

1986 June 6

[KOURRIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

LOULLA VASSIADOU,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF DEFENCE,

Respondent.

(Case No. 456/85).

5 *Requisition—Constitution, Article 23.2, 23.4 and 23.8(c)—
The period of requisition cannot exceed three years—Re-
quisitioning Authority not entitled to requisition property
for more than three years by continuous requisition orders
—Otherwise it would have been entitled to requisition a
property for an unlimited period—Such a course would
amount to deprivation of property—Deprivation of pro-
perty can only be effected through the machinery of com-
pulsory acquisition.*

10 *Constitutional Law—Requisition—Constitution, Article 23.2,
23.4 and 23.8(c).*

15 *Constitutional Law—Constitution, Article 28—Requisition of
the same property for thirteen successive years—In the
circumstances such requisition contravenes the principle of
equality.*

*Administrative Law—Reasoning of an administrative act—Due
inquiry.*

20 The applicant since 1968 is the owner of two building
sites under Plots 1012 and 1008 at Kato Lakatamia.
These plots were occupied by the National Guard since
1964 and formed part of a camp.

After the institution of a civil action, whereby the applicant prayed for an order directing the National Guard to cease trespassing upon her said property, the said property was requisitioned under Law 21/62. The relevant notification was published on 10.3.72. 5

The requisition order was renewed in 1973, 1974 and 1975. A new order of requisition was issued in 1976 and again in 1977. The last order was renewed in 1978, 1979, 1980 and 1981. A new order was once again issued in 1982 and renewed in 1983 and 1984. The property was again requisitioned by the sub judge decision for one year, i.e. from 1.2.85 to 31.1.86. 10

Counsel for the applicant argued that the sub judge decision is contrary to Article 23.8 of the Constitution, that it is not adequately reasoned, that it is not consonant with proper administration and that it was taken without any or adequate inquiry. 15

The first point raised by the applicant raises the question whether property, which has been requisitioned for a period of three years, can be requisitioned again for the same purpose for any other period exceeding the three years. Counsel for the respondent submitted that the construction to be placed on Article 23.8(c) of the Constitution is that every requisition should not exceed three years and not that a requisition order cannot be made after the lapse of a previous requisition order for three years. 20 25

Held, annulling the sub judge decision: (1) The interpretation to be placed on Article 23.8(c) of the Constitution is that a period of requisition cannot exceed three years. If the contention of counsel for the respondents were to be accepted, the object of the constitutional draftsman, who limited the period of requisition to three years, would be defeated. If a Requisitioning Authority were entitled to requisition a property for more than three years by continuous requisition orders, then, it could requisition a property for an unlimited period, even ab infinito. Such a course is contrary not only to Article 23.2 of the Constitution, but also to Article 23.4, because, in effect it results in deprivation of the property, which can 30 35

only be effected through the machinery of compulsory acquisition.

5 (2) In the circumstances of this case the sub judge decision contravenes the principle of equality safeguarded by Article 28 of the Constitution because, since the land of the applicant has been requisitioned for thirteen successive years the respondent should have requisitioned other neighbouring properties, so that the burden for the defence of the country should be distributed equally between the various land owners of the area. In this respect it should be noted that counsel for the respondent did not contend that the property of the applicant has some specific quality, which makes it necessary for its continuous requisition and that neighbouring lands are unsuitable to be used and possessed as a military camp.

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(3) The sub judge decision is duly reasoned, but it was taken without due inquiry as to whether the said military camp could be moved to a short distance away.

*Sub judge decision annulled.
Costs against respondent.*

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Cases referred to:

Vassiadou v. The Republic (1973) 3 C.L.R. 241.

Recourse.

25 Recourse against the decision of the respondent to compulsorily acquire applicant's property situated at K. Lakatamia.

M. Chrysomelas for *A. Markides*, for the applicant.

A. Papasavvas, Senior Counsel of the Republic, for the respondents.

30 *Cur. adv. vult.*

KOURRIS J. read the following judgment. By this recourse the applicant seeks a declaration of the Court that the decision of the respondent to requisition her property at Kato Lakatamia is null and void and of no effect.

The applicant since 1968 is the owner of two building sites under Plot Nos. 1012 and 1008, Block "B", at Kato Lakatamia. These plots were occupied by the National Guard since 1964 and formed part of a camp.

