1986 February 8

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

LOUKIS KRITIOTIS,

Applicant,

v.

1. THE MUNICIPALITY OF PAPHOS THROUGH THE MUNICIPAL COUNCIL OF PAPHOS,
2. THE REPUBLIC OF CYPRUS, THROUGH
   (a) THE MINISTER OF INTERIOR,
   (b) THE CENTRAL COMMITTEE FOR THE PROTECTION OF ABANDONED TURKISH OWNED PROPERTIES,
   (c) THE DISTRICT OFFICER OF PAPHOS,
   (d) THE DISTRICT COMMITTEE OF PAPHOS FOR THE PROTECTION OF ABANDONED TURKISH OWNED PROPERTIES,

Respondents.

(Case No. 137/83).

Administrative Act—Act or decision in Article 146.1 of the Constitution—Such act or decision should be in the domain of public law and the result of the exercise of executive or administrative authority—Test to be applied two-fold, the character of the "authority" and the nature and character of the act in question—The Committee for the Protection of Abandoned Properties of Turkish Cypriots—The Committee is an organ exercising executive or administrative authority—The management of the requisitioned Properties of Turkish Cypriots is in the domain of Public Law.

Administrative act—Executory—An act confirmatory of an earlier act lacks executory character—Unless issued after a new inquiry—What constitutes a "new inquiry".

Legitimate interest—Lack of, deprives the Court of the power to deal with a recourse—It must exist at the time of the filing of the recourse until the determination of it—The Requisition of Properties of Turkish Cypriots who were moved to the area occupied by the Turkish Invasion forces and which are not used personally by them (Order 820/75)—Application by a non-displaced person for the allotment to him of a plot of land under the said requisition—Rejection of said application—As the requisition order explicitly limits the range of persons to displaced persons, the applicant lacks legitimate interest to challenge said refusal and the decision to allot the said plot to a displaced person.

Legitimate Interest—Building permit—When an owner of neighbouring property has a legitimate interest to challenge the decision whereby such permit was granted.

Time within which to file a recourse—Acts or decisions which are not and need not be published—Time begins to run as from the day when the applicant acquired complete knowledge of such act or decision—When such knowledge is complete.

Law of Necessity—The order whereby the properties of Turkish Cypriots who were moved to the area occupied by the Turkish invasion forces and which are not personally used by them (Order 820/75 renewed or reissued annually) is justified by the Law of Necessity.

The applicant, a restaurant owner from Paphos, houses his restaurant in a building standing on Plots 610 and 608 at Paphos. Part of plot 608 is a yard, used as an open-air restaurant. Plot 608 is adjacent to plot 609, owned by Turkish Cypriots, who were moved in 1975 to the area of the Republic occupied by the Turkish invasion forces.

The properties of the Turkish Cypriots who were moved to the said area and which are not used personally by them, wherever found, were requisitioned (Requisition Order 820/75) for the following purposes, namely "(a) Housing Purposes (b) The supply or maintenance or development of supplies and services necessary for life or

promoting the welfare or entertainment of the public, (c) For the better utilization of such properties in the public interest, or any of the aforesaid purposes. The requisition was made imperative for the achievement of the aforesaid purposes for the satisfaction of the needs of the displaced population". The said requisition order was annually renewed and/or reissued.

The special circumstances in the context of which the said orders were made were the following, namely the fact that forty per cent of the Country was run over by the invading forces of Turkey, the fact that the Turkish Cypriots were moved to the area occupied by the said forces and the fact that 2/5ths of the whole Greek Cypriot population of Cyprus were forced to flee to the South, leaving their houses, properties and belongings behind. These circumstances still continue.

The Council of Ministers in exercise of the executive power vested in it by Article 54 of the Constitution set up a Central Committee for the Protection of the Abandoned Properties of Turkish Cypriots. This Committee was empowered by the said requisition order to do all acts necessary for the management of the properties affected thereby and the achievement of the purposes set out in the requisition.

