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OF CYPRUS

v.

CHRISTAKIS
A. SAVVIDES
AND OTHERS

[TRIANTAFYLIDIS, P., STAVRINIDES, L. LOIZOU,
HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

THE REPUBLIC OF CYPRUS,

Appellant (Acquiring Authority),

v.

CHRISTAKIS A. SAVVIDES AND OTHERS,

Respondents (Claimants).

(Civil Appeal No. 5091).

Interest—Compulsory Acquisition—Compensation—In a proper case a Court may, in the exercise of its discretion, award interest on the amount of such compensation, or on a certain part thereof, as the case may be, and for such period as it may deem fit—As a means of rendering such compensation “just and equitable” as required expressly by Article 23.4(c) of the Constitution—Section 10(λ) of the Compulsory Acquisition of Property Law, 1962 (Law 15 of 1962)—Rate of interest—A matter within the discretion of the Court assessing the compensation—Factors which may govern award or not of interest. 5 10

Compulsory Acquisition—Compensation—Notion of adequacy of compensation—And notion of “just and equitable” compensation—Which is wide enough as to include the notion of “complete compensation” in Greece and of “just compensation” in the U.S.A. 15

Constitutional Law—“Just and Equitable Compensation” in Article 23.4(c) of the Constitution.

This was an appeal by the Acquiring Authority 20 against that part of the judgment of the Court below whereby the respondents were awarded interest on the amount of compensation payable to them in respect of Compulsory Acquisition of their property.

The Notice of Acquisition was published on the 18th 21 April, 1968, and the order of Acquisition was published on the 21st February, 1969.

The appellant offered £15,800 by way of compen-

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5 sation, but the respondents claimed £54,000 and, as a result, the appellant instituted proceedings, on the 26th November, 1969, before the Larnaca District Court, for the assessment of the compensation; on the 29th February, 1972, the District Court awarded £22,659 as compensation with 7% interest per annum thereon as from the date of the publication of the Order of Acquisition (the 21st February, 1969) and until payment of the amount of compensation.

10 It was argued by counsel for the appellant that the decision of the trial Court to award interest was wrong in law and in principle; and he stressed, in particular, that the Court was not empowered to award interest, either under the relevant Article of the Constitution
15 (Article 23.4) or the relevant law (the Compulsory Acquisition of Property Law, 1962 (Law 15/62)).

Article 23.4(c) of the Constitution provides :

20 "23.4. Any movable or immovable property may be compulsorily acquired by the Republic and only

(c) Upon the payment in cash and in advance of a just and equitable compensation to be determined in case of disagreement by a civil Court."

25 On the other hand section 10(a) and (A) of the Compulsory Acquisition of Property Law, 1962 (Law 15/62) provides :

"10. The compensation payable in respect of the compulsory acquisition of any property shall be assessed in accordance with the following rules :-

30 (a) The value of the property shall, subject as hereinafter provided, be taken to be the amount which the property, if sold in the open market on the date of the publication of the relative notice of acquisition by a willing seller, might be expected to realize;

35 (A) the provisions of paragraph (a) shall not affect the assessment of compensation for any other matter not directly based on the value of the property acquired."

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As there existed no provision expressly relating to the award of interest in the said Law 15/62 or in Article 23.4 of the Constitution, the Court of Appeal decided the matter in issue in this appeal by examining whether or not the requirement, under paragraph (c) of Article 23.4, that in a case of compulsory acquisition of property there shall be paid "a just and equitable compensation", may in certain instances properly entail the awarding of interest on the amount of the compensation; and in the course of such examination it reviewed the relevant Cyprus, U.S.A., Greek and English case-law.

Held, 1. Having in mind all that we have set out in this judgment (vide pp. 18 - 28 *post*) as regards how the notion of the adequacy of compensation in cases of compulsory acquisition has been understood till now in Cyprus and elsewhere (as well as regards an award of interest where this is necessary in order to do justice) we have reached the conclusion that in a proper case a Court may, in the exercise of its discretion, award, acting under section 10(λ) of Law 15/62, interest on the amount of such compensation, or on a certain part thereof, as the case may be, and for such period as it may deem fit, as a means of rendering such compensation "just and equitable", as required expressly by Article 23.4(c) of the Constitution. It was lawfully and properly open to the trial Court, in the exercise of its discretion, to award interest on the amount of compensation (pp. 28 - 31 *post*).

