

1984 February 16

[TRIANTAFYLIDIS, P., L. LOIZOU, HADJIANASTASSIOU,  
DEMETRIADES, SAVVIDES, JJ.]

SASA P. THEODORIDOU,

*Appellant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE COUNCIL OF MINISTERS, THROUGH  
THE ATTORNEY-GENERAL,

*Respondents.*

(*Revisional Jurisdiction Appeal No. 233*).

*Administrative Law—Administrative acts or decisions—Reasoning  
—May be supplemented by material in the file—Sub judice decision  
a duly reasoned one because its reasoning is to be found in the  
material in the file which is in all respects a proper reasoning as  
it reveals the mind of the administration and affords to the Court* 5  
*the opportunity for judicial review.*

*Compulsory acquisition—Road construction—Objection to the acqui-  
sition—Process contemplated by the Compulsory Acquisition  
of Property Law, 1962 (Law 15/1962) satisfied substantially—  
And objection duly inquired into—Acquiring Authority did not* 10  
*fail to make a sufficient study of all possible alternatives, from  
the point of view of acquiring other property with less onerous  
consequences, before acquiring appellant's property—And exercised  
its discretion properly in the light of all relevant matters taken* 15  
*into consideration and after a due inquiry into the matter—Court  
cannot interfere with the exercise of such discretion and substitute  
its own to that of the Acquiring Authority.*

*Administrative Law—Compulsory acquisition—Principles applicable.*

The respondents acquired compulsorily a part of appellant's  
property for the purpose of improvement, straightening and 20  
asphalting of the new Nicosia-Limassol road. The part affected  
by the acquisition was of a triangular shape and was one meter  
wide on the one side and half a meter on the other side. The

5 appellant, as well as other property-owners, whose properties were acquired for the same purpose, objected to the acquisition and their objections were examined and dismissed by the Council of Ministers after considering a relevant submission by the Minister of Communications and Works. This submission contained, also, the views of the District Officers, Nicosia, Larnaca and Limassol and the views of the Director of the Department of Public Works which were to the effect that the delineation of the new road was the result of a very comprehensive technical and economic study by foreign experts in co-operation with the Department of Public Works and that it was considered the ideal one and could not be changed. The trial Court dismissed the recourse of the appellant, which was directed against the acquisition of her property and hence this appeal.

15 Counsel for the appellant mainly contended:

- 20 (1) That the trial Court was wrong in finding that the sub  
judice act and/or decision was duly reasoned.
- (2) That the trial Court should have accepted the submission of the appellant that the collective dismissal of all objections against the acquisition without proper investigation of each objection on its merits amounted to a violation of Law 15/1962 and/or the general principles of Administrative Law, and that the invitation for objections was made only for the purpose of satisfying formally and not substantially the process contemplated by Law 15/1962.
- 25 (3) That the trial Court was wrong in finding that there was due inquiry in the case because all objections were dismissed collectively irrespective of their individual merit.
- 30 (4) That the trial Court was wrong in rejecting the contention of the appellant that there was a less onerous way of giving effect to the objects of the acquisition than by acquiring the subject matter property of the applicant.

35 *Held*, (1) that the reasoning of a decision may be supplemented by the material in the file; that in this case the sub judice decision is duly reasoned because its reasoning is to be found in the

material in the file expressly referred to in the decision of the Council of Ministers by which the objection of the applicant along with the other objections were dismissed, and it is in all respects a proper reasoning as it reveals the mind of the administration and affords to this Court the opportunity for judicial review; accordingly contention (1) must fail. 5

(2) That the invitation for objections was not made only for the purpose of satisfying formally and not substantially the process contemplated by Law 15/1962 because the final decision for rejecting the objections was taken by the Council of Ministers nearly one year after the submission of the objections and after taking into consideration the views of the Minister of Communications and Works, of the District Officers and of the Director of Public Works; and, also, after all necessary inquiry in respect of them was made; that, therefore, it cannot be contended that at the time of the publication of the notice of acquisition and before the objections were filed, the Council of Ministers had already pre-judged the result of such objections; accordingly contention (2) must fail. 10 15