On 17.5.82 the applicant requested that Plot 609 be let to him to be used as a parking area for his adjacent restaurant. The appropriate District Committee, i.e. respondent 3, turned down his request on the ground that "the space had already been allotted to the displaced Andreas Kareklas". The decision was communicated to the applicant by letter dated 25.10.82.

Early in 1983 the applicant repeated the same request, but once again respondent 3 rejected it on the ground that he is not a displaced person and that the space had already been allotted to the said Andreas Kareklas (the interested party). This decision was communicated to the applicant by letter dated 17.3.83.

On 29.11.82 the interested party submitted an application for the erection of a building on the said plot 609.

On 31.12.82 he was granted the relevant building permit.

By means of the present recourse which was filed on 4.4.83 the applicant seeks the annulment of the following acts, namely (1) The said building permit, (2) The decision to allot plot 609 to the interested party and (3) the decision not to allot to him the whole or part of plot 609.

The following preliminary objections were raised, namely that (1) The acts or decisions in Reliefs (2) and (3) above are not executory administrative acts, (2) The applicant lacks legitimate interest and (3) The recourse is out of time. These points were taken by the Court preliminarily.

Held, (A) (1) The submission that the acts to which the objection relates are acts of management of Government property and as such fall within the domain of private law has to be dismissed. An "act" or "decision" which may be challenged by a recourse is an act or decision which is the result of the exercise of executive or administrative "authority" in the sense of Article 146.1. Such act or decision is in the domain of public law. The test to be applied for the determination of the question is twofold: The character of the "authority" and the nature and character of the act in question. There is no doubt that the respondents No. 2 and such or any of them who took the sub judice decisions are organs exercising executive or administrative authority.

The main characteristic of the management of these requisitioned properties is the furtherance of a purpose of public nature and, therefore, such management takes the character of a public function or service. The primary object of the sub judice decisions was the promotion of a public purpose and in all such cases the Court would have competence under Article 146. They are not acts of management of Government property in the domain of private law.

(2) An act which contains a confirmation of an earlier one in general is not executory, unless it was taken after

a new inquiry. There is a new inquiry when, before the issue of the subsequent act, an investigation takes place of newly emerged elements or although pre-existing were unknown at the time and were taken into consideration in addition to the others, but for the first time. Similarly, the collection of additional information in the matter under consideration constitutes a new inquiry. In this case the refusal communicated to the applicant by the letter dated 17.3.83 (sub judice decision in Relief 3 above) repeats the contents of the refusal communicated to the applicant by the letter dated 25.10.82. Both decisions were taken by the same organ and their factual elements were the same. It follows that the decision in Relief (3) is a confirmatory act and as such lacks executory character.

(B) (1) The existence of legitimate interest creates jurisdiction for the Court. Lack of legitimate interest deprives the Court of the power to deal with a recourse. The legitimate interest must exist at the time of the filing of the recourse until the determination of it. The initial burden lies on the applicant to satisfy the Court that he has a legitimate interest for interference with the sub judice decision.

As the litigation under Article 146 of the Constitution is a matter of public law, the presence of an existing legitimate interest has to be inquired into by an administrative Court even ex proprio motu.

(2) As the applicant is not a displaced person and as the requisition order explicitly limits the range of persons to the displaced population, the applicant lacks legitimate interest as regards the decisions in Reliefs (2) and (3).

(3) The decision in Relief (1), namely the Building Permit, is attacked on the following grounds, namely that contrary to Regulation 5 of the Streets and Buildings Regulations a certificate of ownership was not attached to the application for the permit and that the issue of the permit is in excess of public benefit specified in the order of requisition. The owner simply by his such ownership has no legitimate interest to attack a permit for erection of a building contrary to the existing statutory provi-

sions where his ownership is not injured. He is only entitled to attack by recourse such permit if his rights in respect of the neighbouring immovable are adversely and directly affected.

Having regard to the said grounds of law on which the recourse for the annulment of the building permit is based, the applicant has no legitimate interest to attack the validity of the sub judice building permit on the said grounds.

