1981 October 12

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IRENE CHR. LIVERI,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS,

Respondent.

(*Cases Nos.* 130/79, 433/79).

Time within which to file a recourse—Article 146.3 *of the Constitution —Provisions of, should be strictly interpreted—And in case of doubt to be applied in favour of the citizen—Requisition of property —Description of property in requisition order, as published in the Official Gazette, sufficient to identify such property in relation to lands office records only—Name of owner not stated in the publication—Applicant raising issue of requisition, before publication of order, but respondents failing to reply to her at least as a matter of good administration and in conformity with Article* 29 *of the Constitution—Doubt, in the particular circumstances of this case, whether publication in question a sufficient one for the purposes of the said Article* 146.3*—Recourse not out of time.*

Requisition of property—Total period for which property may be requisitioned—Article 23.8(*c*) *of the Constitution and section* 4(3) *of the Requisition of Property Law,* 1962 (*Law* 21/1962 *as amended by Law* 50/1966)*—Whether possible for property to be requisitioned for a period exceeding the one provided by the Constitution and the said Law.*

Administrative Law—Misconception of the correct legal position— Leads to annulment of the relevant administrative act.

Compulsory acquisition and requisition of property—Observations with regard to the need of revision of the relevant legislation with regard to procedure for payment of compensation—And

observations with regard to the need of expeditious conclusion of references for determination of compensation.

By means of an order of acquisition made in June 1973 the Municipal Committee of Nicosia acquired compulsorily a piece of land ("the property") belonging to the applicant for the purpose of widening Chilonos Street in Nicosia. This property was in July 1973 requisitioned for a period of one year; and there followed renewals of the first requisition order for periods of one year and the last requisition order was due to expire on July 26, 1978. On the 19th July, 1978 Counsel for the applicant informed the said Municipal Committee of the fact that the period of requisition for which they could requisition the property legally was due to expire on the 26th July, 1978 and warned them that the applicant intended to restore her property to its original condition. No reply was ever given to applicant or to her counsel. On the 15th March, 1979, counsel for the applicant was informed that her property was requisitioned for a period of one year starting from October 6, 1978. As against this requisition order applicant filed recourse No. 130/79 on the 19th March, 1979. In October, 1979 applicant's property was requisitioned for a further period of one year and as against this requisition order she filed recourse No. 433/79.

The *sub judice* requisition orders were made through publications in the Official Gazette wherein applicant's property was identified by means of a description sufficient to identify such property in relation to lands office records only. The name of the applicant was not stated in the said publication and no intimation had ever been made to her that a further order of requisition was going to be made in respect of her property.

Counsel for the applicant mainly contended that under Article 23.8(c) of the Constitution the requisition could not exceed the period of three years; and that even assuming that Law 50/1966, which increased the period set out in the above Article from three years to five years, was constitutionally enacted, the act and/or decision complained of purports to requisition the property of the applicant for a period in excess of five years.

Counsel for the respondent Council of Ministers contended

that the *sub judice* requisition orders were made on the advice* of the Attorney-General of the Republic which was based on the judgment of the Supreme Court in the case of *Hadji Michael and Others* v. *Republic* (1973) 3 C.L.R. 176. On the other hand Counsel for the said Municipal Committee in his opposition raised the issue that the recourse was not filed within the period of seventy-five days provided for in Article 146.3 of the Constitution.

Held, (1) that provisions such as Article 146.3 of the Constitution should be strictly interpreted and applied and, in case of doubt, should be applied in favour of, and not against the citizen especially in the case of a citizen such as the applicant who complains against a decision which nobody took the trouble of bringing formally to her notice (see, *inter alia*, *Neophytou* v. *Republic*, 1964 C.L.R. 280); that since the applicant had neither definite reason to expect nor any intimation that a further order of requisition was going to be made in respect of her property, particularly in view of the existence of the letter of her counsel to which nobody took the trouble to give a reply; that since the Municipal Committee had a duty in view of the previous history of the matter and the serious allegations of illegality and unconstitutionality that were raised therein, at least as a matter of good administration and in conformity with Article 29 of the Constitution, to reply to the said letter; that, moreover, since the publication in this case did not state the name of the applicant, in the particular circumstances of this case there is at least some doubt and uncertainty whether the publication in question amounts to such clear and full publication of the fact as to be deemed to be sufficient publication for the purposes of Article 146.3; that resolving this doubt in favour of the citizen this Court finds that time did not begin to run under Article 146.3 until the 15th March, 1979, when the applicant came actually to know for the first time of the requisition of her property; accordingly this recourse is not out of time (see *Pissas* (*No.* 1) v. *Electricity Authority of Cyprus* (1966) 3 C.L.R. 634).