(3) That the material before the Council of Ministers, i.e. the studies of the experts and the views expressed by the various officials involved in this project show that the case of each objector including the one under consideration, was duly inquired into in the light of the very nature of the project and the purpose for which the acquisition was made, accordingly contention (3) must fail. 20 25

(4) That though failure by the acquiring authority to make a sufficient study of possible alternatives, especially from the point of view of the possibility of acquiring access through any other suitable property, either by means of voluntary sale or, by compulsory acquisition, with less onerous consequences than those to the owner of the land to be acquired, may lead to the annulment of the acquisition this Court is in agreement with the finding of the trial Court that there were buildings next to the field on the opposite side of the road which would have been affected if the alignment of the road was moved to that side and with the finding that, irrespective of hardship that might be caused, the purpose of construction and alignment of a major road from Nicosia to Limassol, could not be achieved if the road was given a snake-like shape; that the discretion of 30 35 40

the Acquiring Authority was properly exercised in the present case in the light of all relevant matters taken into consideration and after a due inquiry into the matter; and that, therefore, this Court cannot interfere with the exercise of such discretion and substitute its own to that of the respondent: accordingly contention (4) must, also, fail.

*Appeal dismissed.*

Cases referred to:

*Fournia Ltd. v. Republic* (1983) 3 C.L.R. 262 at pp. 275, 276;

*Karageorghis v. Republic* (1983) 3 C.L.R. 435;

*Petrides v. Republic* (1983) 3 C.L.R. 216 at p. 220;

*Marangos v. Republic* (1983) 3 C.L.R. 682 at p. 692;

*HadjiCleanthous v. Republic* (1983) 3 C.L.R. 810 at pp. 820, 821;

*Chrysochou Bros. v. C.Y.T.A. and Another* (1966) 3 C.L.R. 482 at pp. 497, 498, 499, 501;

*HadjiIoannou v. Republic* (1983) 3 C.L.R. 536;

*Venglis v. E.A.C.* (1965) 3 C.L.R. 252 at p. 262;

*Pissas (No. 2) v. E.A.C.* (1966) 3 C.L.R. 3 C.L.R. 784 at pp. 791, 792;

*Tikkiris and Others v. E.A.C.* (1970) 3 C.L.R. 291 at pp. 300, 301, 306.

**Appeal.**

Appeal against the judgment of a Judge of the Supreme Court (A. Loizou, J.) given on the 11th August, 1980 (Revisional Jurisdiction Case No. 339/78)\* whereby appellant's recourse against the validity of the acquisition of her property was dismissed.

*A. Markides*, for the appellant.

*Cl. Antoniadis*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

TRIANAFYLLIDES, P.: The judgment of the Court will be delivered by Mr. Justice Savvides.

SAVVIDES, J.: This is an appeal from the judgment of a Judge of this Court, whereby he dismissed the recourse of the applicant,

\* Reported in (1980) 3 C.L.R. 397.

now appellant, challenging the validity of the acquisition by the respondent of part of her property.

The appellant is the owner of property under Registration No. B. 766, plot 749, Block 'B' of Aglandjia village, Nicosia. By a Notice of Acquisition published in Supplement No. 3 5  
to the official Gazette No. 1342 of that date. The purpose of public benefit for which the property to be acquired was required, was stated to be the creation and development of public roads in the Republic and the reasons for which same was necessary were the improvement, straightening and asphaltting of the new Nicosia-Limassol road. 10

Appellant's property was one of a number of other properties belonging to other owners and which were also affected by the same Notice of Acquisition.

The appellant objected to the said acquisition and her objection was examined by the Council of Ministers at its meeting of the 16th February, 1978, together with all other objections by other owners, upon a submission made to it by the Minister of Communications and Works. In the said submission reference was made to the number of objections filed with regard to the properties intended to be acquired in all three districts, Nicosia, Larnaca and Limassol, as the new Nicosia-Limassol road would go through them and it went on to say the following: 15  
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"4. The objectors put forward various grounds in support of their objections and mainly that: 25

- (a) They are affected adversely by the intended acquisition.
- (b) The line of the road can be moved elsewhere.
- (c) A great damage is caused to tree plantations or their buildings and generally to their ownership.

