

1985 November 20

[A. LOIZOU, DEMETRIADES, LORIS, STYLIANIDES, PIKIS, JJ.]

AYIOS ANDRONIKOS DEVELOPMENT CO. LTD.,

Appellants,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR,
2. THE DIRECTOR OF LANDS AND SURVEYS,
3. THE MINISTER OF FINANCE,

Respondents.

(Revisional Jurisdiction Appeal No. 388).

Immovable Property—Sale and transfer of—The Immovable Property Law, Cap. 224 ss. 3A (section 2 of Law 3/60 (colonial)) and 40—The Immovable Property (Transfer and Mortgage) Law 9/65 ss. 2, 5(1), 7, 12(1)(a), 12(5) and (6), 15 and 18 and the First Schedule thereto under No. 9 and the Second Schedule thereto under the Heading “Reason for Transfer”—The Department of Lands and Surveys (Fees and Charges) Law, Cap. 219 as amended by Laws 10/65, 81/70, 61/73, 31/76, 66/79, 15/80 and 2/82—The Sale of Land (Specific Performance) Law, Cap. 232—The Courts of Justice Law 14/60 s. 29(1)(c) —In 1979 Kykko Monastery sold to the appellants a large area of land—The relevant contract of sale was deposited with the D.L.O. under Cap. 232—Appellants divided part of the said land into building sites which they sold between 1976-79 to 30-40 persons—In 1980 there was an attempt to transfer the said sites directly by Kykko Monastery to the said purchasers—The Director of Lands and Surveys refused to allow such a transfer and further required that the sites be transferred to the appellants by Kykko Monastery (which was still the registered owner) and thereafter by appellants to the ultimate purchaser—In view of the combined effect of ss. 3A and 40 of Cap. 224 and ss. 2, 7, 18 and 53(1)(2) of Law 9/65 the attempted direct transfer was not possible

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in law—In view of the same provisions there was no room for the application of the rules of Common Law and Equity relating to assignment of the appellants' rights vis a vis the Monastery to the ultimate purchaser in respect of the particular site the latter had purchased from the appellants—The Director rightly considered the deposit under Cap. 232 of the contract of sale between Kykko and the appellant as an encumbrance preventing the transfer by Kykko to the ultimate purchaser—The circular dated 27.12.79 is void as being contrary to the said combined effect of the said provisions of Cap. 224 and Law 9/65.

Constitutional Law—Article 23.1 of the Constitution—S.18(1) (c) of Law 9/65 not unconstitutional.

Revisional Jurisdiction—Practice—Appeal—The Court when hearing an appeal from a judgment of one of its members approaches the matter as a complete re-examination of the case, with due regard to the issues raised by the parties on appeal or to the extent that they have been left undetermined by the trial Judge—As the issue of constitutionality of s. 18(1)(c) of Law 9/65 was raised before the trial Judge, but left undetermined, the Court will examine it.

Administrative Law—General principles—It is a cardinal principle that every administrative act or omission must rely on existing legislation—A circular, though it lacks executory character, should also rely on existing legislation—If it contravenes such legislation, it is void—Same rule applies as far as any administrative practice is concerned.

The appellants, a land development company, purchased from Kykko Monastery, by virtue of a contract of sale dated 24.9.75 a large area of land situated at Strovolos and Lakatamia for the sum of £3,164,000.- payable by instalments as envisaged in the said contract, which was deposited with the Lands Office pursuant to the provisions of the Sale of Land (Specific Performance) Law, Cap. 232. By the said contract the vendors undertook to transfer either in the name of the purchaser or in the name of any other person indicated by the purchaser any parcelled plot from the said land the value of which would have been paid off by the purchaser to the vendor as per the contract of sale.

The appellants proceeded to divide the said land into building sites and between the years 1976-79 they sold a number of plots to some 30 to 40 persons with whom they have entered into contracts of sale undertaking to transfer such plots upon final payment of the purchase price. 5

It appears that in each of the said contracts it was stated that "The registered owner of the property is Kykko Monastery which undertook to transfer the property to the purchaser if he keeps the terms of the present contract". 10

On 14.11.80 the appellants, the individual purchasers of the said plots and the representative of the Kykko Monastery proceeded to the D.L.O. where they produced the relevant D.L.O. forms in such a way as to render feasible the transfer of each of the said plots directly from Kykko Monastery to the individual purchaser of the respective plot. 15

The Director of Lands and Surveys refused to accept such a direct transfer and required the transfer of each of the said plots to be effected first from the Monastery to the appellants and thereafter from the appellants to the individual purchaser. 20

The reasons of such decisions are contained in a document dated 14.11.80 which reads as follows: 25

"(a) That the initial contract between Kykko Monastery and the applicants did not refer to the same immovable property which is referred to in the contract between the applicants and the purchaser-transferee. 30

(b) That the amount paid as consideration is not identical in that the amount which was received by Kykko Monastery was not the same as that which was paid by the purchaser-transferee to the applicants. 35

(c) That it could not be stated in the declaration of transfer that the purchase price was paid as consi-

deration by the purchaser-transferee to Kykko Monastery”.

As a result the appellants filed the present recourse which was dismissed by the President of this Court on the grounds that in view of s. 18(1) and in particular s. 18(1)(c) of Law 9/65 the Director could not lawfully accept a transfer to be made directly by Kykko Monastery to a purchaser of any one of the plots and that the administrative practice contained in a Circular dated 27.12.79 was not consonant with the proper application of s. 18(1)(c) of the said law.

