

1985 March 30

[TRIANAFYLIDIS, P ]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS VORKAS AND ANOTHER,

*Applicants,*

v.

1. THE MUNICIPAL COMMITTEE OF PAPHOS,
2. THE COUNCIL OF MINISTERS,

*Respondents.*

*(Case No. 389/81).*

5 *Legitimate interest — Building zones, challenged by means of this recourse, published on 7.8.81 — Order for the compulsory acquisition of the applicants' properties affected by the zones — Whether applicants possess legitimate interest to proceed with the recourse — Question answered in the affirmative, because the zones may be found to affect the value of the properties and, consequently, the amount of compensation for the compulsory acquisition.*

*Legitimate interest — Court may raise and examine the issue ex proprio motu.*

10 *The facts sufficiently appear in the judgment of the Court. The recourse was dismissed on its merits for the same reasons as those expounded in Galatiani Ltd. v. The Municipality of Paphos (1987) 3 C.L.R. 2044.*

*Recourse dismissed.*

*No order as to costs.*

*Cases referred to:*

15 *Constanjinidou v. The Republic (1974) 3 C.L.R. 416;*

*Leontiou v. The Republic (1983) 3 C.L.R. 221;*

*Sydanides v. The Republic (1983) 3 C.L.R. 672;*

*Galatiani Ltd. v. The Municipality of Paphos (1987) 3 C.L.R. 2044.*

**Recourse.**

Recourse against the validity of building zones affecting applicants' properties at Paphos.

*G. Triantafyllides*, for the applicants.

*K. Chrysostomides*, for respondent 1. 5

*Cl. Antoniadis*, Senior Counsel of the Republic, for respondent 2.

*Cur. adv. vult.*

TRIANTAFYLLIDES P. read the following judgment. By this recourse the applicants are challenging, in effect, the validity of building zones affecting their properties, which were published in the official Gazette of the Republic on 7 August 1981. 10

Counsel appearing for respondent 2 has raised, by means of his Opposition, the objection that the applicants do not possess a legitimate interest, in the sense of Article 146.2 of the Constitution, entitling them to challenge the said zones because their affected by them properties at Paphos were in the meantime compulsorily acquired by the Republic and the relevant order was published in the Official Gazette of the Republic on 21 August 1981. 15

Against the compulsory acquisition of their properties the applicants filed a recourse (No. 150/82), under Article 146 of the Constitution, which was eventually withdrawn and dismissed on 6 November 1982. 20

As the possession by an applicant of legitimate interest is an essential prerequisite to the exercise by this Court of its jurisdiction under Article 146 of the Constitution, and it is a matter that may be examined by the Court even *ex proprio motu* (see, *inter alia*, *Constantinidou v. The Republic*, (1974) 3 C.L.R. 416, 418, *Leontiou v. The Republic*, (1983) 3 C.L.R. 221, 225 and *Stylianides v. The Republic*, (1983) 3 C.L.R. 672, 677), I shall proceed to deal with this issue before considering the merits of this case: 25 30

I am of the view that the restrictions on building entailed by the zones in question may be found to have affected the market value of the properties concerned and, consequently, also the amount of the compensation payable by the Republic to the applicants for the compulsory acquisition of such properties, and, therefore, the 35

applicants do continue to possess a legitimate interest enabling them to challenge the sub judice building zones by pursuing their present recourses, notwithstanding the fact that such properties have in the meantime been compulsorily acquired.

- 5 As regards the merits of this case I wish to refer to the judgment just delivered today in the related cases *Galatiani Ltd. v. The Municipality of Paphos* (cases 348/81) etc)\* the contents of which I fully adopt for the purposes of the present case, too, and which  
10 without having to be repeated verbatim.

In the light of the reasoning set out in the judgment in the *Galatiani Ltd.*, case, the present recourse, also, fails and it is dismissed accordingly, but with no order as to its costs.

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*Recourse dismissed.*

*No order as to costs.*

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\* Reported in (1987) 3 C.L.R. 2044.