5. The District Officers in Nicosia, Larnaca and Limassol affirmed that in certain cases the damage to be caused will be great but they recommend the dismissal of all the objections as the objectors will be compensated both for the damage to be caused and for the acquisition of their affected properties in due course. Copies of the views of the District Officers, Nicosia, Larnaca and Limassol are attached hereto as Annex 'C'. 30  
35

5 6. The Director of the Department of Public Works mentions that the alignment of this road cannot be changed as the said alignment was chosen as techno-economically the best, after a study of many alternative solutions. It should be noted that the final study for its construction was made by the Consultant Engineers Louis Berger, International Inc., after authorization of the Council of Ministers and with the consent of the International Bank of Reconstruction and Development in co-operation with  
10 the Public Works Department.

With regard to the remaining allegations of the objectors, the Director of Public Works Dept. believes that they are unjustified for the reasons he sets out in the copy of his views attached as Annex 'D'.

15 7. The Attorney-General of the Republic is of the opinion that the Council may, in this case, dismiss the submitted objections and proceed with the issue of the relevant orders of acquisition.

20 8. The Council of Ministers is asked that after taking into consideration all circumstances dismiss the objections set out in Annex 'B' against the intended acquisition for the alignment, straightening and asphaltting of the New Road, Nicosia-Limassol and approve for publication in the *Official Gazette of the Republic*, the orders of acquisition  
25 for the districts of Nicosia, Larnaca and Limassol, as well as Annex 'E' which are based on a previous one.

With regard to the appellant, the District Officer of Nicosia in his report of the 2nd July, 1977, Annex 'C', had this to say:  
30 "By this acquisition a narrow strip at the front of the aforesaid plot will be affected for the widening of the Nicosia-Limassol avenue. No further nuisance will be caused to the said newly built house of the objector as same is already adjacent to the said avenue. There are no reasons for upholding the objection".

35 The Director of the Public Works Dept. in his report, Annex 'D' after stating that the delineation of the new road is the result of a very comprehensive technical and economic study by foreign experts in co-operation with the Department of Public Works and is considered the ideal one, refers to the various objectors

and with regard to the appellant says that the strip of acquisition which is necessary affects the front part of the plot without affecting the house itself.

The learned trial Judge on the evidence before him found that the property of the appellant affected, is of a triangular shape being on the one side one meter wide and on the other side half a meter. 5

The Council of Ministers at its meeting of the 12th February, 1978, had this to say in its decision No. 16.611: "The Council (a) studied thoroughly the objections attached to the submission as Annex 'B' on behalf of the persons mentioned therein against the intended acquisition of certain immovable properties situated in the districts of Nicosia, Larnaca and Limassol and having taken into consideration all, in general, circumstances, decided to dismiss them; and (b) decided, taking into consideration all circumstances to approve under section 6 of the Compulsory Acquisition of Property, Law No. 15 of 1962, the issuing of the orders of acquisition attached to the submission as Annex 'E' for the acquisition of the immovable properties in the districts of Nicosia, Larnaca and Limassol, described in the Schedules of the Notices of Acquisition, published under Notifications 233, 235 and 234, in part 11 of the 3rd Supplement to the official Gazette of the Republic No. 1342, dated 24th March, 1977, which is necessary for the purposes connected with the improvement, straightening and asphaltting of the new Nicosia-Limassol road." 10 15 20 25

The grounds of appeal are briefly as follows:

1. The trial Court was wrong in finding that the sub judice act/or decision was duly reasoned.
2. The trial Court should have accepted the submission of the appellant that the collective dismissal of all objections against the acquisition without proper investigation of each objection on its merits amounted to a violation of Law 15/1962 and/or the general principles of Administrative Law, and that the invitation for objections was made only for the purpose of satisfying formally and not substantially the process contemplated by Law 15/1962. 30 35
3. The trial Court was wrong in finding that there was due inquiry in the case.