Hence the present appeal. The grounds of appeal may be conveniently grouped as follows:

- (A) There is nothing in the Law which would oblige the appellants to become the registered owners of the plots in order to be enabled to transfer same in the name of the ultimate purchasers. Counsel submitted in this respect that Law 9/65 is not a taxing statute, that ss. 15 and 18(1) of Law 9/65 are irrelevant to the present case and that the requirements of s. 18(1)(c) of Law 9/65 have been complied with.
- (B) Assignment.
- (C) Reasoning with particular reference to the Specific Performance Law, Cap. 232 misconceived.
- (D) Unconstitutionality of s. 18(1)(c) of Law 9/65. if same is interpreted as obliging the appellants to become the registered owners of the plots in question, and
- (E) Administrative Practice of respondent 2 (circular dated 27.12.79).

Held, dismissing the appeal:

(1) *As to Ground A above:* As it is obvious from the provisions of s. 53(1)(2) of Law 9/1965 the provisions of Law 9/1965 are in addition to and not in derogation of the provisions of Cap. 224. It is crystal clear from the combined effect of the provisions of Cap. 224 (ss. 3A and

40) and the provisions of Law 9/65 (ss. 53(1)(2), 2, 7 and 18) that the vendor has to perfect the sale in question by transferring the immovable property through the D.L.O. and registering it in the name of the purchaser. Such a transfer in order to be effected presupposes inter alia that the vendor is the registered owner of such immovable property and that the requisites of s. 18 of Law 9/65 are complied with. 5

In this case as the appellants were not the registered owners of the plots they could not perfect the title of the purchasers of the plots by transferring them and registering them in the names of the purchasers. 10

Further s. 18(1)(c) of Law 9/65 requires the transferor to make a statement to the effect (A) that he is the person appearing as the owner of said immovable property and (B) that on a date to be stated he agreed to transfer such immovable property to the person named as transferee. How then could in this case Kykko Monastery declare either that it was the owner of the building sites in view of the fact that it had sold the greater portion of land—an altogether different property from the building sites—to appellants as early as 1975 or that it agreed between 1976-79 to sell the building sites to the purchasers while in substance and in fact the sites had been sold by the appellants? And how the intended transferees could declare that they agreed to accept the attempted transfer “on the terms stated in the statement of transfer” when Kykko Monastery had only agreed to sell the greater area to the appellants for £3,164,000? How could, in accordance with the second schedule to Law 9/65 requiring a statement as to whether the transfer was made gratis or for consideration to be specified in words and figures or in exchange of other immovable property, Kykko Monastery declare that it agreed to transfer a building site for say £4,650.- to each of the ultimate purchasers? 15
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It follows that the Director rightly refused the direct transfer by Kykko Monastery to the purchasers of the said plots.

As regards the submission of counsel that Law 9/65 is not a taxing law, one may observe, that though the ques- 40

tion of Transfer Fees is regulated by Cap. 219 as amended, the legislator of Law 9/65 has been extremely careful in protecting the fiscus (ss.15 and 18(3)(b)).

5 (2) *As regards Ground B above:* In the present case there could be no legal or equitable assignment of the rights of the appellants vis a vis the said Monastery to the individual purchaser as regards the respective building site because due to the provisions of s. 3A of Cap. 224 (s. 2 of Law 3/60) on the one hand and the said combined effect of the said provisions of Cap. 224 and Law 9/65, 10 which regulate matters relating to the transfer of immovable property the doctrines of common law and equity are inapplicable (Law 14/60 s. 29(1)(c)*).

15 (3) *As regards Ground C above:* The relevant for the appellants' case reasoning in the sub judge decision reads as follows:

20 "The present declaration of transfer cannot be accepted because the immovable property is encumbered by the deposit of a copy of a contract for its sale to the company AYIOS ANDRONICOS DEVELOPMENT CO. LTD., by virtue of the Sale of Land (Specific Performance) Law. The deposit of the said contract constitutes an encumbrance for any transfer except for a transfer to the purchaser company by virtue of the contract...".

25 As the attempt was to transfer property, encumbered by the deposit under Cap. 232 of the contract of sale made in 1975 between Kykko and the appellant (see ss. 12(5) 30 (6) and 12(1)(a) of Law 9/65 and the First Schedule thereto) directly by Kykko to the purchaser of the plots the Director rightly considered such deposit as an encumbrance for the attempted transfer.

35 (4) *As regards Ground D:* There is nothing in section 18(1)(c) of Law 9/65 which is inconsistent or repugnant to Article 23.1 of the Constitution. Section 18(1)(c) merely lays down the procedure for the transfer of property. In effect and in view of the submission of their counsel the appellants do not complain that their right to acquire

* Quoted at p. 2382 post.

or not to acquire property was infringed (they said that they wanted to acquire the property) but they merely complain against the procedure envisaged by s.18(1)(c).

(5) *As regards Ground E above:* Administrative acts (and omissions) must rely on existing legislation. This is a cardinal principle of administrative law. A circular, though lacks executory character, must nevertheless rely on existing legislation. If a circular defies the law, such circular is void. And if the practice followed in the past was illegal such practice cannot create a legal rule. The circular in question was at all material times contrary to the combined effect of the said provisions of Cap. 224 and Law 9/65. This ground of appeal is, therefore, doomed to failure. 5 10

Appeal dismissed. 15
No order as to costs.

Cases referred to:

- Republic v. Lefkos Georghiades* (1972) 3 C.L.R. 594;
Panayides v. The Republic (1965) 3 C.L.R. 107;
Loizides v. Mayor of Nicosia, 1 R.S.C.C. 59; 20
The Improvement Board of Eylenjia v. Constantinou (1967) 1 C.L.R. 167;
P. M. Tseriotis Ltd. and Others v. The Republic (1970) 3 C.L.R. 135;
Makrides v. The Republic (1979) 3 C.L.R. 584; 25
Ioannou v. The Republic (1982) 3 C.L.R. 1002.

Appeal.