* The advice is quoted at pp. 410-11 *post* and was to the effect that the *Hadji Michael* case established that even if a requisition order, following its various extensions, has been in force for a period of five years, a new independent requisition order for a period not exceeding three years can be made if upon re-examination of the grounds which made possession of the said property necessary, the new possession of the property was imperative on the basis of the new and at the time existing circumstances.

(2) That in the *Hadji Michael* case it has not been expressly held that a new requisition order can be made in respect of a property for which there had been made requisition orders for total periods exceeding five years; and that the maximum that can be said is that this question was left open; that, therefore, the respondents, in making the *sub judice* requisition order were acting under a misconception that they were entitled in law to make the *sub judice* requisition order; that no doubt in the present case the *sub judice* requisition orders were not self-sufficient and independent acts made on account of new requirements after the expiration of the prescribed period, but were a continuation of the old ones and were necessitated for the purpose of affording, if that was in Law possible, legal covering for the continuation of the occupation of the land of the applicant; that the respondents were thus acting under a vital misconception of the relevant legal position which is bound to lead this Court to the conclusion that the administrative action taken by the respondents on the very basis of such misconception has to be annulled (see *Paschalis* v. *Republic* (1966) 3 C.L.R. 593, at p. 608; see also *Kolocos* v. *Republic* (1965) 3 C.L.R. p. 558, where a decision reached under a misconception of the correct legal position was annulled).

Sub judice decision annulled.

Observations: It is necessary to be pointed out that in order to avoid in the future situations as the one created in this case, and in view of its outcome the Law has to be revised in the light of the experiences of other countries, which have the same constitutional provisions governing the question of acquisition and requisition of property. Until then, however, steps must be taken for the expeditious conclusion—and the litigants can constructively help to that direction—of references that come up before the Courts for the determination of the compensation payable in respect of the acquired land.

Cases referred to:

HjiMichael and Others v. *Republic* (1972) 3 C.L.R. 246;

Pissas (No. 1) v. *Electricity Authority of Cyprus* (1966) 3 C.L.R. 634;

Moran v. *Republic*, 1 R.S.C.C. 10;

Markoullides v. *Republic*, 4 R.S.C.C. 7;
Neophytou v. *Republic*, 1964 C.L.R. 280;
Mourtouvanis & Sons Ltd. v. *Republic* (1966) 3 C.L.R. 108;
Georghiades and Another v. *Republic* (1966) 3 C.L.R. 827;
HadjiCostas v. *Republic* (1974) 3 C.L.R. 1;
Paschali v. *Republic* (1966) 3 C.L.R. 593 at p. 608;
Kolocos v. *Republic* (1965) 3 C.L.R. 558;
Philippos Demetriou & Sons v. *Republic* (1968) 3 C.L.R. 444;
Christodoulides v. *Republic* (1968) 3 C.L.R. 57.

Recourses.

Recourses against the decision of the respondents to requisition part of the immovable property of applicant situate at Ayios Andreas Quarter, Nicosia.

A. Dikigoropoullos, for the applicant.

M. Kyprianou, Senior Counsel of the Republic, for the respondent.

K. Michaelides, for the Municipal Committee as interested party.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. These two recourses have, by direction of the Court made with the consent of the parties, been heard together as they present common questions of law and fact.

The applicant is the registered owner of the immovable property under Registration Nos. D. 206 and 922, plots 215 of Block "D" and 26 of Block 26, at Ayios Andreas Quarter, Nicosia. By means of a Notice of Acquisition published under Notification No. 284 in the Third Supplement of the official Gazette of the 26th April, 1973, the Municipal Committee of Nicosia, as the Acquiring Authority, gave notice of its intention to compulsorily acquire part of the aforesaid immovable property of the applicant to an extent of about 7,750 sq. ft. and by an Order of Acquisition under section 6 of the Compulsory Acquisition of Property Law 1962 (Law No. 15 of 1962), published under Notification No. 475 in the Third Supplement to the official Gazette of the 29th June, 1973, the Acquiring Authority confirmed its intention to proceed with the compulsory acquisition of the aforesaid immovable property of the applicants.