4. The trial Court was wrong in rejecting the contention of the appellant that there was a less onerous way of giving effect to the objects of the acquisition than by acquiring the subject matter property of the applicant.
5. There was a misconception of fact by the trial Court in accepting that the width of the area of applicant's property which was the subject matter of the acquisition was half a meter on the one side and one meter on the other side, whereas in fact it was four and eight feet respectively.
6. The trial Court should have ascertained and taken into consideration all facts material to appellant's case before dismissing her recourse.

Counsel for appellant in arguing the first ground of appeal, contended that there was lack of due reasoning and that the contents of para. 6 of the submission to the Council of Ministers, reference to which has already been made, which constituted the main reasoning of the sub judice decision, is so vague and general that it cannot be treated as satisfactory reasoning in the particular case of the appellant.

It is a well established principle of administrative law which has been accepted by this Court in a line of decisions, that an administrative act or decision must be duly reasoned. (See, in this respect, the case of *Fournia Ltd. v. Republic* (1983) 3 C.L.R. 262, 275, 276, where reference is made to other cases. *Karageorghis v. Republic* (1983) 3 C.L.R. 435. Moreover, it has also been held that the reasoning of a decision may be supplemented by the material in the file. See, the cases of *Petrides v. Republic* (1983) 3 C.L.R. 216, 220; *Marangos v. Republic* (1983) 3 C.L.R. 682, 692; *HadjiCleanthous v. Republic* (1983) 3 C.L.R. 810, 820, 821).

We find ourselves unable to accept the contention of counsel for appellant that the sub judice decision is not duly reasoned, and we subscribe to the finding of the learned trial Judge, that—

“The sub judice decision is duly reasoned. Its reasoning is to be found in the material in the file expressly referred to in the decision of the Council of Ministers by which the



objection of the applicant along with the other objections were dismissed, and it is in all respects a proper reasoning as it reveals the mind of the administration and affords to this Court the opportunity for judicial review”.

In dealing with the second ground of appeal, counsel for appellant argued that from the contents of paragraph 6 of the submission to the Council of Ministers and the reasoning that “the alignment of this road cannot be changed as the said alignment was chosen as technoeconomically the best, after a study of many alternative solutions”, it is apparent that all objections were dismissed collectively by one and the same decision of the Council of Ministers without due inquiry and consideration of the individual merit of each case. Though the respondent, counsel contended, had come to the conclusion that the planning of the road was ideal and technoeconomically the best and could not be changed, why the interested parties were invited to make their objections? The reason for doing so, counsel submitted, was to comply formally and not in substance, with section 4 of Law 15/62 which provides that in the notice of acquisition it should be clearly mentioned that any person having an interest in the ownership of the affected properties may file an objection to the acquisition within a fixed period of not less than two weeks, as in fact the Council of Ministers was aware that such objections had to be dismissed as no change could be effected in the planning of the road.

We find ourselves unable to accept such contentions of counsel for the appellant and his above insinuation against the Government in support of his second ground of appeal. His submission that when the various objections were filed and considered by the Council of Ministers, the Council had already pre-judged the issue and that the objections were allowed for mere formality and compliance with the law and not in substance, is entirely unfounded. It is clear from the record of the proceedings that the notice of acquisition was published in the official Gazette on the 24th March, 1977. Following such notice the appellant submitted her objection within the period prescribed in the notice of acquisition and, in fact, on the 4th April, 1977. A number of objectors also filed their objections within 15 days from the publication in the official Gazette of the Notice of Acquisition. Such objections, and

the facts set out therein in their support, were considered by the District Officers of the respective districts within which each property was situated, the Director of the Public Works Department and other Government Departments involved  
5 who expressed their views and made their comments about each objection. Reference to the comments made by the District Officer of Nicosia and the Director of the Public Works Department concerning the objection of the appellant has already been made in this judgment. The objections with the respective  
10 comments finally came before the Minister of Communications and Works who, after examining them, submitted them to the Council of Ministers on the 10th February, 1978, with the observations and submissions. The Council of Ministers examined the objections at its meeting of the 12th February, 1978. It  
15 is clear from the sequence of events and the steps taken that the final decision for rejecting the objections and making the acquisition order was not taken at any earlier date than the 12th February, 1978, nearly one year after the submission of the objections, and after all necessary inquiry in respect of them  
20 was made. Therefore, it cannot be contended that at the time of the publication of the notice of acquisition and before the objections were filed, the Council of Ministers had already pre-judged the result of such objections.