Appeal against the judgment of the President of the Supreme Court of Cyprus (Triantafyllides, P.) given on the 31st March, 1984 (Revisional Jurisdiction Case No. 28/81)* whereby applicants' recourse against the decision of the respondents not to accept the transfer of a number of building plots directly from Kykko Monastery to the 30

* Reported in (1984) 3 C.L.R. 1176.

purchasers and to insist that they should be transferred first by Kykko Monastery to applicants and then by applicants to the purchasers, was dismissed.

G. Triantafyllides, for the appellants.

- 5 *M. Kyprianou*, Senior Counsel of the Republic with
A. Vassiliades, for the respondents.

Cur. adv. vult.

A. LOIZOU J.: The Judgment of the Court will be delivered by *Loris, J.*

- 10 **LORIS J.:** The present appeal is directed against the dismissal by the learned President of this Court, of Recourse No. 28/81, by means of which the appellants were attacking the decision of the Director of Lands and Surveys, dated 14.11.80,
- 15 (a) refusing to accept a transfer of a number of building sites (which were originally forming part of a greater plot of land purchased by the appellants from Kykko Monastery, in whose name the whole property was still registered) directly from Kykko Monastery to the
- 20 persons who have purchased the building sites in question from the appellants and
- (b) requiring the transfer of the aforesaid building sites to be effected, first from Kykko Monastery in the name of the appellants, and thereafter from the appellants
- 25 in the name of the persons to whom the appellants have sold the said properties.

The undisputed facts are very briefly as follows: The appellants, a land development company, purchased from Kykko Monastery, by virtue of a contract of sale

30 dated 24th September, 1975, a large area of land situated at Strovolos and Lakatamia villages, described in Schedule "A" appended to the contract, for the sum of £3,164,000.- an amount which would have been paid by instalments as envisaged by the aforesaid contract of sale.

- 35 We consider it unnecessary to refer here to the other terms of the said contract of sale; useful reference may

only be made to clause 6 thereof, where it is provided that the vendor is obliged to transfer either in the name of the purchaser or in the name of any third person, indicated by the purchaser, any parcellated plot from the said land the value of which would have been paid off by the purchaser to the vendor pursuant to the terms of the contract.

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The aforesaid contract of sale was deposited with the Lands Office pursuant to the provisions of the Specific Performance Law, Cap. 232, as amended.

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The appellants proceeded to divide the land purchased into building sites and between the years 1976 to 1979 they sold a number of plots to some 30 to 40 persons with whom they have entered into contracts of sale undertaking to transfer such plots in their names upon final payment. These contracts were not produced either before the learned President in the first instance or before us. Our attention was only drawn by the learned counsel for appellants to a specimen of such contracts which under the head "property" states inter alia: "The registered owner of the property is Kykko Monastery which undertook to transfer the property to the purchaser if he keeps the terms of the present contract."

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On 14.11.80 the appellants accompanied by the individual purchasers of the building sites, who have paid off their instalments to the appellants, and the representative of Kykko Monastery, proceeded to D.L.O. Nicosia, where they produced the relevant D.L.O. forms (specimen of which was produced as ex. 2 before the first instance Court) filled in, in such a way as to render feasible a transfer through D.L.O. of each building site from Kykko Monastery, in whose name the relevant registration stood, directly in the name of the individual purchasers.

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The respondents refused to accept the above transfer directly from Kykko Monastery to the individual purchasers, and insisted that the individual plots should first be transferred by Kykko Monastery in the name of the appellants and thereafter by the appellants in the names of the individual purchasers.

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The said decision of the respondent was reduced into writing, which was produced as ex. 1 in the first instance.

The appellants inspite of their objection were obliged to comply with the decision as aforesaid and pay £2,604.- transfer fees whereas if the transfer from Kykko Monastery directly to the individual purchasers were accepted, the appellants would not have to pay such fees; the compliance as aforesaid was made under protest the appellants having reserved their rights to impugn the decision of the respondent before the appropriate Court (vide exhibits 2 to 8).

As a result; the appellants filed the present recourse praying for the annulment of the sub judice decision of the Director of Lands and Surveys.

Before proceeding further, we consider it useful at this stage to remind once more that the decision of the Director of Lands and Surveys was twofold:

- (a) He was refusing to accept a transfer of a number of building sites directly from Kykko Monastery to the persons who have purchased the building sites in question from the appellants; and
- (b) he was requiring the transfer of the aforesaid building sites to be effected, first from Kykko Monastery in the name of the appellants, and thereafter from the appellants in the name of the persons to whom the appellants have sold the said properties.

The reasons of this decision are contained in the document prepared by the D.L.O. dated 14.11.80 (ex. 1), and have thus been summed up by the learned President of this Court in his judgment under appeal (vide *Ayios Andronikos Development Co. Ltd. v. The Republic* (1984) 3 C.L.R. 1176 at p. 1179):

“(a) That the initial contract between Kykko Monastery and the applicants did not refer to the same immovable property which is referred to in the contract between the applicants and the purchaser-transferee.

(b) That the amount paid as consideration is not iden-

tical in that the amount which was received by Kykko Monastery was not the same as that which was paid by the purchaser-transferee to the applicants.

- (c) That it could not be stated in the declaration of transfer that the purchase price was paid as consideration by the purchaser-transferee to Kykko Monastery.” 5

The learned President after examining the reasons as aforesaid and the grounds of law on which the recourse was based, in the light of submissions by counsel held: 10

- (i) That in view of the provisions of section 18(1) of the Immovable Property (Transfer and Mortgage) Law, 1965 (Law 9/65) and in particular s. 18(1)(c) thereof, the Lands Office could not lawfully accept a transfer to be made directly by Kykko Monastery to a purchaser of any one of the building plots. 15
- (ii) That the administrative practice which was being followed by the Department of Lands and Surveys at the material time, on the basis of circular dated 27th December 1979, was not consonant with the proper application of s. 18(1)(c) of Law 9/65 and therefore the circular in question could not be treated as creating a legal situation enabling the applicants to succeed in their present recourse. 20 25

In the result the learned President dismissed the recourse in the first instance.