2. In our view the notion of "just and equitable" compensation is wide enough as to include the notion of "complete compensation" in Greece and of "just compensation" in the U.S.A.; and an award of interest may be found appropriate depending on the circumstances of a particular case in order to render the compensation "just and equitable", because of the "reality of the matter" (see *H. Cousins & Co. Ltd. v. D. & C. Carriers Ltd.* [1971] 1 All E.R. 55) and because, also, of "basic equitable principles of fairness" (see *United States v. Fuller*, 35 L. Ed. 2d 16).

3. The rate at which interest may be awarded is a matter which has to be left to the discretion of the Court assessing the compensation; but, in our opinion, the rate of interest prevailing at the material time could

be a relevant consideration (see *Jefford v Gee* [1970] 2 W.L.R 702; *The Funabashi* [1972] 2 All E.R. 181, and *Cremer and Others v General Carriers SA*, [1974] 1 All E.R 1)

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5 *Appeal dismissed*

Cases referred to

- Taladoros v The Attorney-General*, 20 (1) CLR 134,
Moti and Another v The Republic (1968) 1 CLR 102
at pp 117 - 118, 120;
- 10 *Rashid Ali and Another v Vassiliko Cement Works
Ltd.* (1971) 1 CLR 146, at p. 157,
HadjiMichael and Others v The Republic (1972) 3
C.L.R. 246, at pp 253 - 254,
- 15 *Horn v Sunderland Corporation* [1941] 1 All E.R 480
at pp 495 - 496;
- Inland Revenue Comrs v Glasgow & South-Western
Ry. Co.* [1887] 12 A.C 315, at p 322,
Rugby Joint Water Board v Footitt, [1972] 1 All E.R
1057 at p. 1085;
- 20 *Monongahela Navigation Company v United States*, 37
Law. Ed 463 at p 468;
United States v Chandler-Dunbar Water Power Co.,
57 Law Ed. 1063,
- 25 *Seaboard Air Line R Co v United States*, 67 Law
Ed. 664;
- Albert Hanson Lumber Co v United States*, 67 Law
Ed 809;
- Campbell v United States*, 69 Law. Ed. 328,
Phelps v. United States, 71 Law Ed. 1083,
- 30 *Olson v United States*, 78 Law. Ed 1236,
United States v. Miller, 87 Law Ed. 336 & 87 Law
Ed. 1162,
- United States v. General Motors Corp*, 89 Law. Ed. 311.
United States v Virginia Electric & Power Co. 5 L
Ed. 2d 838,
- 35 *United States v Dow*, 2 L Ed 2d 1109;

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United States v. Fuller, 35 L. Ed. 2d 16 at pp. 19 - 20;
Brown v. United States, 68 Law. Ed. 171;
Shoemaker v. United States, 37 Law. Ed. 170;
Bauman v. Ross, 42 Law. Ed. 270;
Shoshone Tribe v. United States, 81 Law. Ed. 360 at 5
p. 369;
Jefford and Another v. Gee [1970] 2 W.L.R. 702;
*London, Chatham and Dover Railway Co. v. South
Eastern Railway Co.* [1893] A.C. 429, at p. 437;
H. Cousins & Co. Ltd. v. D. & C. Carriers Ltd [1971] 10
1 All E.R. 55 at p. 58;
*Decision of the Greek Council of State in Case No.
2437/1966, 616/1950*;
The Funabashi [1972] 2 All E.R. 181;
Cremer and Others v. General Carriers SA [1974] 1 15
All E.R. 1;
Luckenbach Steamship Co. v. United States, 71 Law.
Ed. 394.

Appeal.

Appeal by the acquiring authority against that part of 20
the judgment of the District Court of Larnaca (Georghiou,
P.D.C. and Orphanides, D.J.) dated the 29th February,
1972, (Ref. No. 4/69) which relates to the award of
interest on the amount of compensation payable to
claimants in respect of compulsory acquisition of immo- 25
vable property.

A. Frangos, Senior Counsel of the Republic, with
C. Kypridemos, Counsel of the Republic, for
the appellant.

T. Papadopoulos, for the respondents. 30

Cur. adv. vult.

The facts sufficiently appear in the judgment of the
Court delivered by :

TRIANTAFYLIDIS, P. : In this case the Republic, being 35

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the acquiring authority in a case of compulsory acquisition of immovable property, has appealed against the part of the judgment of a Full District Court in Larnaca whereby the respondents were awarded interest on the amount of compensation payable to them in respect of the compulsory acquisition.

