[A. LOIZOU, J.]

1973
April 23
—
LOULLA VASIADOU
v.
REPUBLIC (MINISTER OF INTERIOR)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LOULLA VASIADOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF INTERIOR,

Respondent.

(Case No. 144/72).

Requisition of land—Requisition order—Reasoning—Respondent Minister approving order of requisition by accepting contents of a submission placed before him together with expert opinion—Reasoning found in said submission and expert advice becomes the reasoning of Minister's decision—Cf. also infra.

Requisition of land—Reasons for requisition order as published in the Official Gazette—Article 23.8(b) of the Constitution and section 4(1) of the Requisition of Property Law, 1962 (Law No. 21 of 1962)—Purpose and reasons should be specified and clearly stated in such order—Whether reasons given are clear as required is a matter depending on the nature of the reasons and the circumstances under which the order of requisition was made—Purpose and reasons for the requisition order in the instant case being the defence of the Republic, it is not essential to give detailed reasons in support thereof—And the said order satisfies in this respect the constitutional and statutory requirements (supra) *as well as the general principles of administrative law.*

Equality—Principle of equal treatment—Article 28.1 of the Constitution—Its meaning, effect and scope—Distinctions having objective and reasonable justification are not repugnant to the provisions of said Article—See, inter alia, The Republic of Cyprus *v.* Arakian and Others *(1972) 3 C.L.R. 294 and the numerous Cyprus and foreign cases mentioned—Cf. also* infra.

1973
April 23
—
LOULLA VASIADOU
v.
REPUBLIC (MINISTER OF INTERIOR)

Equality—Requisiiton of property for defence purposes—Property in occupation of Government for a number of years prior to the making of the requisition order—Non requisitioning of other properties in the area so that the burdens for the defence of the country should be distributed equally between the various landowners in the area—Does not violate the principle of equality—Military installations are not expected to shift from place to place.

Reasoning of administrative decisions—The reasoning of the preparatory acts provides the reasoning of the subsequent executory act—Same principle applies to the reasoning of expert advice to which a particular decision refers or is accompanying same (see Decisions of the Greek Council of State *Nos. 1019-1030/1946, 1812, 1993/1950 and 508/1950).*

By the present recourse, the applicant lady challenges the validity of a requisition order affecting her land at Kato Lakatamia and published in the Official Gazette of the Republic on March 10, 1972. So far as material, the said order reads as follows :

> "Given that the property described in the Schedule attached hereto ..... is required for the following purpose of public benefit, that is to say for the *purpose of the defence of the Republic of Cyprus* and its *requisition is required for the following reasons*, that it to say, the defence of the Republic.....".

It was objected by counsel for the applicant that this order does not satisfy the requirements prescribed in the Constitution and relevant statute (*infra*). Article 28.8(b) of the Constitution provides that the purpose of the requisition should be specified in a reasoned decision of the Requisitioning Authority issued under the provisions of the relevant Law and stating clearly the reasons for such requisition. On the other hand section 4(1) of the Requisition of Property Law, 1962 (Law 21/62) reads as follows :-

> "Where any property is required to be requisitioned for a purpose of public benefit, the Requisitioning Authority may, subject to the provisions of the Constitution and of this Law, by an order..... published in the Official Gazette of the Republic declare that such

property is so required and order its requisition, stating clearly the purpose for which it is so required and the reasons for such requisition and the date as from which the requisition shall take effect."

That being the position, learned counsel for the applicant argued that the reasons given in the said order do not satisfy the requirements of the Constitution and the Law, inasmuch as they are a mere repetition of the purpose of the requisition and they cannot be supplemented from the material in the file, unlike the cases where the reasoning is not required by the Law to be given in the decision itself.

Counsel for the applicant further argued that in view of the fact that the requisitioned property was in the occupation of the Government for a number of years, the respondent should have requisitioned other properties so that the burden for the defence of the Republic be distributed equally between the various owners of land in the area; and the respondent having failed to do so contravened the principle of equality safeguarded under Article 28.1 of the Constitution.