In the statement of facts—paragraphs 7, 8 and 9—there are certain allegations about adverse affectation of the applicant's property by the erection of the building authorised by the sub judice building permit. These allegations combined with legal ground 1(b) relating to other infringements of the Streets and Buildings Regulation Law and the Regulations made thereunder, on the face of them create a legitimate interest for the applicant. This Court has jurisdiction to consider the validity of the subject building permit on the aforesaid ground only.

(C) (1) The acts complained of were neither published nor was it necessary for them to be published. In order to find as from when the period of 75 days began to run, it is necessary to ascertain when such acts came to the knowledge of the applicant. Such knowledge should be complete.

"Complete" is the knowledge that allows the person interested to ascertain with certainty and precision the material and moral damage that he suffers from the published or communicated act. The communication must be complete, because if the interested person does not become aware of the whole of the contents of the act, he cannot judge and decide about the exercise or not of his right to file the recourse. Communication, therefore, of only the operative part without the reasoning for the act is not complete and the time does not run. Complete knowledge may be inferred from a statement or action of the interested person, especially from the submission of an application for remedy, containing the defects of the impeached act or omission.

The onus of proof that an applicant came to the knowledge of the act or omission impeached rests on the party who alleges that the recourse is out of time. In case of doubt the Court has to lean in favour of the applicant-citizen.

(2) The letter of 25.10.82 is an unsurmountable obstacle to allow the applicant to contend that the time with regard to the decisions in Reliefs (2) and (3) started running in 1983 or at any time after October 1982. The letter is presumed to have been delivered to the applicant in the ordinary course of post (section 2 of The Interpretation Law, Cap. 1). In any event applicant admitted that he received it shortly after 25.10.82. It follows, that as regards the said decisions the recourse is out of time.

(3) As regards the decision in Relief (1) the evidence showed that sometime early in January 1983 and at any rate before 12.1.83 the interested party brought to the knowledge of the applicant that a building permit was issued to him for erection on plot 609; but the interested party did not show to the applicant either the plans or the extent or the nature of the buildings or the building permit itself. It follows that the recourse is not out of time as regards the building permit.

Reliefs (2) and (3) dismissed. The Court will proceed with Relief (1) on the sole ground stated in para. B(3) above.

Cases referred to:

Attorney-General v. *Ibrahim,* 1964 C.L.R. 195;

Aristides v. *The Republic* (1983) 3 C.L.R. 1502;

Papaphilippou v. *The Republic,* 1 R.S.C.C. 62;

HjiKyriacou v. *HjiApostolou and Others,* 3 R.S.C.C. 89;

Valana v. *The Republic,* 3 R.S.C.C. 91;

Stamatiou v. *The Electricity Authority of Cyprus,* 3 R.S.C.C. 44;

Sevastides v. *The Electricity Authority of Cyprus* (1963) 2 C.L.R. 497;

The Greek Registrar of the Co-operative Societies v. *Nicolaides* (1965) 3 C.L.R. 164;

Ethnikos v. *K.O.A. and Another—K.O.P* v. *K.O.A. and Another* (1984) 3 C.L.R. 831;

Galanos v. *C.B.C.* (1984) 3 C.L.R. 742;

The Republic v. *M.D.M. Estate* (1982) 3 C.L.R. 642;

Charalambides v. *The Republic* (1982) 3 C.L.R. 403;

Matsoukas v. *The Republic* (1984) 3 C.L.R. 1443;

Kolokassides v. *The Republic* (1965) 3 C.L.R. 542;

Ktena and Another (No. 1) v. *The Republic* (1966) 3 C.L.R. 64;

Varnava v. *The Republic* (1968) 3 C.L.R. 566;

Kyprianides v. *The Republic* (1982) 3 C.L.R. 611;

Mylonas v. *The Republic* (1982) 3 C.L.R. 880;

Avgoloupis v. *The Republic,* (1985) 3 C.L.R. 1525;

Markides v. *The Republic* (1967) 3 C.L.R. 167;

Constantinou v. *The Republic* (1974) 3 C.L.R. 416;

Santos and Others v. *The Republic* (1969) 3 C.L.R. 28;

Paraskevopoulou v. *The Republic* (1980) 3 C.L.R. 647;

