

1985 August 28

[TRIANTAFYLLIDES, P., A. LOIZOU, SAVVIDES. LORIS,
STYLIANIDES. PIKIS. JJ.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CHRISTOFOROS KYTHREOTIS, AS ADMINISTRATOR
OF THE ESTATE OF ARIADNI ZAKKA, DECEASED
AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Respondent.

(Case No. 381/79).

Constitutional Law—Right to property—Constitution, Articles 23.2 and 23.3—Prohibition of erection of buildings by reason of a Notice under section 5(A)(1) of the Foreshore Protection Law, Cap. 59 as amended—54% of applicants' property affected thereby—Notice results in limitations or restrictions (Article 23.3) and not in deprivation (Article 23.2)—Said limitations or restrictions justified under Article 23.3—Delay to offer or pay compensation—Does not render said Notice unconstitutional or unlawful.

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By means of this recourse the applicants challenge the Notice dated 2.8.79 made under s. 5A(1) of the Foreshore Protection Law, Cap. 59, as amended, in particular, by Laws 8/72 and 52/75, which specified areas in which no buildings can be erected and which affected applicants' immovable property within the municipal limits of Paphos to an extent of 54%.

Held, dismissing the recourse: (1) The sub judice Notice results in restrictions and limitations on the property of the applicants in the sense of Article 23.3 of the Constitu-

tion and not in deprivation in the sense of Article 23.2. Such Restrictions or limitations are not unconstitutional inasmuch as they are "absolutely necessary in the interest of the development and utilisation" of the applicants' property "to the promotion of the public benefit" as envisaged by Article 23.3. 5

(2) The delay to pay compensation that may be due under Article 23.3 or section 5A(3) of Cap. 59 does not render the sub judge act as unconstitutional or unlawful, especially as it would be premature for compensation offered or paid before pronouncement by this Court on the validity of the sub judge act 10

Recourse dismissed.

No order as to costs.

Cases referred to: 15

The Holy See of Kitium v. The Municipal Council of Limassol, 1 R.S.C.C. 15;

Sofroniou v. The Municipality of Nicosia (1976) 3 C.L.R. 124;

Manglis v. The Republic (1984) 3 C.L.R. 351; 20

Charalambides v. The Republic (1984) 3 C.L.R. 1516;

Paraskevas Lordos Ltd. v. The Republic (1974) 3 C.L.R. 447.

Recourse.

Recourse against the decision of the respondent whereby areas of the foreshore, or adjoining the foreshore, within the municipal areas of Paphos, were specified as areas in which no buildings can be erected. 25

L. Kythreotis, for the applicants.

G. Erotokritou (Mrs.), Senior Counsel of the Republic. 30
for the respondent.

Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment of the Court. By means of the present recourse the applicants challenge the validity of a Notice published in the Official Gazette of the Republic on the 2nd August 1979 (see No. 174, 25

Third Supplement, Part I) under section 5A(1) of the Foreshore Protection Law, Cap. 59, as amended, in particular, by the Foreshore Protection (Amendment) Law, 1972 (Law 8/72) and by the Foreshore Protection (Amendment) Law, 1975 (Law 52/75).

By such Notice the respondent Council of Ministers specified areas of the foreshore, or adjoining to the foreshore, within the municipal limits of Paphos, in which no buildings can be erected.

10 The applicants are co-owners of immovable property which is affected by the sub judice Notice to an extent of approximately 54% and counsel for the applicants has contended that the Notice results in deprivation of property of the applicants, contrary to paragraph 2 of Article 23
15 of the Constitution, and that, as such deprivation could only have been effected by means of compulsory acquisition of the property in accordance with paragraph 4 of the said Article 23, and this has not been done, the Notice is unconstitutional.

20 In the light of relevant case-law, such as *The Holy See of Kitium v. The Municipal Council of Limassol*, 1 R.S.C.C. 15, *Sofroniou v. The Municipality of Nicosia*, (1976) 3 C.L.R. 124, *Manglis v. The Republic*, (1984) 3 C.L.R. 351, and *Charalambides v. The Republic* (case
25 436/79, not yet reported*), we are of the view that the aforementioned Notice results only in the imposition of restrictions and limitations on the property concerned of the applicants, in the sense of paragraph 3 of Article 23 of the Constitution, and not in deprivation, in the sense of
30 paragraph 2 of the said Article 23, and such restrictions and limitations are not unconstitutional inasmuch as they are "absolutely necessary in the interest of ... the development and utilization" of the property of the applicants "to the promotion of the public benefit", as envisaged by the
35 aforementioned paragraph 3 of Article 23.

It has been complained of further by counsel for the applicants that no compensation has as yet been offered to the applicants for the allegedly prejudicial effect of the

* Reported in (1984) 3 C.L.R. 1516.

Notice in question on their property, even though there is provision for such compensation not only in Article 23.3 of the Constitution but, also, in subsection (3) of section 5A of Cap. 59.

In our view the delay, in a case of this nature, to offer, or to pay, compensation that may be due under Article 23.3 of the Constitution, or under section 5A(3) of Cap. 59, cannot be treated as rendering either unconstitutional or unlawful the sub judice Notice, especially as, once the applicants have contested its validity by means of the present recourse, it would be premature for compensation to be offered, or to be paid, to them before this Court would pronounce on whether or not such Notice is constitutional (and see, by way of useful analogy, *Paraskevas Lordos Ltd. v. The Republic*, (1974) 3 C.L.R. 447, 457, 458).

Before concluding this judgment we should state that we have dealt with the main submissions of counsel for the applicants which, in our opinion, merited particular consideration and the fact that we have not specifically referred to other submissions which were put forward on behalf of the applicants should not be taken as indicating that we have failed to examine them, but only as indicating that we did not find them to be well founded or to be meriting specific reference.

In the light of all the foregoing the present recourse has to be dismissed; but, in the circumstances, we have decided not to make any order as to its costs.

*Recourse dismissed.
No order as to costs.*