The applicant in 1971 instituted legal proceedings against the National Guard under Case No. 7527/71 in the District Court of Nicosia, praying for an order of the Court to order the defendants to cease trespassing upon her property and also she claimed compensation for trespass. 5

After the institution of the said action the Council of Ministers decided to requisition the property of the applicant under notification No. 128 published in Supplement No. 3 of the Official Gazette on 10.3.1972 under the provisions of s. 4 of the Requisition of Property Law, 1962 (Law No. 21/1962). 10 15

This property has a long history of requisition orders and the requisition order was renewed in 1973, 1974 and 1975 to be requisitioned again in 1976 and 1977. This requisition order was renewed in 1978, 1979, 1980 and 1981 to be requisitioned again in 1982 which was renewed twice, i.e. in 1983 and 1984 (vide exhs. 1-13). The property was again requisitioned for one year, i.e. from 1.2.85 till 31.1.86 under notification No. 131 published in the Official Gazette on 1.2.85 (vide exh. 14). 20

It is in respect of this last requisition that the applicant filed the present recourse challenging its validity. Thus, it appears that the property of the applicant has been in possession of the National Guard since 1968 when she acquired the ownership of this property; and by succeeding renewals of the various requisition orders or by new and independent requisition orders the National Guard uses and possesses the land of the applicant for 13 years up to the filing of the present recourse. 25 30

During the hearing counsel for the respondents informed the Court that the respondent requisitioned the applicant's property for a period of another year, i.e. from 1.2.1986 till 1.2.1987 (vide exh. 15). 35

The applicant challenges the validity of the Requisition Order on the following legal grounds:

1. The order of requisition complained of is contrary to the provisions of Article 23.8 of the Constitution.
- 5 2. The decision is contrary to the principles of Administrative Law, viz. it was taken in excess and/or abuse of powers for the following reasons:-
 - a) It is not adequately reasoned.
 - 10 b) It is not consonant with proper administration and
 - 15 c) The decision was taken without any or adequate enquiry.

15 The first point raised by the applicant involves the construction of Article 23.8 (c) of the Constitution and the following question arises for determination:- whether a property, which has been requisitioned for three years, can be requisitioned again for the same purpose for any other period exceeding the three years.

Article 23.8 provides as follows:-

- 20 "8. Any movable or immovable property may be requisitioned by the Republic or by a Communal Chamber for the purposes of the educational, religious, charitable or sporting institutions, bodies or establishments within its competence and only where the owner
- 25 and the person entitled to possession of such property belong to the respective Community, and only -
- (a) for a purpose which is to the public benefit and shall be specially provided by a general law for requisitioning which shall be enacted within a
 - 30 year from the date of the coming into operation of this Constitution; and
 - (b) when such purpose is established by a decision of the requisitioning authority and made under the provisions of such law stating clearly the
 - 35 reasons for such requisitioning; and

- (c) for a period not exceeding three years, and
- (d) upon the prompt payment in cash of a just and equitable compensation to be determined in case of disagreement by a civil court."

With regard to the first ground counsel for the applicant contended that a property cannot be requisitioned for a period exceeding three years because, if it were so, the Requisitioning Authority could requisition a property for several years even ab infinito in which case it would amount in substance to deprivation of the property and as such is contrary to Article 23.1 which includes the right to possess and enjoy property. He further contended that Article 23.2 provides that no deprivation, restriction or limitation of any such right shall be made except by compulsory acquisition or requisition not exceeding three years and he submitted that the Requisitioning Authority ought either to acquire the property compulsorily or remove the National Guard camp elsewhere; and he maintained that this is consonant with Article 28.1 of the Constitution that the burden of the defence of the Country should be born by all citizens or distributed equally between the various landowners in the area implying that by possessing the property of the applicant by way of continuous requisition orders, the Government acts in a way which is discriminatory against the applicant.

Counsel for the respondent relied on a legal advice given by the learned Deputy Attorney-General in 1984 to the Director-General of the Ministry of Defence and he contended that a requisition order may be made every three years and that it is not limited to three years only, if there are new circumstances, which make it necessary for such a requisition. He contended that the construction to be placed on Article 23.8(c) is that every requisition should not exceed three years and not that a requisition cannot be made after the lapse of a previous requisition order for three years. He contended that in view of the occupation of a great part of Cyprus by the Turkish Forces, there are every day new circumstances enabling the Council of Ministers to requisition properties for the defence of the country.

