

1985 February 9

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

SAVVAS A. PATSALOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR.

Respondent.

(Case No. 273/77).

Requisition of abandoned Turkish Cypriot properties—Requisition order 671/75 supplemented and extended by order 820/75—Requisition order renewing order 820/75—Immovable property of Turkish Cypriot, who did not abandon it by moving to the Turkish occupied part of Cyprus, but has been living abroad and has leased it to someone in the free part of the Republic—Not affected by any of the said requisition orders. 5

This recourse is directed against the decision, whereby the applicant was required to deliver to the Nicosia District Committee for the Protection and Management of Turkish Cypriot Properties the immovable property in his possession situated at Aglandjia and belonging to a Turkish Cypriot. 10

The sub judice decision was based on a requisition order 820/75, which was renewed by order 899/76. Order 820/75 was made in order to extend the earlier requisition order 671/75. 15

The applicant established by documentary evidence that he acquired possession of the property in question under a contract of lease with its owner, a Turkish Cypriot who resides in London since 1964. 20

Held, annulling the sub judice decision, that in view of the context in which the interrelated requisition orders 671/75 and 870/75 were made, it has to be found that neither of them applies to a case, where the owner has not abandoned his property by moving to the Turkish occupied part of Cyprus, but has been living abroad, even before the Turkish invasion in 1974 and has leased it to someone in the free part of the Republic.

*Sub judice decision annulled.
No order as to costs.*

Observation by the Court: If the requisition orders were applicable to properties of Turkish Cypriots who have been living and continue to live in the free area of the Republic or abroad, there would result a discriminatory differentiation against Turkish Cypriots on the ground of communal origin contrary to Articles 6 and 28 of the Constitution.

Cases referred to:

Siret v. Constantinou (1981) 1 J.S.C. 11.

20 Recourse.

Recourse against the decision of the respondent whereby applicant was required to deliver to the Committee for the Protection and Management of Turkish Cypriot Properties possession of immovable property at Aglandjia belonging to a Turkish Cypriot.

A. Hadji Ioannou with C. Hadji Ioannou, for the applicant.

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

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Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment. The applicant in this case is complaining against a decision, communicated to him on the 16th September 1977 by the District Officer of Nicosia as Chairman of the Nicosia District Committee for the Protection and Management of

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Turkish Cypriot Properties, by means of which he was required to deliver to such Committee possession of immovable property at Aglandjia belonging to a Turkish Cypriot.

On the 12th November 1983 a decision was given by me in the present proceedings dismissing preliminary objections raised by counsel for the respondent and the contents of such decision should be treated as incorporated in the present judgment.

The sub judge decision was based on a requisition order (No. 820 in the Third Supplement, Part II, to the Official Gazette of 14th November 1975) by means of which there were requisitioned movable and immovable properties belonging to Turkish Cypriots and not being personally used by them. The said order was renewed by means of a requisition order made on the 15th October 1976 (No. 899 in the Third Supplement, Part II, to the Official Gazette of 5th November 1976).

Order 820/1975 was made to supplement and extend an earlier requisition order made on the 11th September 1975 (No. 671 in the Third Supplement, Part II, to the Official Gazette) by virtue of which there were requisitioned all movable and immovable properties which belonged to Turkish Cypriots and had been abandoned by them when they moved to the area of Cyprus under Turkish military occupation.

The applicant has produced documentary evidence establishing that he came to be in possession of the property concerned as a tenant under a contract of lease entered into between him and the owner of the property, Galip Erdil, who resides in London since 1964.

It has not been contended by counsel for the respondent that the property in question has been abandoned by its owner, nor has it been contested that there was entered into a contract of lease in respect of such property between the applicant and the owner of the property.

It is correct that such property is not being personally used by its Turkish Cypriot owner but, in view of the

context in which the interrelated requisition orders 671/1975 and 820/1975 were made, it has to be found that neither of them applies to a case such as the present one where the owner of the property concerned has not abandoned it by moving to the Turkish occupied part of Cyprus but has been living abroad, even before the Turkish invasion of Cyprus in 1974, and has leased it to someone in the free part of the Republic of Cyprus.

I am strengthened in this view of mine by the adoption of the same approach by Mr. Justice Pikis, when he was President of the District Court of Larnaca, in *Siret v. Constantinou*, (1981) 1 J.S.C. 11. in circumstances analogous to those of the present case.

I would like to add that if the aforesaid requisition orders had been rendered applicable also to properties of Turkish Cypriots who have been living and continue to live, together with the Greek Cypriots, in the free area of the Republic, or abroad, there would result a discriminatory differentiation against the Turkish Cypriots on the ground of communal origin contrary to Articles 6 and 28 of the Constitution.

In the light of all the foregoing I have come to the conclusion that the aforementioned requisition orders do not apply to the property involved in the present proceedings and, therefore, the sub judice decision to ask the applicant to deliver possession of it to the Nicosia District Committee for the Protection and Management of Turkish Cypriot Properties is hereby annulled; I shall not, however, make any order as to the costs of this case.

Sub judice decision annulled.
No order as to costs.