

1987 October 21

[STYLIANIDES J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

- 1 SOFOCLIS HADJIIOSSIF,
2. MICHAEL A. ZAPITIS,
3. NICOS K. ASPRIDES,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
(a) THE COUNCIL OF MINISTERS,
(b) THE MINISTER OF DEFENCE,

Respondents.

(Case No. 685/86).

Constitutional Law — Right to property — Constitution, Art. 23.8(c) — Requisition of property — The three year limitation period — Cannot be evaded by the issue of new orders of requisition or extending old ones

5 *Compulsory acquisition — When property in question vests in the acquiring authority*

Damages — Constitution, Art. 146.6 — Annulment of administrative act in question, a sine qua non for the recovery of damages.

Requisition order — Expiration of period of, followed by a notice of acquisition — Applicant suffered damages — He is entitled to judgment on the merits.

10 *Recourse for annulment — Administrative act of limited duration — Expiration of period — If applicant sustained damage, he is entitled to judgment on the merits.*

15 Applicants' land situated in Kato and Pano Lakatamia was first requisitioned for the public benefit, i.e. the defence of the Republic on 7.9.79 for a period of one year. The order was renewed in 1980, 1981, 1982 for further periods of one year respectively. A new order of requisition for the same purpose was made on 9.9.83. This order was renewed in 1984 and 1985. Ultimately on 5.9.86, the sub-judice order was made.

20 It must be noted that on 4.9.87 a notice of acquisition of the properties in question was published in the official Gazette.

Counsel for the respondent submitted that the Court should not annul the sub judice decision for two reasons. The expiry of the period of requisition on 4 9 87 and the publication of the notice of acquisition

The applicants contended that by reason of the sub judice act they suffered damage 5

Held, *annulling the sub judice decision* (1) The three year limitation period imposed by Art 23 8(c) of the Constitution cannot be evaded by the issue of new orders or extending old ones. The sub judice order is not unconnected with the previous requisition. It is contrary to Art 23 8(c) of the Constitution and section 4 of the Compulsory Requisition Law, as amended by Law 23/86 10

(2) There is nothing to prevent the continued subsequent achievement of the same purpose of public benefit as that sought by a requisition by means of a supervening compulsory acquisition and the procedure for such compulsory acquisition may be set in motion at any time during the period of requisition. Neither the publication of the notice of acquisition, nor even an order of acquisition affect the ownership or the possession of the applicants. The property vests only in the acquiring authority on payment or deposit with the Accountant General of the sum agreed or determined to be paid as compensation for the acquisition of any property 15 20

(3) Under Article 146 6 of the Constitution a person is only entitled to seek compensation after he obtains a judgment in annulment proceedings before the Administrative Court. Therefore, if he suffered any damages from the sub judice administrative act, though it ceased to exist after the filing of the recourse he is entitled to have the recourse determined, as a judgment of the Court under paragraph 4 of Article 146 is a sine qua non of a claim for damages before a civil Court, under Article 146 6 25

Sub judice decision annulled
No order as to costs

Cases referred to 30

Aspn v The Republic, 4 R S C C 57

Panayiotopoullou-Toumazı v Nicosia Municipality (1986) 3 C L R 35,

Kynakides v The Republic, 1 R S C C 66,

Andreou v The Republic (1975) 3 C L R 108,

Agrots v The Republic (1983) 3 C L R 1397, 35

Kntiots v The Municipality of Paphos (1987) 3 C L R 1274

Recourse.

Recourse against the order of Requisition No 1227 affecting applicants' land situated in the vicinity of Kato and Pano Lakatamia

- 5 *A Ladas*, for the applicants
 St Theodoulou, for the respondents

Cur adv vult

- 10 STYLIANIDES J read the following judgment By means of this recourse the applicants seek the annulment of an Order of Requisition No 1227, published in the Official Gazette in Supplement No 3, Part II, on 5/9/86

- 15 The applicants are the owners in equal undivided shares of land situated in the vicinity of Kato and Pano Lakatamia Municipality, shown on D L O maps as Plots 357, 360, 334, 335 and 333, sheet plan XXX/12 E I and II, Complex B

- 20 The aforesaid property of the applicants was for the first time requisitioned on 7/9/79 by virtue of order published in Supplement No 3, Part II, page 851 The said order was renewed in 1980, 1981, 1982 for further periods of one year by administrative acts 990, 909 and 962 respectively On 2/9/83 a new Order of Requisition of the same said property was published in the Official Gazette of 9/9/83 (see Supplement No 3, Part II, page 761) This Requisition Order was renewed for two further years by Orders published in the Official Gazette on 31/8/84 and 25 30/8/85 (see Supplement No 3, Part II, page 1141 of 1984 and Supplement No 3, Part II, page 1116 of 1985) Ultimately on 5/9/86 the sub judice order was issued by the Minister of Defence in virtue of the powers delegated to him by the Council of Ministers

- 30 The purpose of the requisition is to serve public benefit, i e for the defence of the Republic of Cyprus

The requisition of property is governed in this country by Article 23 8 of the Constitution and Section 4 of the Requisition of Property Law 1962

- 35 The material part for this case of the Constitutional provision is that movable or immovable property may be requisitioned for a period not exceeding three years In the Requisition of Property

Law 1962, Section 4, which was enacted in compliance with the Constitution included this three years limitation.