Meletis and Others v. *Cyprus Ports Authority* (1986) 3 C.L.R. 418:

Miltiadou v. *The Republic* (1969) 3 C.L.R. 210;

Ttofinis v. *Teocharides and Another* (1983) 2 C.L.R. 363;

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

Neophytou v. *The Republic,* 1964 C.L.R. 280;

Cariolou v. *Municipality of Kyrenia and Others* (1971) 3 C.L.R. 455;

Irrigation Division "Katzilos" v. *The Republic* (1983) 3 C.L.R. 1068;

Decisions of the Greek Council of State in Cases Nos.: 1477/56, 1124/57 and 488/59.

Recourse.

Recourse against the following decisions, namely the decision of the respondents to issue a building permit to respondent No. 1 in respect of the requisitioned Turkish Cypriot property plot 609 at Paphos town, the decision to allot the said plot to the interested party and the refusal of respondent No. 2 to allot to applicant the whole or part of the above requisitioned property.

K. Talarides, for the applicant.

K. Chrysostomides, for respondent No. 1.

Chr. Ioannides, for respondent No. 2.

L. Clerides, for interested party.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicant by this recourse seeks -

(1) The annulment of a building permit for erection of a building on Plot 609 of Paphos town issued by respondent No. 1, the Municipality of Paphos;

(2) The annulment of the decision of respondents No. 2 for the allotment of Plot 609, owned by Turkish Cypriots, to the interested party; and,

(3) The annulment of the decision of respondents No. 2 not to allot the whole or part of the same Plot 609 to the applicant to be used by him in connection with his restaurant business.

In the oppositions of the respondents and of the interested party objections of points of law were raised. These

points were taken by the Court preliminarily. In the order in which I intend to deal with them in this judgment, they are the following:-

(A) The acts or decisions challenged in reliefs (2) and (3) are not executory administrative acts;

(B) The applicant lacks legitimate interest and, therefore, he is barred to proceed with this recourse; and,

(C) This recourse is out of time.

FACTS:

The applicant is a restaurant owner from Paphos. The interested party is a refugee from Famagusta, residing at Paphos.

The applicant houses his restaurant in a building owned by him standing on sites shown on D.L.O. map as Plots 610 and 608. Part of Plot 608 is a yard, used as open-air restaurant. The building has a frontage on Market Street. Plot 608 is adjacent to Plot 609, owned by Turkish Cypriots who were moved to the Turkish occupied area of the Republic in 1975, abandoning their immovables. This plot opens on a blind alley. This blind alley runs from Market Street to Plots 609 and 608. Plot 610 abuts thereon.

Plots 587, 588, 588/2, 588/1 and 581/1 are similarly Turkish Cypriot owned properties abandoned by their owners. Plots 587 and 588 are shops opening in Kanaris Street which is parallel to Market Street—(See plan, exhibit No. 1).

The properties of the Turkish Cypriots who were moved to the Turkish occupied area of the Republic and which are not used personally by them, wherever found, were requisitioned as from 13th November, 1975.

The requisition order was made under s. 4 of the Requisition of Property Law, 1962 (Law No. 21 of 1962), as amended by the Requisition of Property (Amendment) Law, 1966 (Law No. 50 of 1966), by the Minister of the Inte-

rior and Defence in exercise of powers delegated to him by the Council of Ministers—(See No. 671 in the 3rd Supplement. Part II, to the Official Gazette of the said date and No. 820, 3rd Supplement, Part II, to the Official Gazette of the 14th November, 1975).

In Requisition Order No. 820/75 it is stated that the requisition was necessary for purposes of public benefit mentioned therein or any of them and the requisition was imperative for the achievement of the said purposes for the satisfaction of the needs of the displaced population.

A Central Committee for the Protection of the Abandoned Properties of Turkish Cypriots was set up by the Council of Ministers by its Decision No. 14202 of 18th August, 1975—(See No. 51 of the Fourth Supplement to the Official Gazette of 29th August, 1975)—in exercise of the executive powers vested in the Council of Ministers by Article 54 of the Constitution for the general direction and control of the Government of the Republic and the direction of general policy and all matters other than those specifically exempted from the competence of the Council of Ministers under the said Article 54. This Central Committee was empowered by the Requisition Order to do all acts necessary for the management of the properties affected thereby and the achievement of the purposes set out in the requisition.