The learned Judge of the Supreme Court did not accept the foregoing argument of counsel for the applicant, and dismissing the recourse :-

Held, I : *As regards the alleged insufficiency of the reasoning of the* sub judice *order of requisition* :

(1)(a) It is clear that the Minister of Interior and Defence, by approving the issuing of the order of requisition in question (*supra*), was accepting the contents of the relevant submission and the expert opinion of the Military Authorities on the matter. The reasoning, therefore, to be found in the submission, including the reference therein to the opinion of the Military Authorities, becomes the reasoning of the decision of the Minister.

(b) It is well settled principle of Administrative Law that the reasoning of the preparatory acts provides the reasoning of the subsequent executory act. The same applies to the reasoning of expert advice to which the decision refers or is accompanying same. (See *Decisions of the Greek Council of State* Nos. 1019 - 1030/46, 1812,

1993/50 and 508/50). The Requisitioning Authority then proceeded and had the aforesaid order published in the Official Gazette of March 10, 1972 (*supra*).

(2) Until such publication, an act for requisition required by law to be published, constitutes an *internum* of the administration and consequently is devoid of the ability to produce legal results. In order, however, that such a legal result may be produced, the publication must contain the full text of the act or at least its main and substantial contents. (See *Conclusions of the Case - Law of the (Greek) Council of State* 1929 - 1959, p. 192 and the decisions therein mentioned).

(3) The question that arises now for determination is whether the reasons given in the said order of requisition (*supra*), that is to say the defence of the Republic, satisfy the requirements of Article 23.8(b) of the Constitution and section 4(1) of the said Law 21/62 (*supra*). This is a matter depending on the nature of the reasons and the circumstances under which the order is made. One cannot be very explicit about matters relating to defence and that for obvious reasons. It is the very nature of the purpose of public benefit for which the property is required that, in my view, it did not make it essential to give more detailed reasons in support thereof. Matters of defence are not matters to be publicized in full detail

(4) The order of requisition, as published *supra*, served its purpose of giving sufficient notice to a person whose rights are adversely affected thereby for the purpose of exercising his rights. The proper reasoning of the administrative decision, necessary for the purpose of ascertaining the proper application of the law and for the purpose of exercising judicial control over the legality of the decision and the safeguarding of the interests of the citizen as well as those of the administration, is satisfied, because the decision, as such, is duly reasoned.

Held, II : *As regards the submission that the* sub judice *decision and order of requisition contravene in the*

circumstances the principle of equality, safeguarded under Article 28.1 of the Constitution:

(1)(a) It has been argued by counsel for the applicant that once the land of the applicant was used for a number of years by the Government prior to the making of the order of requisition, the respondent should have requisitioned other properties, so that the burdens for the defence of the Republic should be distributed equally between the various landowners in the area.

(b) Article 28.1 of the Constitution has been the subject of judicial pronouncements in a number of cases, the latest one by the Full Bench of this Court being *The Republic of Cyprus* v. *Arakian and Others* (1972) 3 C.L.R. 294, where 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 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 in Belgium" decided in 1968 where at page 34, it was said :-

> "The Court following the principle 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."

(2) I feel that this principle applies to the special facts of the present case where, in the circumstances, it is not expected that military installations should be shifted from place to place so that there will be equality of treatment amongst the various owners of a particular area.

Recourse dismissed.
No order as to costs.

Cases referred to:

The Republic of Cyprus v. *Arakian and Others* (1972) 3 C.L.R. 294, C.A.;

Decisions of Greek Council of State: Nos. 1019 - 1030/1946, 1812, 1993/1950 and 508/1950.

Cf. *Conclusions from the Case Law of the (Greek) Council of State* 1929 - 1959, p. 192, and the decisions cited therein.

Recourse.

Recourse against the validity of an order of requisition concerning applicant's property situated in the village of Kato Lakatamia.

A. Markides, for the applicant.

C. Kypridemos, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:-

A. LOIZOU, J.: The applicant, by the present application, seeks a declaration of the Court that the act and/or decision of the respondent for the requisition of her property under Plot Nos. 1007, 1012, 1008 and 1011 of Block B, situated in the village of Kato Lakatamia, published in Supplement No. 3 (Part II) to the Official Gazette dated 10th March, 1972 under Notification No. 128, is null and void and with no effect whatsoever.