By an Order of Requisition published under Notification No. 537 in the Third Supplement to the official Gazette of the 27th July, 1937, the compulsorily acquired part of the property of the applicant was requisitioned for a period of one year.

There followed renewals of the aforesaid requisition as follows:

(a) By means of an Order of Requisition published under Notification No. 410 in the official Gazette of the 25th June, 1974, for a period of one year.

(b) By means of an Order of Requisition published under Notification No. 506 in the official Gazette of the 27th June 1975, for a period of one year.

(c) By means of an Order of Requisition published under Notification No. 547 in the official Gazette of the 8th July 1976, for a period of one year.

(d) By means of an Order of Requisition published under Notification No. 601 in the official Gazette of the 8th July 1977, for a period of one year.

Thus by the last renewal of the original Requisition Order, the period of requisition of applicant's said property was extended to a total of five years ending on the 26th July, 1978.

By letter dated the 19th July 1978, (*exhibit* 1), counsel of the applicant informed the Municipal Committee of Nicosia of the fact that the period of requisition for which they or anybody acting on their behalf could requisition the property legally, that is 5 years, (if Law No. 50/66 was to be accepted as constitutionally enacted) was due to expire on the 26th July, 1978, and warned them that the applicant intended, as the owner of the property under requisition, to restore it to its original condition. No reply was ever given to the applicant or to her counsel. The applicant on the 14th March, 1979, addressed the Minister of Interior complaining of the continued illegal occupation of part of her property by the Municipal Committee of Nicosia and on the 15th March, 1979, an advocate acting on behalf of the Municipal Committee rang up the counsel of the applicant to inform him that the part of the property of the applicant under compulsory acquisition was again requisitioned by means of a Requisition Order published under Notification No. 1069 in the official Gazette of the Republic

No. 1475 of the 6th October, 1978 (hereinafter referred to as "the *sub judice* Requisition Order").

As against the last Requisition Order, applicant filed Recourse No. 130/79 on March 19, 1979, by means of which he prayed for the following relief:

"A declaration that the act and/or decision of the Respondents purporting to requisition the immovable property of the Applicant, Plots 23 (part) of Block 26 and Plot 215 (part) of Block D Ayios Andreas Quarter in Nicosia to an extent of *Ca* 7,550 sq. ft, under Notification No. 1069 published in the official Gazette No. 1475 of the 6/10/1978 and communicated to Applicant orally and indirectly on the 15/3/1979 is null and void and of no effect whatsoever as having been made or taken without authority contrary to the provisions of the law and of the Constitution and in abuse of their powers if any".

The recourse was based on the following grounds of law:

"1. (a) Under Article 23.8.(c), the requisition of any immovable property cannot exceed the period of three years.

(b) Article 179 of the Constitution provides that the Constitution shall be the supreme law of the Republic and that no law or decision of the House of Representatives or of any organ, authority or person in the Republic exercising executive power or any administrative function, shall in any way be repugnant to, or inconsistent with, any of the provisions of the Constitution.

(c) Article 23.8(c) is not one of the basic articles of the Constitution and can be amended by a law passed by a majority vote comprising at least two thirds of the total number of representatives.....

(d) No law amending Article 23.8(c) of the Constitution was ever enacted.

(e) Law No. 50 of 1966 whereby the number of three years set out in the aforesaid Article 23.8(c) of the Constitution and in Section 4(3) of Law No. 21 of 1962 were replaced by the words 'five years', is uncon-

stitutional in that such enactment was not preceded by an amendment of Article 23.8(c) of the Constitution.

2. Without prejudice to the aforesaid and even assuming Law No. 50 of 1966 was constitutionally enacted, the act and/or decision complained of purports to requisition the immovable property of the applicant referred to in the Notice of Acquisition for a period in excess of five years.

3. In the circumstances, the act and/or decision complained of was made and/or taken without any legal authority and in violation of the law and/or of the Constitution and is, therefore, null and void and of no effect whatsoever".