By the Requisition of Property (Amendment) Law 1966 (50/66) the three years were increased to five years. This provision of Law 50/66 was inconsistent and contrary to the Constitution and, therefore, under Article 179 unconstitutional as being repugnant to the provisions of Article 23.8(c) of the Constitution. 5

By the Requisition of Property (Amendment) Law, 1986 (Law 43/86) the number of years was again reduced to three in order, obviously, to bring the law in conformity with the Constitution. 10

The three years limitation period imposed by the Constitution cannot be evaded by issue of new orders or extending old ones. The requisition is of limited duration and it cannot exceed three years even though the purpose of public benefit to be achieved by means of requisition is not of limited duration. There is nothing to prevent the continued subsequent achievement of the same purpose of public benefit by means of a supervening compulsory acquisition and the procedure for such compulsory acquisition may be set in motion at any time during the period of requisition. (*Aspri v. The Republic*, 4 R.S.C.C. 57). 15 20

The sub judice administrative act - order of requisition - is contrary to Article 23.8(c) of the Constitution and Section 4 of the Compulsory Requisition Law as amended by Law 43/86. The sub judice order is not a requisition order unconnected with the previous requisitions for other purposes or for different circumstances. 25

The immovables of the applicants are under requisition and are in possession of the respondents ever since 1979, for the same purpose, the defence of the Republic of Cyprus. If these properties are, and we have no doubt, necessary for the defence of the Republic, then the procedure for the acquisition of same should be put in motion. The requisition cannot serve the public ad infinitum or for a period over the three years set down in the Constitution. 30

Counsel for the respondents submitted that a notice of acquisition under the Compulsory Acquisition of Property Law was recently published in the Official Gazette (Official Gazette No. 2258, dated 4/9/87, Notification 1395). Neither the publication of the notice of acquisition, nor even an order of acquisition affect the 35

ownership or the possession of the applicants. Neither ownership, nor possession is transferred to the acquiring authority by virtue of such notice. The property vests only in the acquiring authority on payment or deposit with the Accountant-General of the sum
5 agreed or determined to be paid as compensation for the acquisition of any property. (See Section 13 of the Compulsory Acquisition Laws 15/62, 25/83, 148/85; *Aspri v. The Republic* supra; *Panayiotopoullou-Toumazi v. Nicosia Municipality* (1986) 3 C.L.R. 35.)

- 10 It was further argued by counsel for the respondents that this Court should not proceed to the annulment of the sub judge decision for two reasons: the expiry of the period of the requisition and the publication of the notice of acquisition. The sub judge order of requisition is of limited duration. It is specified to one year
15 from the date of the publication of the order in the Official Gazette. It expired on 4/9/87.

The applicants contend that they suffered damages due to the sub judge order.

- 20 In Cyprus paragraph 6 of Article 146 of the Constitution reads as follows:-

- «6. Any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared thereunder that it ought not to have been made shall be entitled, if his claim is not met to his satisfaction by the
25 organ, authority or person concerned, to institute legal proceedings in a court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the court or to be granted such other just and equitable remedy as such court is empowered to grant.»
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- («6. Παν πρόσωπον ζημιωθέν εξ αποφάσεως ή πράξεως ή παραλείψεως κηρυχθείσης ακύρου κατά την τετάρτην παράγραφον του παρόντος άρθρου δικαιούται, εφ' όσον η αξίωσις αυτού δεν ικανοποιηθή υπό του περί ου πρόκειται οργάνου, αρχής ή
35 προσώπου, να επιδιώξη δικαστικώς αποζημίωσιν ή άλλην θεραπείαν επί τω τέλει, όπως επιδικασθή εις τούτο δικαία και εύλογος αποζημίωσις καθοριζομένη υπό του δικαστηρίου ή παρασχεθή εις τούτο άλλη

δικαία και ευλογός θεραπεία ην το δικαστήριον έχει την εξουσίαν να παρασχη »)

In *Kynakides v The Republic* 1 R S C C 66 it was stated at pages 74-75

«Article 172 lays down the general principle that the Republic is made liable for any wrongful act or omission causing damage committed in the exercise or purported exercise of the duties of officers or authorities of the Republic' It is clearly aimed at remedying the situation existing before the coming into force of the Constitution whereby the former Government of the Colony of Cyprus could not be sued in tort

The principle embodied in Article 172 has been given effect, inter alia, in the Constitution by means of paragraph 6 of Article 146 in respect of all matters coming within the scope of such Article 146

Therefore, in the opinion of this Court, in respect of all wrongful acts or omissions referred to in Article 172 and which acts or omissions come within the scope of Article, 146 an action for damages lies in a civil Court only under paragraph 6 of such article, consequent upon a judgment of this Court under paragraph 4 of the same Article, and in such cases an action does not lie direct in a civil court by virtue of the provisions of Article 172 »

It is well settled that under Article 146 6 of the Constitution a person is only entitled to seek compensation after he obtains a judgment in annulment proceedings before the Administrative Court. Therefore, if he suffered any damages from the sub judice administrative act, though it ceased to exist after the filing of the recourse he is entitled to have the recourse determined, as a judgment of the Court under paragraph 4 of Article 146 is a *sine qua non* of a claim for damages before a civil Court, under Article 146 6 (See *Andreou v The Republic* (1975) 3 C L R 108, *Agrotis v The Republic* (1983) 3 C L R 1397, *Loukis Krtiotis v The Municipality of Paphos* case No 137/83 delivered on 6/7/87 still unreported *)

In the present case the sub judice administrative act is null and

* Reported in (1987) 3 C L R 1274

void and of no effect as being contrary to the Constitution and the law.

5 As the applicants contend that they suffered damages they are entitled to an annulling decision, even though the one year duration of the order has expired.

In the result the sub judice requisition order is declared to be null and void and of no effect whatsoever under Article 146.4(b).

Let there be no order as to costs.

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Sub judice order declared null and void. No order as to costs.