The aforesaid properties were arable land and belonged to a certain Aishe Hamjia, of Kato Lakatamia until the 16th January, 1968, when they were bought by the applicant.

The Military Authorities were already in possession of the said land, having entered therein as far back as 1964, and having erected thereon structures and other installations for use as a Military Camp. This state of affairs continued to be so, when the applicant wrote to the Director-General, Ministry of Interior and Defence letter dated 13.11.1968 (*exhibit* 3), by which, apparently, in her effort to exploit the said land as building sites, she requested that, if possible, either the affected part be re-

leased, or permission be given to her for the carrying out of the following works :-

"(a) The placing of boundary marks for the building sites by the Lands and Surveys Department.

(b) Removal of the temporary latrines existing thereon, which affected the construction of part of a proposed road (coloured blue on the attached thereto plans), and

(c) Opening and construction of the said road."

The letter was forthwith transmitted to the appropriate Department of the Military Command by letter dated the 14th November, 1968 (*exhibit* 4). The Military Authorities communicated to the Ministry their views on the said request, by letter dated the 7th December, 1968 (*exhibit* 1). They were to the effect that the release of the farmland of the applicant was impossible, as it formed part of the Camp of a Unit of the National Guard on which there were also installations. It was observed, however, that the placing of boundary marks for the division by her of the said property into building sites, could be done, without disturbing the existing perimeter of the Camp.

The applicant was informed in writing on the 13th December, 1968 (*exhibit* 5), that her property could not be released and her request could not be acceded to, because her said property was within the enclosure of a Camp of the National Guard in which there were installations of the Unit stationed there.

The next step which appears to have been taken in relation to the said property, was a letter of the advocates of the applicant, dated the 12th July, 1971 (*exhibit* 6) addressed to the Director-General, Ministry of Interior and Defence. After referring to the occupation by the National Guard of part of her said property and drawing their attention to the fact that the price of building sites in the area was about £2,500 and that by the said interference with her property, she was unable to sell same, she was exploring the possibility whether the Government would be prepared to proceed to an amicable settlement. The advocates of the applicant were informed by letter dated the 16th July, 1971, *exhibit* 7, that the Lands Office

had been requested to fix the compensation payable to her and that they would communicate with her as soon as that was possible.

On the 13th September, 1971, they were informed by letter that the Lands Office had assessed the rent payable for the property of their client at £2.750 mils per year, which the applicant turned down. After that, the applicant filed, on the 30th December, 1971, Civil Action No. 7527/71 in the District Court of Nicosia, claiming injunction and damages against the respondents for trespass upon her said property. On the 26th January, 1972, the appropriate Department of the Military Command was informed of these proceedings and asked if the said property could be released, if not, then the Ministry would be proceeding to issue and order of requisition for the aforesaid area. The Military Authorities informed the Ministry by their letter dated 23.2.1972 (*exhibit* 2) that on account of the structures and installations standing on the said property for the use of a military unit, same could not be released. This attitude was similar to the one to be found in the letter of the 14th November, 1968 (*exhibit* 1).

It is obvious from the contents of the aforesaid documents that the Military Authorities insisted throughout on retaining the property in question for military purposes. Another feature of the facts, is that the applicant was all along fully aware of the existence of the military installations on the property that she bought.

The position then was placed before the Minister of Interior and Defence in Minute No. 1 which will be found in *exhibit* 9, the file of the Ministry relevant to the subject matter of these proceedings. Reference is made therein to the views of the Military Authorities as expressed in *exhibit* 2, the offer for rent made to the applicant and the survey plans specifying the area to be affected by the requisition order and recommendation was made for the making of an order of requisition. The Minister approved the making of the order by Minute No. 2 in *exhibit* 9. It may be stated here, that by so approving the issuing of the order of requisition, the Minister was accepting the contents of the submission and the expert opinion of the Military Authorities on the matter. The

reasoning, therefore, to be found in the submission, including the reference therein to the opinion of the Military Authorities, becomes the reasoning of the decision of the Minister.