Counsel for the respondent Council of Ministers in his opposition stated that the *sub judice* Requisition order was made on the advice of the Attorney-General of the Republic which was based on the judgment of the Supreme Court in the case of *Hadji Michael & Others* v. *Republic* (1973) 3 C.L.R. 176. Council for the applicant in his reply to the above opposition stated that the "respondents were labouring under a misconception of law, in that the opinion from the Office of the Attorney -General is based on a misreading of a decision of the Supreme Court which does not support the requisition of property after the expiration of three and/or five years".

Counsel for the Municipal Committee of Nicosia, which has been joined in the proceedings as an interested party, in his opposition raised the ground that the recourse was not filed within time, i.e. within 75 days from 6.10.1978. It was also urged that as the applicant had not accepted a valuation for compensation from the L.R.O., Reference No. 22/75 was filed at the District Court of Nicosia for assessment of the compensation payable to the applicant which is still pending; and that the *sub judice* Requisition Order was rendered necessary due to the fact that the parties have not as yet agreed on the amount of the compensation to be paid to the applicant.

The issues for determination in this recourse are two, namely: (a) whether the recourse is out of time, (b) whether the *sub judice* Requisition Order is valid.

Counsel's objection with regard to time is based on Article 146.3 of the Constitution which reads as follows:

> "3. Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse".

In the case of *Pissas (No. 1) v. The Electricity Authority of Cyprus (1966) 3 C.L.R.*, p. 634, in the Notice of Acquisition the property of the applicant was identified by means of a description in relation to land office records; but the name of the owner of such property—applicant's name—was not mentioned at all in the Notice of Acquisition. Moreover the applicant in that case had really no reason to expect that a Notice of Acquisition was going to be published in the official Gazette in relation to part of his property. Triantafyllides, J., as he then was, held at p. 639:

> "In the particular circumstances of this Case, I cannot accept that the publication, out of the blue, of the relevant Order of acquisition, without stating therein either directly or, at least, by reference to the Notice of acquisition—the name of the Applicant, of the owner of the property acquired, amounts to such clear and full publication of the fact that it was Applicant's land which was being compulsorily acquired, as to be deemed to be sufficient publication for the purposes of Article 146.3. Thus, in my view, time did not begin to run under Article 146.3 until the 12th November, 1965, when Applicant came actually to know of the compulsory acquisition in question, for the first time, in the circumstances stated earlier in this Decision. It follows, thus, that this recourse is not out of time.
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> In reaching the above conclusion, I must make it clear that I cannot accept the view that once there has been publication of an Order in the official Gazette, in conformity with the provisions of a particular enactment, then, necessarily, that amounts also to sufficient publication for the purposes of Article 146.3; there may be such publication as would comply with all that is laid down in a particular enactment for the purposes of the inherent validity of an Order and, yet, it may not amount to publication which gives to the

person affected by the act or decision concerned a full and clear picture of the contents of such Order, as envisaged by a provision in the nature of Article 146.3".

The period of time provided for in Article 146.3 of the Constitution is mandatory and has to be given effect to in the public interest (see *Moran* v. *Republic*, 1 R.S.C.C. 10 and *Markoullides* v. *Republic*, 4 R.S.C.C. 7). In the case of *Neophytou* v. *Republic*, 1964 C.L.R. 280, it was held (vide p. 290) that "provisions such as para. 3 of Article 146, which limit the right of access to Court, should be strictly interpreted and applied and, in case of doubt, should be applied in favour of, and not against the citizen..... who comes to this Court seeking redress, especially in the case of a citizen such as the applicant who complains against a decision which nobody took the trouble of bringing it formally to his notice, though he had applied himself in writing for promotion to the post in question". The case of *Neophytou* was followed and adopted in *Mourtouvanis & Sons Ltd.* v. *Republic* (1966) 3 C.L.R. 108 and *Georghiades & Another* v. *Republic* (1966) 3 C.L.R. 827.

In cases of publication of the decision or act, time begins to run, for the purposes of Article 146.3, from the date of publication, irrespective of when the act or decision in question came to the knowledge of the person concerned (see the *Pissas* case (*supra*)). In the case of *Hadjicostas* v. *The Republic* (1974) 3 C.L.R. 1, which dealt with the publication of a decision to close a certain street to vehicular traffic from another street the Court, distinguishing it from the *Pissas* case, held that there has been a sufficient publication of the *sub judice* decision in the official Gazette for the purposes of Article 146.3 because the identification of the property affected by the *sub judice* decision was made by reference not only to a description sufficient to identify such property in relation to Lands Office records, but also by reference to the name of the street as well as the name of the applicant himself.

