

1987 August 26

[DEMETRIADES, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SOPHOCLIS HADJIOSIF AND OTHERS,

*Applicants,*

v

THE REPUBLIC OF CYPRUS, THROUGH  
1 THE COUNCIL OF MINISTERS,  
2 THE MINISTER OF INTERIOR AND DEFENCE,

*Respondents*

*(Case No 584/84)*

*Constitutional Law — Right to property — Constitution, Art 23 8(c) — Requisition of property — Period of — Cannot, by the provisions of any law, be extended beyond three years from the order of requisition — Prolongation of order for a period beyond such period of three years — Offends Art 23 8(c)*

*Requisition of property — Order for, for purpose of defence published on 7 9 79 — Repeatedly renewed until 23 9 83 — New order requisitioning the same properties for the same purpose published on 7 9 83 — Such new order was not a self-existent and an independent one, because no new circumstances arose since the making of the first order — Sub judice decision, i e the renewal made in 1984 of the order of 1983, annulled — Constitution, Art 23 8(c)*

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On 7 9 79 the respondents requisitioned by order published in the Official Gazette certain immovable properties of the applicants for a period of one year for the defence of the Republic. The order was renewed in 1980, 1981 and 1982. The last renewal expired on 21 9 83.

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On 2 9 83 the respondents issued a new order of requisition of the same properties and for the same purpose as the purpose of the first order of the 7 9 79. On 6 7 84 this order was renewed until the 9 9 85.

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By means of this recourse the applicants impugn the validity of the renewal dated 6 7 84.

Held, *annulling the sub judice decision* (1) The provisions of Article 23 8(c)\* of the Constitution are clear and unambiguous. The period of three

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\* Quoted at p 959

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years provided therein cannot by the provisions of any law (see Law 50/66, which extended such period to five years) be extended

(2) The new order of requisition was not a self-existent and independent one, because no new circumstances arose since the making of the first order

(3) The prolongation of the period of the first order for a period beyond three years offends Art. 23 8(c) of the Constitution 5

*Sub judice decision annulled  
Costs against the respondents*

**Recourse.**

Recourse against the decision of the respondents to extend the order requisitioning applicants' immovable property situated at K. Lakatamia. 10

*A. Ladas, for the applicants.*

*A. Papasavvas, Senior Counsel of the Republic, for the respondents.* 15

*Cur. adv. vult.*

DEMETRIADES J. read the following judgment. The applicants are the registered owners of immovable property situated at Pano and Kato Lakatamia plots 357, 360, 334, 335 and 333 of complex B, Sheet Plan XXX/12.EI and II, and by their present recourse they complain that the decision of the respondents to extend the order requisitioning them until the 9th May, 1985, is null and void and of no effect. 20

It is to be noted that references which I shall be making hereinafter with regard to «Notifications» (Not.) are to be found in Part II to the Third Supplement of the Official Gazette of the Republic of the relevant year. 25

The undisputed facts of the case are: On the 7th September, 1979, the respondents, by order published under Not. No. 1026, requisitioned the said properties of the applicants for a period of one year for purposes of public interest, that is, for the defence of the Republic. The said requisition order was renewed in 1980, 1981 and 1982 (see Not. Nos. 990, 909 and 962 respectively). The order made under Not. No. 962 expired on the 21st September, 1983. By Not. No. 1006 of the 2nd September, 1983, the 30 35

respondents issued a new order for the requisition of the said properties of the applicants. The purpose for which this order was made was exactly the same as that of the original one. This order was on the 6th July, 1984, renewed until the 9th September, 1985  
5 (see Not. No. 1389).

The constitutional and legislative provisions that govern the requisition of property (movable and immovable) are Article 23.8(c) of the Constitution and the Requisition of Property Law, 1962 (Law 21/62), as amended by the Requisition of Property  
10 (Amendment) Law, 1966 (Law 50/66).

Article 23.8(c) provides:-

«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 and the person entitled to possession of such property belong to the respective Community, and only-

- (a) .....
- 20 (b) .....
- (c) for a period not exceeding three years; and
- (d) .....