The Notice of Acquisition was published on the 18th April, 1968, and the Order of Acquisition was published on the 21st February, 1969.

The appellant offered £15,800 by way of compensation but the respondents claimed £54,000 and, as a result, the appellant instituted proceedings, on the 26th November, 1969, before the Larnaca District Court, for the assessment of the compensation; the District Court awarded £22,659 as compensation with 7% interest per annum thereon as from the date of the publication of the Order of Acquisition (the 21st February, 1969) and until payment of the amount of compensation.

The part of the judgment of the trial Court which relates to the matter of the interest is as follows :

“Finally, the Court took upon itself to decide whether any interest may be granted on this amount bearing in mind the decision of the Supreme Court in *Rashit Ali and Another v. Vassiliko Cement Works Ltd.* (C.A. No. 4837), in which interest at the rate of 7% per annum was allowed to the claimants running from the date of the acquisition order, on the ground that as from that date they were entitled to payment of the amount of the ‘just and equitable’ compensation payable for the loss of their property. They referred to the English case of *Jefford v. Gee* (C.A.) [1970] 2 W.L.R., 702 at pp. 709 - 712. Following this decision of the Supreme Court, we are inclined to allow interest at the rate of 7% per annum from the date of the publication of the acquisition order which was the 21.2.1969, to payment. In favour of this principle, it should be noted that the Government took possession of the acquired property a few months later and thus the owners were deprived of their property. Moreover, the owners of plots 418 and 420—which were, also, acquired by the Republic—“must have been

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paid soon after agreement reached and must have taken an advantage of gaining interest”.

Counsel for the appellant has argued that the decision of the trial Court to award interest, as aforesaid, is wrong in law and in principle, and he has stressed, in particular, that the Court was not empowered to award interest, either under the relevant Article of the Constitution (Article 23.4) or the relevant Law (the Compulsory Acquisition of Property Law, 1962, Law 15/62).

No provision expressly relating to an award of interest is to be found in Law 15/62; nor does there exist any express provision in this respect in Article 23.4 of the Constitution; so, the matter in issue in this appeal has to be decided by examining whether or not the requirement, under paragraph (c) of Article 23.4, that in a case of compulsory acquisition of property there shall be paid “a just and equitable compensation” may in certain instances properly entail the awarding of interest on the amount of the compensation.

It is useful to review, at this stage, relevant case-law in Cyprus :

In *Taliadoros v. The Attorney-General*, 20 (1) C.L.R. 134, it was held that the owner of the compulsorily acquired property was entitled in equity to legal interest—4% per annum—on the compensation money, from the date of the notification of the sanctioning of the acquisition, and the entry on his property, to the date of the awarding of compensation by the Court. This was a case which was decided by the District Court of Nicosia on the basis of the then in force provisions of the Land Acquisition Law, Cap. 233 of the 1949 Revised Edition of the Laws of Cyprus, and it is to be noted that, under such provisions, upon the sanctioning of the acquisition the acquiring authority became immediately entitled to the property concerned; therefore, this case is not nowadays of direct relevance, because we are faced with a different legal situation, created by Article 23.4 of the Constitution which provides as follows :

“Any movable or immovable property or any right over or interest in any such property may be com-

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pulsorily acquired by the Republic or by a municipal corporation or by a Communal Chamber for the educational, religious, charitable or sporting institutions, bodies or establishments within its competence and only from the persons belonging to its respective Community or by a public corporation or a public utility body on which such right has been conferred by law, and only —

(a) for a purpose which is to the public benefit and shall be specially provided by a general law for compulsory acquisition which shall be enacted within a year from the date of the coming into operation of this Constitution; and

(b) when such purpose is established by a decision of the acquiring authority and made under the provisions of such law stating clearly the reasons for such acquisition; and

(c) upon the payment in cash and in advance of a just and equitable compensation to be determined in case of disagreement by a civil Court.”

The Law, the enactment of which is envisaged by paragraph (a) of Article 23.4, is the aforementioned Law 15/62, and provision is made therein regarding the assessment of the compensation for a compulsorily acquired property (see Part III of the Law) and that such property vests in the acquiring authority only upon payment of the compensation (see section 13 of the Law).