Looking at the publication in question, it is apparent that the property of the applicant, same as in the *Pissas* case, was identified by means of a description sufficient to identify such property in relation to Lands Office records. Therefore, such publication prima facie is not deemed to be a sufficient publi-

cation for the purposes of Article 146.3 unless there are special circumstances distinguishing this case from the *Pissas* case.

Counsel for the interested party in his address submitted that this case is distinguishable from the *Pissas* case in view of its special circumstances. He contended that the applicant "knew and was well aware that the Order of Requisition which was published for the first time on the 27th July, 1973, has been year after year published again and the period of the compulsory acquisition was extended". Counsel further submitted that the applicant had a duty in view of the repeated extensions to look into the Gazette and "see whether the order which was due to expire on the 26th July, 1978, was published again, was renewed, was extended, in view of the fact that it was well within her own knowledge that the road was been constructed on that part".

As against the special circumstances invoked by counsel for the interested party, we have certain undisputed facts namely that the previous period of requisition expired on the 26th July, 1978; that applicant's counsel by letter dated the 19th July, 1978, informed the Municipality that the previous period of requisition was due to expire on the 26th July, 1978, and warned them that the applicant as owner of part of the property under requisition intended to restore it to its original condition, and that no reply was ever given to the applicant or to her advocate.

In the *Pissas* case the publication in question was not deemed to be a sufficient publication for the purposes of Article 146.3 of the Constitution in the particular circumstances of that case and such particular circumstances were mainly: (a) that the applicant had really no reason to expect that a Notice of Acquisition and later an Order to Requisition were going to be published in the official Gazette in relation to part of his property in question, and (b) that the applicant had no intimation whatsoever that it was intended by respondent to acquire compulsorily his property.

Having quoted the particular circumstances which in the *Pissas* case rendered the relevant publication not sufficient for the purposes of Article 146.3 it has to be examined whether any such circumstances exist in this case.

In my view the applicant had neither definite reason to expect,

nor any intimation that a further order of requisition was going to be made in respect of her property. The position can with certainty be stated to be so, particularly in view of the existence of the aforesaid letter of the applicant to which same as in the *Neophytou* case (*supra*), nobody took the trouble to give a reply. The Municipal Committee had a duty in view of the previous history of the matter and the serious allegations of illegality and unconstitutionality that were raised therein, at least as a matter of good administration and in conformity with Article 29 of the Constitution, to reply to the said letter. Moreover, contrary to what happened in the *HadjiCostas* case (*supra*), the publication in this case did not state the name of the applicant.

I, therefore, find that in the particular circumstances of this case there is at least some doubt and uncertainty whether the publication in question amounts to such clear and full publication of the fact as to be deemed to be sufficient publication for the purposes of Article 146.3. Resolving this doubt in favour of the citizen (see the *Neophytou, Mourtouvanis* and *Georghiades* cases (*supra*)), I find that time did not begin to run under Article 146.3 until the 15th March, 1979, when the applicant came actually to know for the first time of the requisition of her property. Accordingly I hold that this recourse is not out of time.

I will hereinafter proceed to deal with the merits of the recourse together with the merits of recourse No. 433/79 whereby another order of requisition of the same property published under Notification No. 1044 in the third supplement to the Official Gazette No. 1556 dated the 28th September, 1979 covering the period up to the 5th October 1980, is challenged.

The provisions which touch upon the determination of this issue are:

(a) Article 23(8)(c) of the Constitution which so far as relevant provides:

"Any movable or immovable property may be requisitioned. .....

(c) For a period not exceeding three years".

(b) Section 4(3) of the Requisition of Property Law 1962 (Law No. 21/62) which reads as follows:

"(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

(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".

Section 4(3) was amended by means of section 2 of the Requisition of Property (Amendment) Law, 1966 (Law No. 50 of 1966), so that the period of three years appearing above was substituted by a five years period.