As to the contention of counsel for the appellant that all  
25 objections were dismissed collectively, irrespective of their individual merit and that the contents of paragraph 6 of the submission that the alignment of the new road was the result of a comprehensive technical and economical study by foreign and local experts, left no room for a proper inquiry of the  
30 matter raised in the objection and, therefore, the trial Court erred in finding that there was due inquiry, we find them untenable. We agree with the conclusion reached by the learned trial Judge that "the material before the Council of Ministers, i.e. the studies of the experts and the views expressed by the  
35 various officials involved in this project show that the case of each objector including the one under consideration, was duly inquired into in the light of the very nature of the project and the purpose for which the acquisition was made".

In the result, grounds (2) and (3) of the appeal fail.

40 In arguing ground (4) of the appeal, counsel contended that

there was a less onerous way of giving effect to the object of acquisition without interfering with appellant's property by moving the alignment of the road opposite appellant's property to the field on the other side, as suggested by the applicant in her objection to the notice of acquisition. The trial Court, counsel submitted, erred in finding that by moving the alignment to that side, buildings would have been affected as there were no buildings on the said field. 5

It is well settled by the case law of our Supreme Court, following in this respect the principles laid down by the jurisprudence of the Greek Council of State, that the taking away of property belonging to a private individual, through compulsory acquisition, is an onerous measure and that the principles of proper administration and of lawful use of discretionary powers demand that a compulsory acquisition should not be ordered if its object can be achieved in any less onerous manner. Moreover, before resorting to compulsory acquisition of a particular immovable property, the acquiring authority must exhaust the possibility of acquiring compulsorily other suitable immovable property the acquisition of which will entail a deprivation less onerous than the deprivation entailed in the proposed acquisition. The above have been elaborated in *Chrysochou Bros and (1) The Cyprus Telecommunications Authority (2) The Republic of Cyprus through The Council of Ministers* (1966) 3 C.L.R. 482, by Triantafyllides, J. (as he then was) at pp. 497, 498, 499 and reiterated by the Full Bench in the recent case of *Hadji Ioannou v. The Republic* (1983) 3 C.L.R. 536. 10 15 20 25

Failure by the acquiring authority to make a sufficient study of possible alternatives, especially from the point of view of the possibility of acquiring access through any other suitable property, either by means of voluntary sale or, by compulsory acquisition, with less onerous consequences than those to the owner of the land to be acquired, may lead to the annulment of the acquisition (see, *Chrysochou Bros* (supra) at p. 501). 30

In *Venglis and The Electricity Authority* (1965) 3 C.L.R. 252, Munir J., had this to say at page 262: 35

"In conclusion, I would state that in exercise of the statutory powers vested in it the Respondent having exercised a discretion, which I am satisfied has been properly exercised

after taking into account all relevant factors, to acquire the property in question of the Applicant, this Court is not prepared to substitute its own discretion for the Respondent's discretion and to say that the discretion should  
5 have been exercised in some other way by the acquisition of some other property”.

The principles of proper use of discretionary powers in cases of compulsory acquisition of land, have also been considered, inter alia, in *Charalambos Pissas (No. 2) v. The Electricity  
10 Authority of Cyprus* (1966) 3 C.L.R. 784, 791, 792 and *Tikkiris and others v. The Electricity Authority of Cyprus* (1970) 3 C.L.R. 291.