The next case to which we would like to refer is *Moti and Another v. The Republic* (1968) 1 C.L.R. 102. This was a case in which the situation was rather special, in the sense that the Notice of Acquisition was published on the 29th November, 1956 (under the provisions of the then in force Cap. 233) and the Order of Acquisition was published considerably later, on the 28th February, 1963, under the enacted in the meantime Law 15/62. As regards the issue of interest in that case it is useful to quote the following from the judgment of Josephides, J. (at p. 120):

“In all the circumstances of this case, namely, the unjustified delay in the sanctioning of the acquisition

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and the common ground that the market value of the lands taken has to be assessed on the basis of the 1956 prices (the date of the notice to treat), pursuant to the provisions of section 10(a) of the Law, we are of the view that, having regard to the provision in the Constitution for the payment of 'just and equitable compensation', the provisions of section 10(λ) of the Law, for the payment of compensation 'for any other matter not directly based on the value of the property acquired' should be construed to include compensation for unreasonable delay in the sanctioning of the acquisition, such as the one which occurred in the present case. We hold that such compensation should take the form of legal interest at the rate of 4 per cent per annum on the assessed market value of the property acquired and on the damage for injurious affection, unless the owner's loss due to the delay exceeds that rate of interest, e.g. where he has to pay a higher rate on a mortgage debt on the property acquired".

In *Rashid Ali and Another v. Vassiliko Cement Works Ltd.* (1971) 1 C.L.R. 146—which has been relied on by the trial Court in the present case—the position was that the acquiring authority had taken possession of the compulsorily acquired property as soon as the Order of Acquisition had been published and, on appeal, Vassiliades P. stated the following regarding the issue of interest (at p. 157):

"The expropriated owners were deprived of their property from the publication of the acquisition order on 11.8.1966. As from that date they were entitled to payment of the amount of the 'just and equitable' compensation payable for the loss of their property. And we think that as from that date they are entitled to interest on the amount which, considering current rates and other relevant circumstances, we would put at the rate of 7% per annum. (See *Jefford v. Gee* (C.A.) [1970] 2 W.L.R. 702 at 709 and 712)."

Lastly, in *HadjiMichael and Others v. The Republic*, (1972) 3 C.L.R. 246, the following statement appears in the judgment of this Court (at pp. 253 - 254) :-

5 “We might add, in passing, that if it were to be found that any delay by the respondent acquiring authority did operate inequitably against the appellants as regards the quantum of compensation for the acquisition of their properties the competent in the matter civil Court has power to make the necessary adjustment by directing the payment of interest in respect thereof, for such length of time as it may deem fit in the circumstances of the case for the purpose of awarding just and equitable compensation; in this respect we might refer to the decision in *Moti v. The Republic* (1968) 1 C.L.R. 102—which was adopted in argument by learned counsel for the respondents—and to the later case of *Rashid Ali v. Vassiliko Cement Works Ltd.* (1971) 1 C.L.R. 146.”

20 Before proceeding further, it is pertinent to quote the following passage, from a “Note” appearing at p. 816 in volume 15 of the Lawyers’ Edition of the United States Supreme Court Reports, as regards the right of a Government to compulsorily acquire private property and its duty to pay compensation in respect of it:

25 “The right to take private property for public use is an incident to the sovereignty of every government. The right of eminent domain or inherent sovereign power, gives to the Legislature the control of private property for public uses. The interest of the public is deemed paramount to that of the individual, and the maxim of law is, that private mischief is to be endured rather than a public inconvenience. The obligation to make just compensation is concomitant with the right. The settled and fundamental doctrine is, that Government has no right to take private property for public purposes without a just compensation. Bell’s Principles of Law of Scotland, 173, 174; Stat. 1 & 2, William IV. ch. 43; and Code Napoleon, Article 545; and the Constitutional Charter of Louis XVIII. Grotius de Jure. B. & P. b. 3, ch. 19, sec. 7, ch. 20, sec. 7; Puff. de Jure. Nat. et Gent. b. 8, ch. 5, secs, 3, 7; Bynk. Q. Jur. Pub. b. 2, ch. 15; Vattel. b. 1, ch. 20, sec. 244.

