *Hoppi*, *supra*, 523, and *Demetriades*, *supra*, 270, and, see, too, Tsatsos on the Problem of Construction in Constitutional Law—Θ. Τσάτσου, Τὸ Πρόβλημα τῆς Ἑρμηνείας ἐν τῷ Συνταγματικῷ Δικαίῳ—1970, p. 27), and that (c) a constitutionally valid part 20 of a statute will be separated from an unconstitutional part of the same statute unless the two parts are inextricably connected (see, *inter alia*, *The Board etc.*, *supra*, 655, *Ansor*, *supra*, 339 and *Demetriades*, *supra*, 228).

Today, nine whole years after the *Thymopoulos* case, I find 25 myself still of the same view as the one which I have expressed in such case (see above) and, therefore, I am in agreement with the view of Mr. Justice A. Loizou that, in effect, section 12 of Cap. 96 can be applied on its own without contravening Article 23 of the Constitution; and I again leave open the issue of con- 30 stitutionality relating to the mode of applying section 13 of Cap. 96.

I shall not repeat in my judgment all that has been said on the matter, in his judgment, by Mr. Justice A. Loizou; I shall only limit myself to observing the following:

35 An attempt has been made by counsel for the applicants to present the case of *Anastassiadou and Others and The Municipal Commission of Nicosia*, 3 R.S.C.C. 111, as having laid down, by implication, that a street-widening scheme, published under section 12 of Cap. 96, amounts to direct or indirect compulsory 40 acquisition; that is not a correct reading of that case, or of the subsequent case of *Nemitsas Industries Ltd.* v. *The Municipal Corporation of Limassol and another*, (1967) 3 C.L.R. 134; in

both such cases, which were decided before the *Thymopoulos* case, *supra*, it was the contention of the applicants that street-widening schemes amounted to direct or indirect compulsory acquisition and the Court found it not necessary to pronounce in this respect as the schemes concerned had come into force before the coming into operation, in 1960, of the Constitution and so the issue as to whether or not they amounted to direct or indirect compulsory acquisition was not relevant to the constitutionality of administrative action taken after 1960 on the basis of such schemes. Actually in the judgment in the *Anastassiadou* case, *supra*, there is to be found the following passage (at p. 116) which strongly indicates that the Court regarded a street-widening scheme as imposing restrictions, in the sense of Article 23 of the Constitution:-

> " ... if any restrictions were imposed upon the property of Applicants by means of the said scheme such restrictions were imposed before the coming into operation of the Constitution. As held by this Court in the Case of *Husein Ramadan and The Electricity Authority of Cyprus and the Republic through the District Officer of Limassol*, 1 R.S.C.C. p. 49, Article 23 does not, as a rule, apply to restrictions or limitations imposed before the coming into operation of the Constitution and continuing in force thereafter and, unlike the facts of the said Case, no question of constructive imposition of restrictions arises in the present Case because there has not supervened any basic change in the nature of the use of the servient tenement, which at all material times has been a property suitable for building development".

In my view the crucial issue to be determined in the present proceedings has all along been not whether the application of section 12 of Cap. 96, through the publication of a street-widening scheme, results, normally, in compulsory acquisition of land in the theoretical or abstract legal sense, but whether it results in "deprivation" in the sense of paragraph 2 of Article 23 of the Constitution, and not only in the imposition of a "restriction or limitation" in the sense of the same paragraph of the said Article; the two notions being, as a rule, mutually exclusive. It is only in case of "deprivation" that compulsory acquisition, as envisaged under paragraph 4 of Article 23, has to be resorted to. That is why in, also, the *Thymopoulos* case, *supra*, I deemed it fit to construe the notion of "deprivation" in the context of Article 23 as a whole, and in relation, particularly, to the pro-

visos to paragraphs 9 and 10 of such Article; the following were stated, in this respect, in my judgment in the said case (at p. 606):-

" 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 of 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".

Likewise, I regard paragraph 5 of Article 23, which provides that: "5. Any immovable property or any right over or interest in any such property compulsorily acquired shall only be used for the purpose for which it has been acquired. If within three years of the acquisition such purpose has not been attained, the acquiring authority shall, immediately after the expiration of the said period of three years, offer the property at the price it has been acquired to the person from whom it has been acquired. Such person shall be entitled within three months of the receipt of such offer to signify his acceptance or nonacceptance of the offer, and if he signifies acceptance, such property shall be returned to him immediately after his returning such price within a further period

of three months from such acceptance" as another strong indication that it is an incorrect approach to treat a street-widening scheme, under section 12 of Cap. 96, as resulting in "deprivation" necessitating resort to compulsory acquisition under paragraph 4 of Article 23, because in such a case I fail to see how on earth the provisions of paragraph 5 of the said Article could conceivably be applied in relation to such a scheme.

For all the above reasons I agree, as already stated, with Mr. Justice A. Loizou that the objection as regards the constitutionality of the said section 12 cannot be upheld.

STAVRINIDES, J.: I agree with the judgment of my brother A. Loizou, J. and have nothing to add.

L. LOIZOU, J.: I have read the judgment delivered by my brother Hadjianastassiou, J. and I am in complete agreement with the conclusion reached by him.

In my view sections 12 and 13 of the Streets and Buildings Regulation Law (Cap. 96) are so inextricably connected that they cannot be read and considered separately; and once they are read together the situation created by their combined effect is that once the scheme becomes binding—and it becomes binding both on the appropriate authority concerned and on all persons affected thereby to the extent that no permit can be issued save in accordance with the plans—the owner of the property affected will, inevitably, be deprived of the part of his property between the new and old alignment, just as if same had been compulsorily acquired, except that he is not immediately dispossessed of such part and it does not actually become part of the street until, upon application, a permit under section 3 is issued by the appropriate authority.

MALACHTOS, J.: In these cases I have had the opportunity of reading in advance the judgment just delivered by my brother A. Loizou, J. and I am in full agreement with the conclusions reached by him and I have nothing to add.

TRIANTAFYLLIDES, P.: In the result the preliminary objection that section 12 of Cap. 96 is unconstitutional is rejected, by majority, and these cases will now be proceeded with, in the normal course, as regards the other issues arising for determination in each one of them.

Order accordingly.