Is it regrettable that neither counsel referred me to any authorities for an issue which involves the interpretation of an Article of the Constitution.

5 Bearing in mind the facts of this case I have reached the conclusion that the sub judge decision is contrary to the provisions of Article 23.2 of the Constitution because in effect it amounts to deprivation of the property of the applicant and consequently is unconstitutional.

10 As at present advised I am of the opinion that the interpretation to be placed on Article 23.8 (c) is that a period of requisition cannot exceed three years. If I were to accept the contention of counsel for the respondents, then it would defeat the object of constitutional draftsman who limited the period of requisition to three years. For, if a
15 Requisitioning Authority were entitled to requisition a property for more than three years by continuous requisition orders, then, it could requisition a property for an unlimited number of years, even ab infinito, and as such is contrary not only to Article 23.2 but also to Article 23.4
20 of the Constitution because it frustrates the applicant's rights of property safeguarded under Article 23.4 and resulting in effect in deprivation of the property because the owner is denied the use and possession of her property. Further, the owner cannot dispose of her property to a
25 prospective purchaser who knows that the property is under requisition and it may continue to be so for an indefinite period; and deprivation of property can only be effected under Article 23.4 of the Constitution through compulsory acquisition.

30 For these reasons the recourse succeeds and the requisition order is declared to be null and void and of no effect.

I shall now proceed and deal with the other points raised if I were to be held wrong on this ground.

35 Counsel for the applicant argued that the sub judge decision and requisition order contravene, in the circumstances of this case, the principle of equality safeguarded under Article 28.1 of the Constitution because, since the land of the applicant has been requisitioned for thirteen

successive years the respondent should have requisitioned other neighbouring properties, so that the burden for the defence of the country should be distributed equally between the various land owners of the area.

In the case of *Loulla Vassiadou v. The Republic* (1973) 5
3 C.L.R. 241 the Court at p. 252 said as follows:-

“Article 28.1 of the Constitution has been the subject of judicial pronouncement in a number of cases, the latest one by the Full Bench being *The Republic of Cyprus through the Ministry of Finance v. Nishan Arakian & Others* (1972) 3 C.L.R. 294, where 10
after reviewing all previous decisions, as well as decisions of courts of countries where the principle of equality has been upheld as part of their democratic way of Government, it referred and adopted what was said by 15
the European Court of Human Rights of the Council of Europe in the case ‘relating to certain aspects of the laws on the use of languages in education of Belgium’ decided in 1968 where at page 34, it was said:- 20

‘The Court following the principles which may be extracted from the legal practice of a large number of democratic States holds that the principle of equality of treatment is violated if the distinction has no objective and reasonable justification.’ ” 25

The facts of that case are different from the facts of the present case. In that case the property of the applicant has been requisitioned for only one year, that is from 10th March, 1972 whereas in the case in hand the property of the applicant has been requisitioned for thirteen successive 30
years and I am inclined to accept the argument of learned counsel for the applicant.

I think that the principle of equality of treatment is violated because the “distinction” has no reasonable justification. It has not been contended by counsel for the respondent that the land of the applicant has some specific 35
qualities which make it necessary for its continuous requisition orders and that neighbouring lands are unsuitable to be used and possessed as a military camp. Also there is

no contention that the military camp cannot be moved a short distance away from the present location.

5 With regard to ground 2 I accept the contention of counsel for the applicant except ground 2 (a) that it is not duly reasoned. In the circumstances of the present times I am of the view that the decision is sufficiently reasoned but, I am satisfied that it was taken without adequate enquiry as to whether the said military camp could be moved to a short distance away.

10 If it were to be held that the argument of counsel for the respondents were correct to the effect that there were new circumstances and factors for the defence of the Country which necessitated the requisition of the said land the argument of the respondents could not have succeeded
15 because they did not place before me any material indicating that new circumstances and factors have arisen, which did not exist before, necessitating the requisitioning again of the said land.

20 In view of all the above the recourse succeeds and the sub judice requisition order is declared to be null and void and of no effect.

In the exercise of my discretion I order the respondents to pay costs, to be assessed by the Registrar.

25 *Sub judice decision annulled.*
Order for costs as above.