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The concluding clause of the fifth amendment to the Constitution of the United States, that private property shall not be taken for public use without just compensation, is an affirmation of a great doctrine established by the common law for the protection of private property. It is founded in national equity, and is laid down by jurists as a principle of universal law. 2 Story on Constitution, sec. 1790; 1 Black. Com. 138, 139, 140; 2 Kent, 275, 276; 3 Wilson's Law Lect. 203; Rawle on Const. ch. 10, p. 123; *Ware v. Hylton*, 3 Dall. 194, 235; *Van Horn v. Dorrance*, 2 Dall. 384." 5 10

Our own Constitution provides in Article 23.4 (c) that the compensation to be paid for compulsorily acquired property shall be "a just and equitable"; and in the *Moti* case, *supra*, the following was stated by Josephides, J. (at pp. 117 - 118): 15

"We have already referred to the principle of equivalence which is at the root of statutory compensation (see *Horn* case, *supra*). On the American authorities 'just compensation' means the full and perfect equivalent in money of the property taken (*The Monongahela Navigation v. United States* (1893) 148 U.S. 312, 326). 'The right to just compensation could not be taken away by statute or be qualified by the omission of a provision for interest where such an allowance was appropriate in order to make the compensation adequate....' (*Seaboard Air Line R. Co. v. United States*, 261 U.S. 299); and the owner 'is entitled to such addition (to the value of the property at the time of the taking) as will produce the full equivalent of that value paid contemporaneously with the taking' (*Jacobs v. U.S.A.* (1933) 290 U.S. 13; 78 Law. ed. 142)". 20 25 30 35

In *Horn v. Sunderland Corporation* [1941] 1 All E.R. 480, Scott, L.J., after referring with approval (at p. 495) to the dictum of Lord Watson in *Inland Revenue Comrs. v. Glasgow & South Western Ry. Co.* [1887] 12 A.C. 315, at p. 322, that "By 'compensation' is meant an equivalent for that which the railway company take 40

and acquire, and which the proprietor gives up to them”,
proceeded to state (at p. 496) that :

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5 “The statutory compensation cannot and must not
exceed the owner’s total loss, for, if it does, it will
put an unfair burden upon the public authority or
other promoters, who on public grounds have been
given the power of compulsory acquisition, and it
will transgress the principle of equivalence which
10 is at the root of statutory compensation, which lays
it down that the owner shall be paid neither less
nor more than his loss. The enunciation of this
principle—the most fundamental of all—is easy
enough. Its justice is self-evident, but its application
to varying facts is apt to be difficult. It is not easy
15 to spell out of it a general criterion which will
afford a practical test in all cases.”

The above approach was adopted with approval in,
inter alia, *Rugby Joint Water Board v. Footit* [1972]
1 All E.R. 1057, at p. 1085.

20 In the U.S.A. one of the leading cases on the sub-
ject is that of *Monongahela Navigation Company v.*
United States, 37 Law. Ed. 463, where the following
was stated (at p. 468) by Mr. Justice Brewer :

25 “The language used in the 5th Amendment in
respect to this matter is happily chosen. The entire
Amendment is a series of negations, denials of right
or power in the government, the last, the one in
point here, being ‘Nor shall private property be
taken for public use without just compensation’.
30 The noun ‘compensation’ standing by itself, carries
the idea of an equivalent. Thus we speak of damages
by way of compensation, or compensatory damages,
as distinguished from punitive or exemplary damages,
the former being the equivalent for the injury done,
35 and the latter imposed by way of punishment. So
that if the adjective ‘just’ had been omitted, and
the provision was simply that property should not
be taken without compensation, the natural import
of the language would be that the compensation
40 should be the equivalent of the property. And this
is made emphatic by the adjective ‘just’. There can,
in view of the combination of those two words, be

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no doubt that the compensation must be a full and perfect equivalent for the property taken. And this just compensation, it will be noticed is for the property, and not to the owner. Every other clause in this 5th Amendment is personal. 'No person shall be held to answer for a capital, or otherwise infamous crime', etc. Instead of continuing that form of statement, and saying that no person shall be deprived of his property without just compensation, the personal element is left out, and the 'just compensation' is to be a full equivalent for the property taken. This excludes the taking into account as an element in the compensation any supposed benefit that the owner may receive in common with all from the public uses to which his private property is appropriated, and leaves it to stand as a declaration that no private property shall be appropriated to public uses unless a full and exact equivalent for it be returned to the owner." 5 10 15