The appellants filed the present appeal directed against the aforesaid judgment of the Court relying on the following grounds: 30

“1. It is respectfully submitted that the Court wrongly decided to the effect that there can be no direct transfer from Kykko Monastery to the purchasers of the plots in question but there had to be first a transfer in the name of the appellants. 35

2. It is submitted that there is nothing in s. 18 of Law 9/65 which necessitates a double transfer.

3. On the basis of Law 9/65 a transfer should have taken place directly from Kykko Monastery i.e. the registered owners of the property to the purchasers directly and not via the appellants."

5 The complaints of the appellants in the light of the submissions by learned counsel appearing for them may conveniently be grouped under five broad heads as follows:

1. The respondents should not have required the appellants to become the registered owners of the plots in question, as there is nothing in the law which would oblige the appellants to become the registered owners of these properties in order to be enabled to transfer same in the names of the ultimate purchasers.

15 Under this head the following subsidiary submissions were made:

(a) Law 9/65 is not a taxing Statute, the transfer fees being governed exclusively by the provisions of Cap. 219 as amended.

20 (b) Sections 15 and 18(1) of Law 9/65 are completely irrelevant to the present issues.

(c) The requirements of section 18(1)(c) of Law 9/65 have been fully complied with.

2. Assignment.

25 3. Reasoning with particular reference to the Specific Performance Law, Cap. 232, as amended, allegedly misconceived.

30 4. Alleged unconstitutionality of s.18(1)(c) of Law 9/65, if same is interpreted as obliging the appellants to become the registered owners of the properties in question, as it would then infringe the provisions of Article 23 of the Constitution.

5. Administrative practice of respondent No. 2—(Circular dated 27.12.79.)

35 We shall now proceed to examine the present appeal in the light of the submissions advanced, bearing in mind

that "this Court, when hearing an appeal from a judgment of one of its members, approaches the matter as a complete re-examination of the case, with due regard to the issues raised by the parties on appeal, or to the extent that they have been left undetermined by the trial Judge..." *Republic v. Lefkos Georghiades* (1972) 3 C.L.R. 594 at p. 690). *Complaints under Groups 1 and 2* above, are interwoven and will be examined together: It is pertinent at this stage to examine in the first place the position in Law.

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Section 2 of Law 3/1960 (colonial) had substituted section 4 of the Immovable Property Law, Cap. 224 with section 3A the relevant part of which reads as follows:

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"3A (1) Notwithstanding anything contained in paragraph (c) of sub-section (1) of section 28 of the Courts of Justice Law or in any Law amending or replacing the same, and subject to the provisions of this section, the law relating to trusts, the law relating to vakfs and the provisions of any other Law in force for the time being, no estate, interest, right, privilege, liberty, easement or any other advantage whatsoever in, on or over any immovable property shall subsist or shall be created, acquired or transferred except under the provisions of this Law".

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Section 40 of the Immovable Property Law, Cap. 224 reads as follows:

"40. (1) No transfer of, or charge on, any immovable property shall be valid unless registered or recorded in the District Lands Office.

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(1) No transfer or voluntary charge affecting any immovable property shall be made in the District Lands Office by any person unless he is the registered owner of such property:

Provided

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On 15.11.1965 the Immovable Property (Transfer and Mortgage) Law, 1965 (Law 9/65) was promulgated in the Official Gazette of the Republic. It is important to note

that section 53(1)(2) of Law 9/65 provides as follows:

5 "53.- (1) Subject to the provisions of sections 12(6), 44 and 51, nothing in this Law contained shall affect the provisions of any other Law in force for the time being where such Law makes specific provision for any of the matters referred to in this Law.

(2) Nothing in this Law contained shall operate to -

10 (a) make legal, validate or permit any act which is illegal, void or not permissible under the provisions of any other Law in force for the time being; or

15 (b) dispense with any order, permit, consent, licence, registration, permission or formality required by the provisions of any other Law in force for the time being."

It is obvious from the above section of Law 9/65 that the provisions of Law 9/65 are in addition to and not in derogation of the provisions of the Immovable Property Law, Cap. 224.

20 Section 5(1) and section 7 of Law 9/65 provide as follows:

"5. (1) No transfer or mortgage of any immovable property shall be valid unless made in accordance with the provisions of this Law.

25 7. No transfer or mortgage of any immovable property shall be made by any person unless he is the owner of such immovable property:

Provided

....."

30 In this respect the definition of "owner" must be borne in mind, which appears in s. 2 of Law 9/65: "'owner' means the person registered as the owner of any immovable property."

Section 18 of Law 9/65 contains provisions relating to

transfers of immovable property providing inter alia for the declarations to be made before the D.L.O. by the transferor and transferee of immovable property, for the required documents to be produced etc.

Section 18 reads as follows:

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“18. - (1) The written declarations required to be produced at the District Lands Office by the transferor and transferee of any immovable property shall contain the particulars following, that is to say -

- (a) a description of the immovable property proposed to be transferred by reference to its situation, the number and date of registration, the assessed value and the share or interest desired to be transferred; 10
- (b) a statement on whether or not there is any change in the condition of the immovable property proposed to be transferred as described in the registration therefor and on the nature of any such change and a statement on whether or not there is any subsisting tenancy of such immovable property; 15
- (c) in the case of the transferor, a statement that he is the person appearing as the owner of such immovable property and that on a date to be stated he agreed to transfer such immovable property to the person named as transferee either gratis or for a specified consideration: 20
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Provided that where two or more immovable properties are included in one declaration of transfer on payment of a consideration, the consideration for each of such immovable properties shall be separately stated:

- (d) in the case of the transferee, a statement that he has agreed to accept the transfer of such immovable property on the terms stated in the statement of the transferor; 30
- (e) a statement that there is no agreement for the re-transfer to the transferor of such immovable property on any payment or on the occurrence of any event; 35

(f) a statement confirming that the parties know each other and giving particulars of any relationship existing between them; and

5 (g) a statement that the parties desire that the immovable property be registered in the name of the transferee.