This requisition order was annually renewed and/or reissued—(See Notification No. 899 dated 15.10.76; Not. No. 1003 dated 21.10.77; Not. No. 1253 dated 2.11.78; Not. No. 1223 dated 23.10.79; Not. No. 13 dated 11.12.80; Not. No. 1510 dated 10.12.81; Not. No. 25 dated 7.1.83; Not. No. 56 dated 9.1.84).

Forty per cent of the country was run over by the invading forces of Turkey. The Turkish Cypriots were moved to the Turkish occupied areas in the North and the 2/5ths of the Greek Cypriots population were forced to flee to the South, leaving their houses, their properties and belongings behind. These were the special circumstances in the context of which the requisition orders were made. These circumstances still continue.

These requisition orders are valid in virtue of the

"law of necessity", as expounded in *The Attorney-General of the Republic* v. *Ibrahim*, 1964 C.L.R. 195, which coincides with the doctrine of "permissible deviation from legality in the strict sense on the ground of paramount public interest"—(See judgment of Triantafyllides, P.. in *Aristides* v. *Republic*, (1983) 3 C.L.R. 1502).

Plots 587, 588, 588/2, 586/1, 581/1 and 609 were as from 1.2.77 allotted and let to the interested party by the respondents who, under the Law and the Requisition Orders, were empowered, as aforesaid. On Plot 609 there was at the time of the requisition a ruined house which ever since collapsed and was demolished and at the material time for this case it was only a building site. On the other plots there are buildings. This allotment continues without interruption as from 1.2.77.

On 18.7.70 the applicant applied for the allotment to him of 1/3rd of Plot 609 for the purposes of his restaurant business. The Court could not trace any copy of a written reply to that request in the file of the Administration, exhibit No. 4.

By a written application dated 17.5.82 (Blue 50) the applicant requested that Plot 609 be let to him to be used as a parking place for his customers. His such request was examined by the appropriate District Committee on 12.8.82 which rejected it as "that space had already been allotted to the displaced Andreas Kareklas". This decision was communicated to the applicant by letter dated 25.10.82—(See Blue 52).

Early in 1983 the applicant repeated the same request but the same Committee again rejected it on the same grounds, and by letter dated 17.3.83 (Blue 56) informed the applicant accordingly. The grounds of the rejection of this application were again that the applicant was not a displaced person and that such space had been allotted to the displaced Andreas Kareklas.

I shall refer to the facts pertaining to the building permit, the validity of which is challenged, later on in this

judgment, when dealing with the legal points connected with the prayer for its annulment.

POINT (A)—EXECUTORY AND ADMINISTRATIVE ACTS:

It was submitted by counsel for respondents No. 2 that the act of the allotment of Plot 609 to the interested party and the rejection of the request of the applicant in respect of the same plot are not administrative executory acts in the sense of Article 146 of the Constitution and, therefore, not amenable to judicial review by this Court. They are acts of management of Government property and they fall within the domain of private law. He further submitted that the decision communicated to the applicant on 17.3.83—the sub judice decision—is simply confirmatory.

A decision or act may be the subject or a recourse to this Court if it is the result of exercise of an "executive or administrative authority" in the sense in which such words are used in paragraph 1 of Article 146. Such "act" or "decision" is an act or decision in the domain only of public law—*George S. Papaphilippou* v. *The Republic*, 1 R.S.C.C. 62; *Achilleas Hji-Kyriacou* v. *Theologia Hji-Apostolou and Others*, 3 R.S.C.C. 89; *Savvas Yianni Valana* v. *The Republic*, 3 R.S.C.C. 91).

In this country the test to be applied for the determination of the question posed is twofold: the character of the "authority" and the nature and character of the act in question.