Section 4(3) - which is the section relevant to our case - of Law 21/62, which was enacted by virtue of the provisions of this Article  
25 of the Constitution, originally provided that:-

«(3) The duration of an order of requisition shall be for such period or periods, not exceeding three years in toto, as may be specified in such order or, if no period is specified therein, until the expiration of three years from the date on which the requisition took effect:

Provided that, at any time whilst an order of requisition remains in force, the requisitioning authority may, by an order in this respect published in the official Gazette of the Republic-

- (a) revoke the order of requisition; or
- 35 (b) extend any period specified in the order of requisition by such further period or periods, not extending beyond three

years from the date on which the requisition first took effect, as the requisitioning authority may deem necessary.»

The period of time that a requisition order could be in force was, however, by section 2 of Law 50/66, extended to five instead of three years. 5

The legal grounds on which the applicants based their recourse are the following:

The sub judice decision was taken-

- (1) in violation of Article 23.8(c) of the Constitution in that the requisition order was extended for a total period of more than three years, 10
- (2) contrary to the provisions of section 4(3) of the Requisition of Property Law, 1962 (as amended by Law 50/66) in that the total period of the requisition was extended to more than five years, 15
- (3) under a misconception of law and/or facts,
- (4) in excess and/or abuse of power.

The case for the respondents, as this is set out in their opposition to the recourse, is that the sub judice decision was taken lawfully and rightly in accordance with the provisions of the relevant Law and in the correct application of the powers given to them by the Law, in that- 20

- (a) as section 4(3) of the Requisition of Property Law, 1962 (Law 21/62, as amended by Law 50/66) provides that a requisition order can be extended for a period of up to five years, the requisition of the property of the applicants up to the 29th September, 1983, did not offend the provisions of the law, and 25
- (b) the second requisition order of the 2nd September, 1983, concerned a new requisition of the property, self-existent (αυτοτελή) and independent (ανεξάρτητη) of the first one and was made because of new requirements for the defence of the State. 30

Counsel for the respondents in his written address relied on an opinion given to the Director-General of the Ministry of Defence in 35

1984 by the Deputy Attorney-General of the Republic. In the said opinion the Deputy Attorney-General, amongst others, expresses the following views

- 5 (a) A new requisition order of property which had previously been requisitioned is not excluded
- (b) After the expiration of a requisition order, if new circumstances arise that make a new requisition of the property necessary, this is permissible as, in this case, the new order is considered to be self-existent and independent from  
10 the previous one and its period is not added onto the period of the previous order. This is so even though the purposes of the new order are the same as those of the previous one, for instance the defence of the State

15 In addition, counsel further argued that in view of the occupation of a great part of Cyprus by the Turkish forces, new circumstances are being created every day which give to the Council of Ministers the right to requisition afresh properties for purposes of the defence of the country

20 Counsel for the applicants submitted that the arguments of counsel for the respondents that the new requisition order is a new one, independent and self-existent, cannot stand. He further argued that the second requisition, as well as the sub judice one, were made in order to bypass the time limits imposed by the provisions of the Constitution

25 Having carefully considered the wording of Article 23 8(c) it is my view that the intention of the legislator was to limit the powers of the Executive to deprive temporarily, by means of requisition orders, an individual of his rights in movable and immovable property and that as the provisions of this Article are clear and  
30 unambiguous, the period of three years provided therein cannot, by the provisions of any Law, be extended

I now come to the submission of the respondents that the new order was a self-existent and independent one. As it appears from the file of the administration which is exhibit No. 1 before me, no  
35 new circumstances arose since the making of the first and subsequent to it requisition orders, the purpose of which was the defence of the State. In the circumstances, I find that the prolongation of the period of three years of the first requisition

order offends the provisions of Article 23.8(c) and the respondents, in extending the period beyond three years, acted under a misconception of Law.

In the result, the recourse succeeds and the sub judice decision is annulled.

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Costs against the respondents.

*Sub judice decision annulled.  
Costs against respondents.*