The above view as to the function of compensation in compulsory acquisition cases was expressed, also, in, *inter alia*, *United States v. Chandler-Dunbar Water Power Co.*, 57 Law. Ed. 1063, *Seaboard Air Line R. Co. v. United States*, 67 Law. Ed. 664, *Albert Hanson Lumber Co. v. United States*, 67 Law. Ed. 809, *Campbell v. United States*, 69 Law. Ed. 328, *Phelps v. United States*, 71 Law. Ed. 1083, *Olson v. United States*, 78 Law. Ed. 1236, *United States v. Miller*, 87 Law. Ed. 336 & 87 Law. Ed. 1162, *United States v. General Motors Corp.*, 89 Law. Ed. 311, *United States v. Virginia Electric & Power Co.*, 5 Law. Ed. 2d 838. 20 25 30

Earlier on in this judgment we quoted a passage from the judgment in the *Moti* case, *supra*, wherein it was stated that the provision in section 10(λ) of Law 15/62 regarding compensation "for any other matter not directly based on the value of the property acquired" should be construed in the light of the notion of "just and equitable compensation" in Article 23.4 (c) of the Constitution, with the result that in view of the particular circumstances of that case there was awarded interest on the amount of compensation. An examination of U.S.A. case-law shows a similar approach in construing legislation in relation to the matter of compensation for 35 40

compulsory acquisition of property: In *Phelps, supra*. it was stressed (at p. 1085) by Mr. Justice Butler that "Acts of Congress are to be construed and applied in harmony with and not to thwart the purpose of the
5 Constitution"; and in *United States v. Dow*, 2 L. Ed. 2d 1109, it was held that the Supreme Court will not attribute to Congress the intention to promulgate a statutory rule which would open the door to obvious incongruities and undesirable possibilities.

10 We shall examine next how the matter of awarding interest on the amount of compensation payable for compulsory acquisition was dealt with in the U.S.A.: but just before doing so it is, we think, useful to mention that in the very recent case of *United States v. Fuller*,
15 35 L. Ed. 2d 16 (decided in 1973) Mr. Justice Rehnquist has stated the following (at pp. 19 - 20) by way of general principles regulating nowadays, in an equitable manner, the assessment of compensation for compulsory acquisition:

20 "Our prior decisions have variously defined the 'just compensation' that the Fifth Amendment requires to be made when the Government exercises its power of eminent domain. The owner is entitled to fair market value, *United States v. Miller*, 317
25 US 369, 374, 87 L. Ed. 336, 63 S Ct. 276. 147 ALR 55 (1943), but that term is 'not an absolute standard nor an exclusive method of valuation'. *United States v. Virginia Electric & Power Co.*, 365
30 US 624, 633, 5 L. Ed. 2d 838, 81 S Ct. 784 (1961). The constitutional requirement of just compensation derives as much content from the basic equitable principles of fairness, *United States v. Commodities Trading Corp.*, 339 US 121, 124, 94 L. Ed. 707.
35 70 S Ct. 547 (1950), as it does from technical concepts of property law."

In *Brown v. United States*, 68 L. Ed. 171, Chief Justice Taft, after referring to the cases of *Shoemaker v. United States*, 37 Law. Ed. 170, and *Bauman v. Ross*, 42 Law. Ed. 270, in which claims for interest were
40 refused, stated the following (at p. 182):

"In these cases, the value found was at the time of taking or vesting of title, and the presumption

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indulged was, that the valuation included the practical damage arising from the inability to sell or lease after the blight of the summons to condemn. Where the valuation is as of the date of the summons, however, no such elements can enter into it, and the allowance of interest from that time is presumably made to cover injury of this kind to the landowner pending the proceedings. It often happens that in the delays incident to condemnation suits the loss to the owner arising from the delay between the summons and the vesting of title by judgment is a serious one.” 5 10

Further, in *Shoshone Tribe v. United States*, 81 Law. Ed. 360, it was pointed out by Mr. Justice Cardozo (at p. 369) that : 15

“The claimant’s damages include such additional amount beyond the value of its property rights when taken by the Government as may be necessary to the award of just compensation, the increment to be measured either by interest on the value or by such other standard as may be suitable in the light of all the circumstances. 20

Finally the fact is unimportant, there having been an appropriation of property within the meaning of the Fifth Amendment, that the jurisdictional act is silent as to an award of interest or any substitute thereof. 25

Given such a taking, the right to interest or a fair equivalent, attaches itself automatically to the right to an award of damages.” 30

In the *Shoshone Tribe* case, *supra*, interest was awarded as from the time of the taking of the property only, because the value of the land concerned was assessed by reference to the time of such taking, and in this respect the *Shoshone Tribe* case is like, also, the *Shoemaker* and *Bauman* cases, *supra*, distinguishable from the *Brown* case, *supra*, which is analogous to the case now before us because of the fact that in the *Brown* case 35 40

the compensation was assessed by reference to the date of "the summons to condemn" the property concerned and in the present case the value of the property of the respondents was assessed, under section 10(a) of Law 15/62, by reference to the date of the Notice of Acquisition.