In *Tikkiris* case Hadjianastassiou J. said at pp. 300, 301, 306:

“Having in mind the principles of proper administration with regard to the use of lawful discretionary powers, and the fact that the necessary extent of the acquisition to meet both the technical point of view as well as the other purposes of the acquiring authority is within its discretion, I have reached the view that the said authority has properly  
15 exercised its discretionary powers under the law. In any event, the Applicants have failed to adduce any evidence to show to the Court that really the extent of the property  
20 acquired by the acquiring authority was more than necessary to achieve its public utility purpose. I would, therefore, dismiss also this contention of counsel.  
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In the present case, regarding the fact that this substation could possibly be erected on to the private properties within the Pouyeros area - and this point has not been pressed by counsel for the Applicants - it would appear  
30 that the same amount of hardship would have been caused to those owners as to the Applicants. In my view, therefore, I cannot reach the conclusion that the decision of the Respondent has been taken in contravention of the administrative principles. It goes without saying, of course,  
35 that such principles could have been contravened if less onerous means of achieving the purpose of the compulsory acquisition had been overlooked by the acquiring authority; and not because one out of equally onerous solutions has

been preferred. I would reiterate once again that the Respondent has properly exercised its discretion, and it is not for this Court to exercise its own discretion in substitution of the discretion of the Respondent regarding the choice among equally suitable properties the acquisition of which entails more or less equal hardship. See *Pissas* (No. 2) v. *E.A.C.* (1966) 3 C.L.R. 784 at pp. 791-792.” 5

The learned trial Judge in the present case in dealing with the submission of counsel for applicant on this issue, concluded as follows: 10

“One should not lose sight of the fact that that purpose was the construction and alignment of a major road which could not be given a snake-like shape because of the hardship that might be caused to one affected owner of property or another. The suggestion that the field opposite the house of the applicant if utilized, could constitute a less onerous deprivation than the deprivation entailed in the proposed acquisition of the property of the applicant, cannot really be accepted, in view of the fact that next to the field there were buildings on the other side of the road that technically might have to be also affected if the alignment of the road was moved to that side.” 15 20

We agree with the above conclusions of the learned trial Judge. His findings that there were buildings next to the field on the opposite side of the road which would have been affected if the alignment of the road was moved to that side and that, irrespective of hardship that might be caused, the purpose of construction and alignment of a major road from Nicosia to Limassol, could not be achieved if the road was given a snake-like shape, are warranted by the material before him and the applicant has not called any evidence to the contrary. The construction and alignment of this road was the result of careful consideration of a number of alternative solutions which led the experts to conclude that it was the best from the technoeconomical point of view and on the basis of such conclusion, the final alignment study was carried by experts from abroad on the instructions of the Council of Ministers and after the approval of the International Bank of Development and Reconstruction, which was to finance the project. As already mentioned, in the opinion of the experts the part of the property of the appellant 25 30 35 40

which is affected is a narrow strip of land in the front part of the site, leaving unaffected any part of the building.

5 Before taking its final decision for the compulsory acquisition of the properties in question, the Council of Ministers (according to its decision No. 16.611) studied thoroughly the objections, including that of the applicant, which were attached to the submission of the Minister of Communications and Works (Annex 'B') made to the Council of Ministers proposing the acquisition of the property for the reasons explicitly stated  
10 therein. It also had before it all material necessary to enable it exercise its discretion in the case and having taken into consideration all, in general, circumstances, decided to reject the objection and proceed with the acquisition of the properties. We find that the discretion of the Acquiring Authority was  
15 properly exercised in the present case in the light of all relevant matters taken into consideration and after a due inquiry into the matter, and we have come to the conclusion that this Court cannot interfere with the exercise of such discretion and substitute its own to that of the respondent. Therefore, ground 4  
20 of the appeal fails.

Ground 5 of the appeal has not been pursued in the course of his argument by counsel for the appellant and, therefore, we find it unnecessary to embark on it.

25 The contentions under ground 6 of the appeal have already been dealt with when considering grounds 2 and 3 of the appeal and we have nothing useful to add other than rejecting such ground as well.

In the result, the appeal is hereby dismissed but in the circumstances we make no order for costs.

30 *Appeal dismissed with no order as to costs.*