As already stated the *sub judice* requisition order was made relying on the advice of the Deputy Attorney General of the Republic, which was given in respect of another case. In so far as relevant it reads:

"Τὸ ἐν λόγω διάταγμα ἐπιτάξεως δὲν δύναται νὰ ἀνανεωθῆ ἐφ' ὅσον κατόπιν τῶν διαφόρων ἀνανεώσεων του εἰς τὸ παρελθὸν ἔχει ἰσχύσει διὰ συνολικὴν περίοδον 5 ἐτῶν. Ὑπὸ τὰς περιστάσεις ὅμως δύνασθε νὰ προβῆτε εἰς τὴν ἔκδοσιν νέου διατάγματος ἐπιτάξεως διὰ περίοδο μὴ ὑπερβαίνουσαν τὰ τρία ἔτη ἐὰν κατόπιν ἐπανεξετάσεως τῶν λόγων οἵτινες ἐπιβάλλουν τὴν κατοχὴν τῆς ἐν λόγω ἰδιοκτησίας ἡ ἐκ νέου κατοχὴ αὐτῆς εἶναι ἀναγκαία βάσει τῶν νῦν ὑφισταμένων πραγματικῶν συνθηκῶν.

Ἐν τοιαύτη περιπτώσει δύναται νὰ ὑποστηριχθῆ νομικῶς ὅτι ἡ ἐπίταξις ὡς νέα αὐτοτελὴς καὶ ἀνεξάρτητος τῆς προηγουμένης, βασιζομένη ἐπὶ τῶν νεωτέρων ἀναγκῶν . ...
δὲν εἶναι ἀσυμβίβαστος πρὸς τὰς περὶ τῆς χρονικῆς ἰσχύος μίας ἐπιτάξεως διατάξεις τοῦ Νόμου 21/62 καὶ τοῦ ἄρθρου

23 τοῦ Συντάγματος, καθότι αὗται ἀναφέρονται εἰς τὴν συνολικὴν περίοδον ἰσχύος ἑκάστης αὐτοτελοῦς ἐπιτάξεως μιᾶς ἰδιοκτησίας συμπεριλαμβανομένων τῶν ἀνανεώσεων αὐτῆς καὶ οὐχὶ εἰς τὴν συνολικὴν περίοδον τῶν διαφόρων αὐτοτελῶν ἐπιτάξεων τῆς ἰδίας ἰδιοκτησίας. (Βλ. σχετικῶς ἀπόφασιν τοῦ 'Ανωτάτου Δικαστηρίου εἰς τὴν ὑπόθεσιν Χ" Μιχαὴλ καὶ ἄλλων ἐναντίον τῆς Δημοκρατίας 3 J.S.C. σελ. 289 εἰς σελ. 294)".

In English it reads:

"The said requisition order cannot be renewed since after its several renewals in the past it has been valid for a total period of five years. Under the circumstances, however, you can proceed to the issue of a *new* order of requisition for a period not exceeding the three years if after re-examination of the reasons which call for the possession of the said ownership its possession afresh is necessary on the basis of the now existing factual conditions. In such a case it may be supported in Law that the requisition is a new self-sufficient and independent of the previous one, based on the new requirements.....is not incompatible to the provisions of Law 21/62 and Article 23 of the Constitution about the valid duration of a requisition, as these provisions refer to the total period of validity of each self-sufficient requisition of ownership including its renewals and not to the total period of the various self-sufficient requisitions of the same property. (See in this respect the judgment of the Supreme Court in the case of *Hadji Michael and Others* v. *The Republic*, 3 J.S.C. p. 289 at p. 294."

It may be mentioned here that section 4(3) of the Requisition of Property Law 1962, originally provided that the duration of an order of requisition was to 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 order took effect, as already seen amended by Law No. 50 of 1966 and the period of three years was extended to five years.

It appears that such advice was to the effect that the case of *Koumis Hadji Michael and Others* v. *The Republic* (1972) 3 C.L.R. 246, established that even if a requisition order, follow-

ing its various extensions, has been in force for a period of five years, a new independent requisition order for a period not exceeding three years can be made if upon re-examination of the grounds which made possession of the said property necessary, the new possession of the property was imperative on the basis of the new and at the time existing circumstances.