(2) The written declaration referred to in sub-section (1) shall be in the form A set out in the Second Schedule.

10 (3) The other documents required to be produced at the District Lands Office at the time at which the declaration is made shall be -

(a) the certificate of registration of the immovable property proposed to be transferred; and

15 (b) official receipts showing that all taxes, rates, charges, duties and fees payable on or before the date on which the declaration is made with respect to such immovable property have been paid; Provided that this paragraph shall apply only to such taxes, rates, charges, duties and fees as may, under the provisions of any
20 Law in force for the time being, be made a charge on immovable property or be recoverable by seizure and sale of immovable property, whether steps have or have not been taken for making them a charge on the immovable property proposed to be transferred or for seizing and selling such immovable property."

25 It is crystal clear from the combined effect of the provisions of the Immovable Property Law, Cap. 224 as amended and the provisions of the Immovable Property (Transfer and Mortgage) Law, 1965 (Law 9/65), that in
30 the case of sale of immovable property, the vendor has to perfect the sale in question by transferring through D.L.O. and registering in the name of the purchaser the immovable property in question. Such a transfer in order to be effected presupposes inter alia that the vendor is the registered
35 owner of such immovable property and that the requisites of s. 18 of Law 9/65 are complied with.

In the case under consideration the original vendor notably Kykko Monastery, did not perfect the sale of the greater plot of Land purchased by the appellants by trans-

ferring through D.L.O. and registering in the name of the appellants the immovable property in question. In consequence thereof the appellants, who were not the registered owners of the said immovable property could not perfect the sale of smaller plots—building sites—to subsequent purchasers by transferring through D.L.O. and registering in the name of subsequent purchasers the building sites which were forming part of the greater plot of land, still registered in the name of Kykko Monastery. 5

Therefore the D.L.O. rightly did not accept the attempted transfer directly from Kykko Monastery to the names of subsequent purchasers. To do otherwise the D.L.O. would be acting contrary to the combined effect of Cap. 224 and Law No. 9/65; such transfer further would not be feasible inter alia in view of the provisions of s. 18(1)(c) and (d) of Law 18/65 for the following reasons: 10 15

As stated above s. 18(1)(c) requires the transferor to make a statement to the effect (A) that he is the person appearing as the owner of such immovable property and (B) that on a date to be stated he agreed to transfer such immovable property to the person named as transferee. The transferor in the attempted transfer would have been Kykko Monastery. But Kykko Monastery was still standing registered as the owner of a large area of land described in Schedule 'A' of the recourse, which the Monastery had agreed to sell to the appellants on 24.9.75 for £3,164,000; and the contract in question was deposited with the Lands Office ever since, pursuant to the provisions of the Specific Performance Law, Cap. 232, as amended. A portion of this land, as already stated earlier on in the present judgment, has been divided by the appellants into small holdings—building sites—and between the years 1976 to 1979 the appellants sold a number of such building sites to some 30 to 40 persons with whom they have entered into contracts of sale, undertaking to transfer such building sites in their names upon final payment. 20 25 30 35

How then could Kykko Monastery declare pursuant to s. 18(1)(c) of Law 9/65 either:

A. that it was the owner of such building sites in view of the fact that it was known that Kykko had sold the 40

greater portion of land—which was an altogether different property from the building sites—to appellants as early as 24.9.75, a fact which was well known to the D.L.O. where the relevant contract of sale was deposited for specific performance purposes, or

5 B. that it agreed between the years 1976-1979 to sell the building sites in question to some 30 or 40 purchasers, when in substance and in fact these agreements for the sale of the building sites were made between the appellants
10 and the 30 or 40 purchasers to whom the appellants have sold the building sites in question?

Furthermore how could the 30 or 40 intended transferees at the time, make a statement to the effect that they agreed to accept the attempted transfer of the building
15 sites in question “on the terms stated in the statement of the transfer” (as envisaged by s. 18(1)(d) of Law 9/65) when in substance and in fact Kykko Monastery had only agreed to sell on 24.9.75 the whole area described in Schedule “A” to the appellants for £3,164,000?

20 In this connection, it must always be borne in mind, that the written declaration required to be produced to the D.L.O. pursuant to the provisions of s. 18(1) should be in form “A” as set out in the Second Schedule, as envisaged by s. 18(2) of Law 9/65.

25 Amongst the particulars of the immovable property declared to be transferred “the reason for transfer” must be stated as provided by the Second Schedule to the Law as above. It is significant to note the directions contained in the Schedule under the Heading “Reason for transfer” de-
30 noted by letter “(c)” which reads as follows:

“(c) State whether the transfer is made gratis or for a consideration (to be specified in words and figures) or in exchange for other immovable property (to be specified by reference to another declaration of
35 transfer).”

In simple words both the transferor and the transferee had to state in the particulars of the declaration form envisaged by s. 18(2) of Law 9/65 whether the transfer was

gratis, for a consideration or in exchange for other im-
 movable property. And it is common ground that in the
 attempted transfer Kykko Monastery would be declaring
 the transfer for a consideration to the 30 or 40 purchasers
 (who purchased the building sites from the appellants and
 not from Kykko Monastery) and this consideration was
 money which ought "to be specified in words and figures"
 in the declaration of sale form. How could Kykko Mona-
 stery as a transferor state that he agreed to transfer a
 building site for say £4,650 (vide ex. 1)—to each one of
 the 30 or 40 purchasers and how could each one of the 30
 or 40 purchasers subscribe to such a statement when in
 substance and in fact Kykko Monastery had only agreed
 on 24.9.75 to sell the whole property described in Schedule
 'A' to the appellants for the sum of £3,164,000?