In *John Stamatiou* v. *The Electricity Authority of Cyprus*, 3 R.S.C.C. 44, Forsthoff, P., at pp. 45-46 said:-

> "Whatever the general and predominant character of the respondent might precisely be, it is only relevant for the purposes of this case to consider whether, in relation to the particular function which is the subject-matter of this recourse, the respondent was acting in the capacity of an 'organ, authority or person, exercising any executive or administrative authority' in the sense of paragraph 1 of Article 146."

In *Sevastides* v. *Electricity Authority of Cyprus*, (1963)

2 C.L.R. 497, it was said that due regard must be had not only to the nature and character of the respondent corporation but also, primarily, to the powers vested in, and duties imposed on, such public corporation and its functions generally, as well as to the particular nature of the decision, act or omission concerned.

In the case of *The Greek Registrar of the Co-operative Societies* v. *Nicos A. Nicolaides*, (1965) 3 C.L.R. 164, at pp. 170-171, the following test was laid down by the Full Bench:-

> "In the opinion of the Court it is primarily the nature and character of a particular act or decision which determines whether or not such act or decision comes within the scope of paragraph 1 of Article 146 of the Constitution. Such an issue is one which must be decided on the merits and in the circumstances of each particular case and having due regard to such relevant factors as the office and status of the organ, authority, person or body performing such act or taking such decision, as well as to the circumstances and context in which such act was performed or decision taken. As pointed out by the learned Judge in his Ruling the 'same organ may be acting either in the domain of private law or in the domain of public law, depending on the nature of its action'. Ultimately, what is the important and decisive factor in this respect is the nature and character of the particular function which is the subject-matter of a recourse".

(See, also, the decisions of the Full Bench of this Court in *Ethnikos* v. *K.O.A. and Another—K.O.P.* v. *K.O.A. and Another*, (1984) 3 C.L.R. 831; *Galanos* v. *C.B.C.*, (1984) 3 C.L.R. 742; *The Republic* v. *M.D M. Estate*, (1982) 3 C.L.R. 642).

Respondents No. 2 and 3—the Central Committee for the Management of the Turkish Cypriot Properties and the District Committee of Paphos for the Management of the Turkish Cypriot Properties—were set up and their composition is defined by the decision of the Council of Ministers of 18.8.75 hereinabove referred to.

By these requisition orders invariably they are empowered to do all acts necessary for the management of the properties affected by the orders and for the achievement of the purposes of the requisition. The specific purposes of the requisition are:-

"(a) Housing purposes;

(b) The supply or maintenance or development of supplies and services necessary for life or promoting the welfare or entertainment of the public;

(c) For the better utilization of such properties in the public interest,

or any of the aforesaid purposes, and the requisition was made imperative for the achievement of the aforesaid purposes for the satisfaction of the needs of the displaced population".

There is no doubt that the respondents No. 2 and such or any of them who took the sub judice decisions are organs exercising executive or administrative authority.

The main characteristic of the management of these requisitioned properties is the furtherance of a purpose of public nature and, therefore, such management takes the character of a public function or service—*(Stassinopoulos-Civil Liability of the State,* (1950) p. 197; *Kyriacopoulos-Greek Administrative Law,* 4th Edition, Volume 3, p. 103).

The primary object of the sub judice decisions was the promotion of a public purpose and in all such cases the Court would have competence under Article 146. They are not acts of management of Government property in the domain of private law—*(Charalambides* v. *The Republic,* (1982) 3 C.L.R. 403; *Matsoukas* v. *The Republic,* (1984) 3 C.L.R. 1443).

Both acts—the allotment to the interested party and the refusal to allot to the applicant the requisitioned Plot 609—are within the domain of public law.

An act which contains a confirmation of an earlier one

in general is not executory and, therefore, cannot be the subject of a recourse for annulment. Only when it was taken after a new inquiry into the matter, it is an executory act—(*Kolokassides* v. *The Republic*, (1965) 3 C.L.R. 542; *Ktena and Another (No. 1)* v. *The Republic*, (1966) 3 C.L.R. 64; *Varnava* v. *The Republic*, (1968) 3 C.L.R. 566, at p. 573; *Kyprianides* v. *The Republic*, (1982) 3 C.L.R. 611).