It is a well settled principle of Administrative Law that the reasoning of the preparatory acts provide the reasoning of the executory act. The same applies to the reasoning of expert advice to which the decision refers or is accompanying same. (See Decisions of the Greek Council of State, No. 1019 - 1030/46, 1812, 1993/50 and 508/50).

The Requisitioning Authority then proceeded and had the said order published in the official Gazette of the Republic, and in so far as material, it reads as follows :-

> "Given that the property described in the Schedule attached hereto..... is required for the following purposes of public benefit, that is to say, for the purpose of the defence of the Cyprus Republic and its requisition is required for the following reasons, that is to say, the defence of the Republic..."

In view of the fact that both the purposes and the reasons given in the said order of requisition are the same namely, that of the defence of the Cyprus Republic, the first ground of law relied upon by the applicant, is that the said decision is unlawful and/or unconstitutional, as being contrary to Article 23.8(b) of the Constitution which requires that the purpose of the requisition is "specified in the reasoned decision of the Requisitioning Authority issued under the provisions of such Law, containing clearly the reasons for such requisition".

Relevant in this respect is also section 4(1) of the Requisition of Property Law, 1962 (No. 21 of 1962) which reads :-

> "Where any property is required to be requisitioned for a purpose of public benefit, the Requisitioning Authority may, subject to the provisions of the Constitution and of this Law, by an order (in this Law referred to as 'an order of requisition') published in the official Gazette of the Republic, declare that such property is so required and order its requisition, stating clearly the purpose for which it is so required

and the reasons for such requisition and the date as from which the requisition shall take effect."

It has been argued by learned counsel for the applicant, that the reasons for the requisition given in the said order, do not satisfy the requirements of the Law and the Constitution, inasmuch as they are a repetition of the purpose of the requisition and they cannot be supplemented from the material in the file, unlike the cases where the reasoning is not expressly required by the Law, but only by the nature of the act itself.

The third ground of law relied upon by the applicant is closely connected with the first ground, because it deals with the lack of or insufficiency of due reasoning contrary to the general principles of Administrative Law. The aforesaid arguments are based on the assumption that the administrative decision was the publication in the official Gazette, or in any event by the provisions of the Constitution and the Law hereinabove referred to, that publication had to contain clearly the reasoning of the decision.

Before examining whether the contents of the order, as published, comply with the said provisions of the Constitution and the Law, one has to examine the very nature of this order. To my mind, it does not constitute the decision itself of the administrative organ, nor is it a case where the decision has to be supplemented from the material in the file. It is only a constituent element of the administrative act which acquires legal existence only as from such publication in the official Gazette. Until such publication, an act for requisition required by law to be published, constitutes, as of its nature only an *internum* of the administration and consequently is devoid of the ability to produce legal results. In order, however, that such a legal result will be produced, the publication must contain the full text of the act or at least its main and substantial contents. (See conclusions of the Greek Council of State, 1929 - 1959, page 192 and the Decisions therein mentioned). The question, therefore, that arises for determination in relation to both these grounds, is whether the reasons, that is to say the defence of the Republic given in the order, satisfy the requirements of Article 23.8(b) of the Constitution, and of section 4(1) of Law 21 of 1962. Whether the reasons given are clear

enough to satisfy the aforesaid constitutional and statutory requirements, as well as those of the general principles of Administrative Law, is a matter depending on the nature of the reasons and the circumstances under which the order is made. One cannot be very explicit about matters relating to defence and that for obvious reasons. It is the very nature of the purpose of public benefit for which the property is required that it did not make it essential to give more detailed reasons in support thereof. That matters of defence are not matters to be publicized in full detail, can be seen even if one looks at Article 19 of the Constitution, guaranteeing the freedom of speech and expression, the exercise of which right may be subjected to restriction, *inter alia,* in the interest of the security of the Republic or the public safety. Needless to be stated that the circumstances that created the necessity for the introduction of the National Guards Law, unfortunately, still exist. Helpful in this approach is Decision No. 1993/50 of the Greek Council of State which is a case of requisition of a building site for the purposes of the Greek Military Police. In this case the ground of law for lack of due reasoning was dismissed, because the reasoning of the insufficiently reasoned act was found to be sufficiently completed by the opinion of the Army General Staff. The order of requisition, as published, served its purpose of giving sufficient notice to a person whose rights are adversely affected thereby for the purpose of exercising his rights under the law and under Article 146 of the Constitution. The proper reasoning of the administrative decision necessary for the purpose of ascertaining the proper application of the law and for the purpose of exercising judicial control over the legality of the act and the safeguarding of the interests of the administration and the citizen are satisfied, because the decision, as such, is duly reasoned. I have, therefore, in the circumstances of this case, come to the conclusion that neither of the said two grounds can succeed.