It is apparent from the above that the Director of Lands
 and Surveys rightly refused on 14.11.80 a direct transfer
 of the building sites from Kykko Monastery to the ultimate
 purchasers as the intended transfer which was in substance
 and in fact a declaration of sale of the building sites would
 contravene the combined effect of the relevant Laws Cap.
 224 and Law 9/65 and in particular it would inter alia
 defy the provisions of s. 18(1)(c) of Law 9/65 which is
 quite relevant in the present case and the provisions of
 which were not, and in fact could have never been com-
 plied with in view of the facts and circumstances of this
 case, in spite of the submission of learned counsel of ap-
 pellants to the contrary.

Whilst at this stage we may as well consider subsidiary
 submission advanced by learned counsel for the appellants
 in support of ground 1 of this complaint as grouped
 earlier on in the present judgment.

The submission is to the effect that Law 9/65 is not
 a taxing Statute, the transfer fees being governed exclu-
 sively by the provisions of Cap. 219 as amended.

It is true that transfer fees are being regulated by the
 provisions of the Department of Lands and Surveys (Fees
 and Charges) Law, Cap. 219 as amended by Laws: 10/65,
 81/70, 61/73, 31/76, 66/79, 15/80 and 2/82.

But at the same time it must not be overlooked that the legislator of Law No. 9/65 has been extremely careful in protecting the fiscus, by providing *inter alia*

5 A) "... that all taxes, rates, charges, duties, and fees payable on or before the date on which the declaration is made with respect to such immovable property have been paid." (Vide s. 18(3)(b) of Law 9/65).

10 B) For the payment of fees: s. 15 of Law 9/65 clearly ordains that if the said fees and charges are not paid "the declaration shall be deemed to be null and void."

Section 15(1) reads as follows:

15 "15. - (1) Where any declaration of transfer or mortgage has been accepted, all fees and charges leviable, under the provisions of any Law in force for the time being, on the registration of such transfer or mortgage shall be paid, at the District Lands Office or sub-office in which such declaration has been accepted; and if the said fees and charges are not so paid on the day aforesaid, the declaration shall be deemed to be null and void..."

25 2. *Assignment*: It was submitted by learned counsel for appellants that the agreement contained in the aforesaid contract of sale dated 24.9.75 to the effect that Kykko Monastery would be transferring specific plots of land "to any person indicated by the appellants" and the relevant undertaking of the appellants by contracting with individual purchasers to sell a particular plot of land purchased from Kykko, was creating an assignment of the rights of the appellants they had, as regards that particular plot of land under the contract of sale with Kykko, to the individual purchasers.

30 In support of his submission learned counsel cited Halsbury's Laws of England, 4th edition Vol. 42 paragraphs 207 and 290 and concluded that contracts for the sale of land are not governed by statute but by the rules of Common Law and Equity citing in support paragraph 204 of Halsbury's Laws of England (*supra*) which reads as follows:

“204. Disposition by the purchaser. Upon the making of an enforceable contract for sale the purchaser becomes the owner of the land in equity and can dispose of his equitable interest to a third person.”

With respect, we are unable to agree with this submission of learned counsel for the following reasons: 5

Our Courts of Justice Law 1960 (Law No. 14/60) dealing with the law to be applied by the Courts of the Republic in the exercise of their civil jurisdiction provides in s.29(1)(c) the following: 10

“(c) the common law and the doctrines of equity save in so far as other provision has been or shall be made by any law made or becoming applicable under the Constitution or any law saved under paragraph (b) of this section in so far as they are not inconsistent with, or contrary to, the Constitution;” 15

Section 2 of Law 3/1960 (which was enacted prior to the coming into operation of our Constitution and which is a law saved under paragraph (b) of s.29(1) of Law 14/60) having substituted s.4 of Cap. 224 with section 3A provides that: 20

“.... no estate on.... immovable property shall.... be created, acquired or transferred except under the provisions of this Law.”

As already stated earlier on in the present judgment it is clear from the combined effect of the provisions of the Immovable Property Law, Cap. 224 as amended and the provisions of the Immovable Property (Transfer and Mortgage) Law, 1965 (Law No. 9/65) that in the case of sale of immovable property—which is the case under consideration—the vendor has to perfect the sale in question by transferring through D.L.O. and registering in the name of the purchaser the immovable property in question. Such a transfer in order to be effected presupposes inter alia that the vendor is the registered owner of such immovable property and that the requisites of s.18 of Law 9/65 are complied with. 25
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Therefore in the present case there could be no legal

or equitable assignment as the common law and the doctrines of equity are inapplicable due to the general provisions of s. 2 of Law 3/60 on the one hand and the specific provisions of Cap. 224 and those of Law 9/65, set out above, which regulate matters relating to the sale of immovable property.

We need not embark on this ground of appeal any further as the facts pertaining to this issue have already been dealt with at length earlier on in the present judgment with the previous complaints of the appellants with which the present issue is interwoven.

3. Alleged misconception in the reasoning relating to Specific Performance:

As already stated earlier on in the present judgment the appellants purchased from Kykko Monastery, by virtue of a contract of sale dated 24.9.1975 a large area of land described in Schedule "A" appended to the contract, for the sum of £3,164,000; the aforesaid contract of sale was deposited with the Lands Office pursuant to the provisions of the Specific Performance Law Cap. 232 as amended.

According to the provisions of Law 9/65 s. 12(5) & (6) and the First Schedule thereto (under No. 9), a deposit of a contract of sale of immovable property under the provisions of the Sale of Land (Specific Performance) Law shall operate as an encumbrance with respect to such immovable property from the date of its deposit at the District Lands Office.