For an appreciation, however, of the approach to the *Hadji Michael* case (*supra*) its facts have to be examined. The properties there, were requisitioned for a period of 12 months by means of an order published on the 6th February, 1971. After the expiration of that order they were again requisitioned for a period of one more year, by means of an order published on the 25th February 1972. As against the last requisition order that recourse was filed on the ground, *inter alia*, that the order of requisition was against the aforesaid section 4(3)(b) of The Requisition of Property Law, 1962 (Law No. 21 of 1962), in the sense that there could not be a renewal of a requisition order after the expiration of the previous one.

Counsel for the respondent in the *Hadji Michael* case who, it must be noted, was the officer who gave the aforementioned legal advice upon which the requisition order in this recourse was made, maintained "that the *sub judice* order is not in law a renewal of the previous one, but an independent new order for requisition, and that same could be made independently of the previous requisition order, so long as the period of requisition concerning the same property does not exceed the maximum of three years provided by the Constitution when made for the same purpose". And the Court at page 182 held:-

> "This ground, therefore, in my view, fails, inasmuch as the very wording of the order suggests that it was an independent order made after the expiration of the previous one. If any limitation could be imposed to the making of such successive independent orders, same will arise in cases that the three year maximum period of requisition of property is exceeded. In such cases, it will have to be decided, depending on the circumstances, whether they amount to an effort to bypass the restriction as to time provided for by the Constitution".

So it is clear that in the *Hadji Michael* case it has not been

expressly held that a new requisition order can be made in respect of a property for which there had been made requisition orders for total periods exceeding five years. The maximum that can be said is that this question was left open.

The respondents, therefore, in making the *sub judice* requisition order were acting under a misconception that they were entitled in law to make the *sub judice* requisition order. No doubt in the present case the *sub judice* requisition orders were not self-sufficient and independent acts, merely because the requisition order, subject matter of recourse number 130/79 was made six months after the expiration of the previous one for a duration of twelve months expiring from the date of the publication of the order in the official Gazette, namely the 6th October 1978 and that the requisition order subject of recourse number 133/79 was made upon the expiration of the previous one for a duration of twelve months expiring on the 5th October 1980, once the very purpose of all these requisitions was the same, namely the widening of Hilonos street, for the convenience and service of the citizens and the traffic and in effect of course for the authorization in Law of the entry into the said property of the Municipal Authority and the carrying out of the planned works therein, before the vesting of the property in them upon the payment or deposit of the sum agreed or determined to be paid as compensation for the acquisition of the said property. They were thus acting under a vital misconception of the relevant legal position which is bound to lead this Court to the conclusion that the administrative action taken by the respondents on the very basis of such misconception has to be annulled. (See *Paschalis* v. *Republic* (1966) 3 C.L.R. 593, at p. 608; see also *Kolocos* v. *Republic* (1965) 3 C.L.R., p. 558, where a decision reached under a misconception of the correct legal position was annulled). As to annulment of an administrative act on the ground that it was reached under a misconception of law, see, *inter alia*, *Philippos Demetriou & Sons* v. *Republic* (1968) 3 C.L.R. 444 and *Christodoulides* v. *Republic* (1968) 3 C.L.R. 57.

No doubt the *sub judice* requisition orders were not two new independent ones made on account of new requirements after the expiration of the prescribed period, but were a continuation of the old ones and were necessitated for the purpose of affording,

if that was in Law possible, legal covering for the continuation of the occupation of the land of the applicant and it is on that factual situation that I have reached the aforesaid conclusion.

Having reached this conclusion and in view of the fact that the *sub judice* requisition orders were made after the expiration of the five year period, provided by the Law, I need not decide whether the period of five years, which exceeded that of three years provided for by Article 23.8(c) of the Constitution, is unconstitutional.

I feel, however, that it is necessary to point out that in order to avoid in the future situations as the one created in this case, and in view of its outcome the Law has to be revised in the light of the experiences of other countries, which have the same constitutional provisions governing the question of acquisition and requisition of property. Until then, however, steps must be taken for the expeditious conclusion—and the litigants can constructively help to that direction—of references that come up before the Courts for the determination of the compensation payable in respect of the acquired land.

For all the above reasons both recourses succeed and the *sub judice* orders challenged hereby are annulled.

As to costs the respondents to pay £60.—against those of the applicant.

Sub judice decisions annulled.
Order for costs as above.