The second ground is that the Requisitioning Authority did not take into consideration all relevant facts, as well as the general principles of Administrative Law and in particular, it did not take into consideration that the said properties were possessed by the respondents since 1964 and that on the 30th December, 1971 an action for trespass was filed.

It may be pointed out here that the applicant since becoming the owner of this property, started negotiations with the respondents for an amicable settlement and only sometime after the offer for compensation was made to her she instituted an action for trespass.

Obviously, the reasons for which the Requisitioning Authority proceeded with the making of the order, were the needs of defence for which the Military Authorities were consulted and expressed an expert opinion. A proper inquiry was carried out and there is nothing to suggest that the relevant facts were not taken into consideration. Regarding the entry of the respondents since 1964 and the action for trespass filed by the applicant, I shall have something more to say when dealing with the 5th ground of law.

The 4th ground of law refers to an alleged unequality of treatment and to discrimination as against the applicant in violation of the provisions of Article 28 of the Constitution, in the sense that once the properties of the applicant were used prior to the making of the order of requisition, the respondents should have requisitioned other properties, so that the burdens for the defence of the Republic should be distributed equally between the various owners of land in this area. 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. *Nishian Arakian & Others* (1972) 3 C.L.R. 294, where 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 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 in Belgium" decided in 1968 where at page 34, it was said :-

> "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."

I feel that this principle applies to the special facts of the present case where in the circumstances, it is not expected that military installations should be shifted from place to place so that there will be equality of treatment amongst the various owners of a particular area.

If this ground of law could be held to amount to a dispute as to the reasonableness of the requisition order and its necessity, then, as it was said in the case of the Greek Council of State 1993/50 already referred to, it was upon the applicants who disputed the existence of a necessity for the requisition that had to produce persuasive evidence to the contrary. The previous occupation of the property in question by the Military Authorities has been invoked also in relation to the 5th ground of law in the sense that counting the period from the date that the respondent first entered into occupation of the properties in question, the three-year maximum period during which a property may be kept under a requisition order has expired and "the issuing of a requisition order is contrary to Article 23 of the Constitution and/or section 4(2) of Law 21/62 and/or was taken in excess and/or abuse of power and/or is contrary to the principles of good administration and/or the general principles of Administrative Law."

The period prior to the making of the requisition order is the subject matter of civil proceedings instituted before the appropriate Court. The respondents are entitled to be heard on the merits of that case before a judgment is pronounced. The issues that may be raised in that case and the defences that can be set up are before the Court having competence to adjudicate upon them, and I cannot take into consideration that period in calculating whether the three-year limit imposed by the Constitution for purposes of requisition have been exceeded or that the *sub judice* order of requisition is made in excess or abuse of power, as alleged, in this ground of law. It has been urged that one cannot take advantage of his own wrong but for that there are the pending proceedings to decide. Furthermore, the applicant did not become the owner of the property until 1968 and thereafter she entered into negotiations for an amicable settlement, the significance of which cannot be, as I have already pointed out, a matter of adjudication by this Court.

The further allegation of the applicant that the purpose for which the requisition order was made, was to acquire permanent possession of the property cannot stand, as the safeguards for the duration of such order of requisition are clearly specified in Article 23.8(c) of the Constitution.

For all the above reasons, the present application is dismissed, but in the circumstances I make no order as to costs.

Application dismissed.
No order as to costs.