It is necessary, now, to revert to English Law in order to refer to the case of *Jefford and Another v. Gee*, [1970] 2 W.L.R. 702, which has been cited by the trial Court, as having been referred to in the *Rashid Ali* case, *supra*; in the judgment in the latter case it was not mentioned that the award of interest in the *Jefford* case was made on the basis of a statutory provision in England, namely section 22 of the Administration of Justice Act, 1969, which amended section 3 of the Law Reform (Miscellaneous Provisions) Act, 1934; in any event, however, the *Jefford* case does provide useful guidance, especially because as has been observed by Lord Denning M.R. in his judgment therein (at p. 707) the relevant statutory provision was intended to give effect to a principle of law enunciated by Lord Herschell in *London, Chatham and Dover Railway Co. v. South Eastern Railway Co.*, [1893] A.C. 429, at p. 437; by virtue of such principle (which the Court of Admiralty and the Courts in Scotland applied even before it was given effect by statutory provision in England) interest becomes payable to somebody for being kept out of money which ought to have been paid to him.

In the *Jefford* case, *supra*, interest was awarded on the amount of damages due in a personal injury case and, in view of the statutory provisions applicable, the award of interest was compulsory. In the subsequent case of *H. Cousins & Co. Ltd. v. D. & C. Carriers Ltd.* [1971] 1 All E.R. 55, the award of interest was a matter of discretion and it is useful to note from the judgment of Widgery, L.J. (at p. 58) that in such a case "the Court should look at the reality of the matter and should take note" of relevant factors to the extent necessary "in order to do justice".

In Greece, as stated by Kyriacopoulos in his treatise on Greek Administrative Law, 4th ed., Vol. C, p. 379, the compensation for compulsory acquisition should be

—as required by Article 17 of the 1952 Constitution—
«πλήρης» (“complete”); and complete compensation has
been stated, by the Council of State in Greece, in case
616/1950, to be such compensation as would enable
the affected owner to replace his compulsorily acquired
property by another of equivalent value («... ἐπὶ πλήρει
ἀποζημιώσει, ὡς τοιαύτη δὲ ἐννοεῖται ἐκείνη, τῆς ὁ-
ποίας τὸ ποσὸν ἐπιτρέπει εἰς τὸν καθ’ οὗ αὕτη ἰδιο-
κτῆτην νὰ δύναται νὰ ἀντικαταστήσῃ τὸ ἀπολλοτριούμε-
νον πρᾶγμα δι’ ἐτέρου ἰσαξίου»). (See, also, the deci-
sion of the Council of State in case 2437/1966).

Having in mind all that we have set out in this judg-
ment as regards how the notion of the adequacy of
compensation in cases of compulsory acquisition has
been understood till now in Cyprus and elsewhere (as
well as regards an award of interest where this is necessary
in order to do justice) we have reached the conclusion
that in a proper case a Court may, in the exercise of
its discretion, award, acting under section 10(λ) of Law
15/62, interest on the amount of such compensation, or
on a certain part thereof, as the case may be, and for
such period as it may deem fit, as a means of rendering
such compensation “just and equitable”, as required
expressly by Article 23.4(c) of the Constitution.

In our view the notion of “just and equitable” com-
pensation is wide enough as to include the notion of
“complete compensation” in Greece and of “just com-
pensation” in the U.S.A.; and an award of interest may
be found appropriate depending on the circumstances of
a particular case in order to render the compensation
“just and equitable”, because of the “reality of the
matter” (see the *H. Cousins & Co Ltd.* case, *supra*) and
because, also, of “basic equitable principles of fairness”
(see the *Fuller* case *supra*).

The rate at which interest may be awarded is, again,
a matter which has to be left to the discretion of the
Court assessing the compensation; but, in our opinion,
the rate of interest prevailing at the material time could
be a relevant consideration (see the *Jefford* case, *supra*,
the *Funabashi*, [1972] 2 All E.R. 181, and *Cremer and*
Others v. General Carriers S.A. [1974] 1 All E.R. 1).