In this connection s. 12(1)(a) of Law 9/65 provides that no declaration of transfer or mortgage of an immovable property which is subject to any encumbrance shall be accepted in the appropriate District Lands Office.

On 14.11.80 when the representative of Kykko Monastery accompanied by the individual purchasers of the building sites, proceeded to D.L.O. Nicosia with a view to transferring directly the building sites in question in the name of the individual purchasers the contract of sale dated 24.9.75 entered into between Kykko Monastery and the appellants was still so deposited with the D.L.O.

Respondent No. 2 upon refusal to accept the transfer directly from Kykko Monastery to the individual purchasers, (insisting that the building sites should first be transferred by Kykko Monastery in the name of the appellants and thereafter by the appellants in the name of the individual purchasers) gave amongst other reasons for such refusal, the following which appears in exhibit 1:

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«Η παρούσα δήλωση μεταβίβασης δέν δύναται νά γίνη αποδεκτή διότι: τό ακίνητον εἶναι ἐμποδισμένον διὰ τῆς καταθέσεως ἀντιγράφου συμβάσεως διὰ τήν πώλησιν του πρὸς τήν ἐταιρείαν ΑΥΙΟΣ ΑΝΔΡΟΝΙΚΟΣ DEVELOPMENT CO LTD., δυνάμει τοῦ Περι Πωλήσεως Γαιῶν (Εἰδική Ἑκτέλεσις) Νόμου. Ἡ κατάθεσις τῆς ἐν λόγω συμβάσεως ἀποτελεῖ ἐμπράγματον βάρος διὰ κάθε μεταβίβασιν πλὴν μεταβίβασεως πρὸς τήν ἀγοράστριαν ἐταιρείαν δυνάμει τῆς συμβάσεως...».

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English Translation:

“The present declaration of transfer cannot be accepted because the immovable property is encumbered by the deposit of a copy of a contract for its sale to the company AYIOS ANDRONIKOS DEVELOPMENT CO LTD., by virtue of the Sale of Land (Specific Performance) Law. The deposit of the said contract constitutes an encumbrance for any transfer except for a transfer to the purchaser company by virtue of the contract...”

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Learned counsel for appellants submitted that, that part of the decision of the respondents “is fallacious because the deposit of the contract with the D.L.O. was intended to operate in favour of the appellants and safeguard their rights and not to operate against them.”

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With respect, we find ourselves unable to agree with this submission or learned counsel for the appellants; it must be borne in mind always that the contract of sale dated 24.9.75 was concluded between Kykko Monastery on the one hand, as the vendor, and the appellant company on the other, as purchaser; what was attempted on 14.11.80, (when the above contract of sale was still validly deposited with the D.L.O., operating as an “encumbrance” on the

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said property of Kykko Monastery according to the Law set out above) was a direct transfer of a portion of the property sold under the said contract of sale to strangers (the ultimate purchasers from appellants) and NOT to the appellants themselves. Of course the "encumbrance" in question was intended to safeguard the rights of the appellants; and undoubtedly that is what is meant by respondent No. 2 in stating in his decision that "the deposit of such contract constitutes an encumbrance for any transfer except for a transfer to the purchaser company...". But, we repeat, on 14.11.80, the attempt was to transfer directly by Kykko Monastery to strangers property standing registered in its name "encumbered" according to the Law (at least as far as strangers were concerned); and it is immaterial whether the appellants were consenting to such a course being adopted or not, as the course in question was contravening the laws governing the matter as already explained at length in dealing with grounds 1 and 2 of the present appeal as grouped above.

This ground of appeal is therefore doomed to failure and is accordingly dismissed.

4. *Alleged unconstitutionality of s. 18(1)(c) of Law 9/65*

The submission of the learned counsel for appellants on this issue was thus placed before us:

The right conferred by virtue of Article 23.1 of our Constitution on every person to acquire and own immovable property, implies also the converse i.e. not to acquire and own property. (The latter part of the submission was based on the opinion expressed by Triantafyllides J. (as he then was) in the case of *Panayides v. The Republic* (1965) 3 C.L.R. 107 at p. 119, where the following are stated "The right to marry, which has been expressly safeguarded as a Fundamental Right and Liberty, necessarily implies the converse, i.e. the right not to marry. Nobody can be free to do something unless he is also free not to do it.")

If, the learned counsel added, by following the provisions of s. 18(1)(c) of Law 9/65 the transfer from Kykko Monastery to the appellants is necessary, "then we humbly submit that the said provision is unconstitutional."

Before examining the submission we feel that we should state the following:

This issue was never raised in the grounds of appeal; counsel for appellants stated though, that the issue of unconstitutionality was raised before the learned President of this Court, who tried this case in the first instance, but this issue was left undetermined. 5

Having gone through the record we are satisfied that the issue of unconstitutionality was raised in the first instance in the 2nd ground of law in support of the application and was also pursued further in the written address (p.34 of the record); we have decided to examine it following the decision in *Republic v. Lefkos Georghiades* (1972) 3 C.L.R. 594 at p. 690, as this issue was left undetermined in the first instance; we must say though, that in the Court of first instance it was not referred with sufficient clarity and in quite unequivocal terms, as it should be. (*Loizides v. Mayor of Nicosia*, 1 R.S.C.C. 59; *The Improvement Board of Eylenjia v. Constantinou* (1967) 1 C.L.R. 167). 10 15 20

The submission before us was also vague and was raised hypothetically, in the sense that we should first decide whether s. 18(1)(c) of Law 9/65 renders necessary the transfer of the immovable property in question from Kykko Monastery to the appellants. 25

We have already held in dealing with ground 1 of the present appeal that it is clear from the combined effect of the provisions of the Immovable Property Law, Cap. 224 as amended and the provisions of the Immovable Property (Transfer and Mortgage) Law, 1965 (Law No. 9/65) that in the case of sale of immovable property, the vendor has to perfect the sale in question by transferring through D.L.O. and registering in the name of the purchaser the immovable property in question. 30

Section 18(1)(c) of Law 9/65 simply provides for the declaration to be made by the transferor of immovable property before the D.L.O. in the case of transfer of immovable property; it requires from a transferor a statement to the effect that he is the owner of such immovable property and 35

that he agreed to transfer same to the person named as transferee, either gratis or for a specified consideration. In short, the aforesaid paragraph of s. 18(1), which is being impugned for unconstitutionality as above, merely lays
5 down the procedure to be followed, so far as the transferor only is concerned, in the case of transfer of immovable property.

