

1986 July 30

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

SAVVAS G KAPARTIS AND ANOTHER.

*Applicants.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE COUNCIL OF MINISTERS,  
2. THE ATTORNEY-GENERAL.

*Respondents.*

(Case No. 350/83).

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*Time within which to file a recourse—Constitution, Article 146.3—Notice of acquisition—Objection by applicants—Publication of order of acquisition on 17.6.83—Letter, informing applicants of the dismissal of their objection,*  
5 *dated 24.6.83—The period of 75 days began to run as from the date of such letter and not as from the date of publication of the order.*

*Executory act—Composite administrative action—Notice of acquisition—If it ever was executory, it ceased to be such*  
10 *upon the final outcome of the composite administrative action, that is the order of the acquisition.*

*Recourse for annulment—Practice —Parties —Attorney-General joined as a respondent in a recourse directed against a notice and an order of compulsory acquisition—Not a*  
15 *proper party to the proceedings.*

This recourse is directed against a notice of acquisition and an order of acquisition of applicants' immovable property in Nicosia. The notice was published in the Official Gazette of 30.7.82. By letter dated 18.8.82 the applicants lodged an objection. The order of acquisition was  
20 published in the Official Gazette of 17.6.83. The letter,

whereby the applicants were informed that their objection was dismissed, was dated 24.6.83. This recourse was filed on 3.9.1983.

Counsel for the respondents raised the following preliminary objections, namely that the notice cannot be challenged by a recourse as the only act of an executory nature is the order of acquisition, that the recourse as regards the order is out of time and that the Attorney-General was wrongly joined as a party. 5

*Held*, (1) The applicants were informed of the fate of their objection a whole week after the publication of the order of acquisition. In the light of the rather special circumstances of this case and the case law of this Court, the Court reached the conclusion that the period of 75 days under Article 146.3 of the Constitution began to run from the date of the letter informing the applicants of the fate of their objection and not from the date of publication of the order. It follows that this recourse is not out of time. 10 15

(2) The notice of acquisition, even if it ever was executory, has ceased to be so, as it merged in the final outcome of the composite administrative action of which it forms part, that is the order of acquisition. 20

(3) The Attorney-General has nothing to do with the sub judice decisions. He is not a proper organ through which to proceed against the Republic, the real respondent. It follows that the title of this case should be amended by erasing the reference to him. 25

(4) In the light of the above the recourse will be heard on its merits as regards the order of acquisition. 30

*Order accordingly.*

**Cases referred to:-**

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

*Bakkaliaou v. The Municipality of Famagusta* (1969)  
3 C.L.R. 19;

*Prezas and Another v. The Republic* (1986) 3 C.L.R. 2525.

**Recourse.**

5        Recourse against the validity of a notice of acquisition published in the Official Gazette in respect of applicant's property in Nicosia.

*C. Pamballis*, for the applicants.

*A. Vladimirov*, for the respondents.

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*Cur adv. vult.*

**TRIANTAFYLIDIS P.** read the following judgment. In this case the applicants, who are the owners of immovable property in Nicosia, challenge the validity of a notice of acquisition (see No. 790, Third Supplement, Part II, in the Official Gazette of the 30th July 1982) and of an order of acquisition (see No. 700, Third Supplement, Part II, in the Official Gazette of the 17th June 1983) which were published in respect of the aforesaid immovable property of the applicants.

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20        Counsel for the respondents has raised the preliminary objection that the notice of acquisition cannot be challenged by means of the present recourse because it is part of a composite administrative action which has culminated in the order of acquisition and that, therefore, it is only the  
25        order of acquisition which is of executory nature and could be challenged by this recourse. Furthermore, he has argued that in respect of such order of acquisition the present recourse is out of time since the order of acquisition was published on the 17th June 1983 and this recourse was  
30        filed on the 3rd September 1983, that is after the lapse of the period of seventy-five days which is prescribed by Article 146.3 of the Constitution.

          As regards the objection that the recourse is out of time in relation to the order of acquisition it is to be noted that  
35        after the notice of acquisition was published on the 30th

July 1982 the applicants objected to the acquisition by means of a letter dated the 18th August 1982, and they received a reply to their objection dated the 24th June 1983, by means of which they were informed that the Council of Ministers had rejected their objection; thus the applicants were informed of the fate of their objection to the compulsory acquisition a whole week after the order of acquisition had been published in the Official Gazette.

In the light of the rather special circumstances of this case, and bearing in mind relevant case-law of this Court such as *Pissas (No. 1) v. The Electricity Authority of Cyprus*, (1966) 3 C.L.R. 634 638, and *Bakkaliou v. The Municipality of Famagusta*, (1969) 3 C.L.R. 19, 27, I have reached the conclusion that the period of seventy-five days under Article 146.3 of the Constitution should be reckoned as running not as from the date of the publication of the order of acquisition on the 17th June 1983, but as from the date of the letter by means of which the applicants were informed that their objection against the acquisition had been rejected, that is as from the 24th June 1983, and, consequently, this recourse, which was filed on the 3rd September 1983, is not out of time.

As regards the issue of whether by means of this recourse the notice of acquisition can be challenged I am of the view that even if it could be said that such notice is an executory act, and not merely a preparatory act, it cannot be challenged separately on its own, because it has merged in the final stage of the composite administrative action of which it forms part, namely in the order of acquisition, and only, therefore, the order of acquisition is of executory nature; and the notice of acquisition if it ever was executory has ceased to be so after the publication of the order of acquisition (see, in this respect, *Prezas v. The Republic*, R. A. 491, judgment delivered on the 4 July 1986 and not reported yet.\*). Of course, in challenging the validity of the order of acquisition there may be put forward as a ground of invalidity of such order any defect of the notice of acquisition which forms part of the relevant composite administrative action.

Counsel for the respondents has, also, objected that the Attorney-General of the Republic should not have been

\* Now reported in (1986) 3 C.L.R. 2525

made a party to these proceedings because he has nothing to do with either the notice or the order of the acquisition. I do agree with this contention of counsel for the respondents and, apparently, the Attorney-General was joined in his capacity as the legal adviser of the Republic, which does not, however, render him a proper organ through which to proceed against the Republic, which is the real respondent in this case. I, therefore, order that the title of this case should be amended accordingly so as to erase the reference to the Attorney-General of the Republic.

In the light of all the foregoing this case will be heard on its merits as regards the validity of the sub judice order of acquisition.

*Order accordingly.*