It would not be feasible, or proper, for us to lay down

in this judgment rules covering all possible situations in which interest may or may not be awarded in cases of assessment of the compensation for compulsory acquisition; until, and unless, this matter is regulated by statutory provision (see, for example, the Federal Declaration of Taking Act, 1931, in the U.S.A.) the said rules will have to be developed by means of case-law; but we may, in this respect, mention some of the factors which appear to us to be relevant to the matter in question :

One such factor is delay in the assessment of the compensation payable, which has occurred due to the conduct of the acquiring authority. When the Order of Acquisition is published the acquiring authority should be in a position to make a formal offer of compensation to the owner of the affected property, so that if no agreement can be reached proceedings for the assessment of the compensation by a civil court can be instituted either by the acquiring authority or the owner; and, of course, any delaying of the normal course of such proceedings, attributable to the conduct of either side, will have to be duly weighed, too.

Another relevant factor is the extent of the difference, if any, between the amount of compensation offered and the amount of compensation assessed by a Court in case the offer is refused; if an owner, having rejected the offer made to him, does not succeed, through proceedings in Court, in increasing to an appreciable extent the amount of the compensation then he can hardly complain that he has been, in the meantime, kept out of his money due to the conduct of the acquiring authority; in *Luckenbach Steamship Co. v. United States*, 71 Law. Ed. 394, Mr. Justice Van Devanter stated in his judgment at (p. 398) :

“In short, while the United States was prepared, willing and offering when the vessels were taken over to pay the sum now adjudged to have been just compensation at that time, the claimant was not then in a position entitling it to demand or receive compensation because as yet it was without a good title and had not executed a bill of sale to the United States : and after it became entitled to

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compensation it rejected the offer, which was still outstanding, to pay that sum in full payment and elected to accept three-fourths as a partial payment and to take chances on enlarging the compensation by resorting to this suit against the United States. 5
The effort to obtain an enlargement has resulted, as already shown, in establishing that the amount offered and rejected was all that justly could have been demanded. In these circumstances we think such postponement as has occurred in the actual 10 payment of the compensation is attributable entirely to the claimant, and therefore that an allowance of interest to the time of payment is not in this case made essential..."

On the other hand, if it turns out that the offer made 15 by the acquiring authority was appreciably below the, eventually, judicially assessed value of the acquired property, then, obviously, its owner has been prevented by the conduct of such authority from receiving earlier the compensation due to him. 20

Another factor which might, conceivably, be taken into account in deciding about an award of interest, would be the whole or a part of the delay caused by an unsuccessful exercise of the right of recourse, by the affected owner, under Article 146 of the Constitu- 25 tion, as regards the Order of Acquisition; the refusal of interest in this connection should not be regarded as penalizing the owner for having exercised the right of recourse, but as a course of avoiding, in a proper case, to burden unjustifiably the acquiring authority with the 30 amount of such interest.

A further relevant consideration would be the extent of the effective enjoyment, by its owner, of the expropriated property, between the date of the Notice of Acquisition and the date of the assessment of compen- 35 sation in respect thereof, for example by way of receipt of rents; likewise, there has to be borne in mind whether during the above period the acquiring authority has entered upon the property and if so if this was done under an Order of Requisition (entailing the payment of 40 compensation) or otherwise.

In the light of all the foregoing and of the particular

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circumstances of the present case (as set out already at the beginning of this judgment) we are of the view that it was lawfully and properly open to the trial Court, in the exercise of its discretion, to award interest on the amount of compensation, as it has done, especially as the compensation assessed by it was considerably more than what had been originally offered by the appellant; it is true, indeed, that the compensation assessed by the trial Court was, also, considerably less than what had been demanded by the respondents and had we been trying this case, as a Court of first instance, we might have awarded lower interest or we might have awarded it on only part of the judicially assessed compensation; but, the matter of the award of interest being a matter of discretion, we are not prepared to say, in this particular case, that we have been satisfied that we should interfere on appeal with the exercise, in this respect, of the discretion of the trial Court.

As a result this appeal fails and it is dismissed; but we are not prepared, in view of the novelty and complexity of the issue raised, to make any order as to the costs of this appeal.

Appeal dismissed.

No order as to costs.