In this respect in the course of the appeal counsel for the appellants acknowledged that respondents did not force
10 registration of the property on the appellants and explained that though appellants intended to acquire it they did not wish to have it registered in their name.

So in effect the appellants do not complain that their right to acquire (or not to acquire) immovable property has
15 been infringed (they say that they wanted to acquire this property) they merely complain against the procedure envisaged by s. 18(1)(c) of Law 9/65 which is merely confined to the required declarations to be made by the transferor in cases of transfer of immovable property.

20 We have considered this submission and we hold the view that same is absolutely unfounded as there is nothing in s. 18(1)(c) of Law 9/65 which is inconsistent or repugnant to Art. 23.1 of our Constitution.

5. *Administrative practice of respondent No. 2*

25 Learned counsel for appellants referred us to an administrative practice of respondent No. 2, in force at the material time of the present application, based on circular dated 27th December, 1979, which was addressed by the Department of Lands and Surveys to all District Land Officers;
30 by virtue of the aforesaid circular (which was revoked as late as 17.2.1981 by virtue of another circular which appears at p. 59 of the record) the administrative practice followed by the respondents was to the effect that they were
35 allowing direct transfers from vendor to sub-purchasers without asking for the intermediate transfer of the immovable property in question in the name of the original purchaser.

The learned President of this Court in dealing with this

issue in the first instance held that "as the said administrative practice was not consonant with the proper application of s. 18(1) (c) of Law 9/65 it cannot be treated as creating a legal situation enabling the applicants to succeed in their present recourse." 5

Counsel for appellants impugning the decision on this issue in the first instance, maintained that this administrative practice of respondents which was in force up to 17.2.81, and on which the appellants allegedly relied to shape their policy, was not illegal and was not contrary to s. 18(1) (c) of Law 9/65; Counsel for appellants in support of this submission referred us to reasons advanced in support of grounds 1 and 2 of the present appeal as grouped above. 10

It is a cardinal principle of Administrative Law that every Administrative Act (and omission: E2258/47) must rely on the existing legislation (E 1292/54) (vide Conclusions from the Jurisprudence of the Greek Council of State 1929-1959 at p. 156). 15

Circulars issued by Administrative Authorities directed to inferior organs usually bear the character of directions or communications aiming at the proper application of the law on a particular occasion by their subordinates (vide the Conclusions... supra at p. 238). 20

In spite of the fact that such circulars lack executory character as constituting administrative measures of internal nature, they must rely on the existing legislation, the application of which they are aiming at implementing. 25

If such circulars issued by a Government Department, for any reason, establish an administrative practice defying the Law, obviously such circulars are void as contravening the relevant Legislation. 30

And "of course if the practice followed in the past by the Department in question was contrary to Law, it cannot create a legal rule which would enable the applicants to succeed in these recourses..." (Vide *P.M. Tseriotis Ltd and others v. The Republic* (1970) 3 C.L.R. 135 at p. 143 adopted in *Makrides v. The Republic* (1979) 3 C.L.R. 584 at p. 601 (lines 11-16)). 35

“... Nor does the unlawful act of the Administration in the past or towards other persons, create obligation to it, to repeat likewise the contravention.” (Vide the Conclusions from the Jurisprudence of the Greek Council of State 1929-1959 at p. 158—*Ioannou v. The Republic* (1982) 3 C.L.R. 1002 at p. 1015).

As we have stated earlier on in the present judgment, when dealing with grounds 1 & 2 of the present appeal—as grouped above—“It is crystal clear from the combined effect of the provisions of the Immovable Property Law Cap. 224, as amended, and the provisions of the Immovable Property (Transfer and Mortgage) Law, 1965 (Law No. 9/65) that in the case of sale of immovable property, the vendor has to perfect the sale in question by transferring through D.L.O. and registering in the name of the purchaser the immovable property in question. Such a transfer in order to be effected presupposes inter alia that the vendor is the registered owner of such immovable property and that the requisites of s. 18 of Law 9/65 are complied with”.

The circular of 27.12.1979, was therefore at all material times until revoked in direct conflict not only with the provisions of s. 18(1)(c) of Law 9/65 but also with material provisions of Cap. 224 and other provisions of Law 9/65 set out in detail earlier on the present judgment.

Therefore the practice followed in the past by the respondents, pursuant to circular of 27.12.1979, was contrary to Law and could not enable the appellants to succeed in the present appeal; nor did the unlawful acts of the respondents in the past, pursuant to circular 27.12.1979, towards other persons as alleged, create obligation to the respondents to repeat likewise the contravention in the case of the appellants.

For the reasons given above this ground of appeal is doomed to failure as well.

Before concluding we feel duty bound to make the following observation: The circular of 17.2.81 is prima facie in direct conflict with many provisions of Cap. 224 and the Law 9/65 as set out in the first part of the present

judgment. We did not hear argument on this circular nor do we know whether it is still in force; but the mere reading of it reveals that many parts of it are illegal. We trust that respondent No. 2 will examine the matter in the light of the present judgment and act accordingly.

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In the result present appeal fails and is accordingly dismissed; we have decided, although we must say very reluctantly, to make no order as to the costs hereof.

*Appeal dismissed with
no order as to costs.*

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