A confirmatory act or decision is an act or decision of the administration which repeats the contents of a previous executory act and signifies the adherence of the administration to a course already adopted; it is not in itself executory because it does not itself determine the legal position of an individual case, and cannot, therefore, be the subject of a recourse under Article 146.

I could not trace in the file anything indicating that the act of the allotment challenged is confirmatory of any previous decision.

In the present case there is the decision communicated to the applicant in answer to his request for allotment to him of part or the whole of Plot 609 by letter of 25.10.82 and the sub judice decision communicated to him by letter dated 17.3.83.

Was a new inquiry carried out in the present case? There is a new inquiry when, before the issue of the subsequent act, an investigation takes place of newly emerged elements or although pre-existing were unknown at the time and were taken into consideration in addition to the others, but for the first time. Similarly, the collection of additional information in the matter under consideration constitutes a new inquiry—(*Stassinopoulos—The Law of Administrative Disputes*, 4th Edition, p. 176; *Kyprianides* v. *The Republic*, (supra), at pp. 619-620; *Mylonas* v. *The Republic*, (1982) 3 C.L.R. 880, at p. 887).

Both decisions to which I have just referred were taken by the same organ. The factual elements were exactly the same: Plot 609 was already allotted to the displaced interested party and the applicant himself was not a displaced

person. These elements pre-existed at all material times for both decisions and its is clear that they have been taken into consideration when the first decision of October, 1982, was reached. Therefore, no new inquiry was carried out. The decision impeached by this recourse in Prayer (3) is a confirmatory act and not an executory act and thus it is not reviewable by this Court.

POINT (B)—LEGITIMATE INTEREST:

A recourse is admissible by an administrative Court only if the applicant possesses a direct, present, concrete (συγκεκριμένο), legitimate interest. Though traditionally a recourse for annulment of an administrative decision is very widely open, it is not an actio popularis open to every citizen of the country. A citizen cannot contest the validity of every administrative act unless he possesses the quality of legitimate interest. Had it been otherwise, the influx of the recourses would paralyse administrative justice and the judicial control would have become illusory; furthermore for practical reasons the administration would also be handicapped in the due performance of its function. The criterion is the existence of a direct relationship and affectation of an interest, material or moral, of the applicant, otherwise the recourse is deprived of its admissibility.

No express provision is to be found in Article 146 itself, under which a recourse is made, yet, paragraph 2 of this Article, may be usefully referred to. It provides that "... a recourse may be made by a person whose any existing legitimate interest... is adversely and directly affected...". Thus expression is given to the basic condition precedent of the annulment jurisdiction of an administrative Court, viz. the existence of an interest of an applicant. A recourse for annulment requires in respect of the applicant a legitimatio ad causum—(See *Fleiner, Administrative Law,* 8th Edition, pp. 212 and 243; *Odent-Contentieux Administratif-Fascicule* IV pp. 1280-81; *Tsatsos—The Recourse for Annulment Before the Council of State,* 3rd Edition, p. 30).

The existence of legitimate interest creates jurisdiction for the Court. Lack of legitimate interest deprives the

Court of the power to deal with a recourse. The legitimate interest must exist at the time of the filing of the recourse until the determination of it—(*Avgoloupis* v. *The Republic*, Case No. 366/83, unreported).*

The initial burden lies on the applicant to satisfy the Court that he has a legitimate interest for interference with the sub judice decision—(*Markides* v. *The Republic*, (1967) 3 C.L.R. 167).

As the litigation under Article 146 of the Constitution is a matter of public law, the presence of an existing legitimate interest has to be inquired into by an administrative Court even ex proprio motu—(*Constantinou* v. *The Republic*, (1974) 3 C.L.R. 416).

In the present case the recourse aims at the validity of -

(a) The refusal of respondents No. 2 to allot to the applicant the whole or part of Plot 609 requisitioned as aforesaid;

(b) The allotment to the interested party of the same plot; and,

(c) The issue of a building permit by the Municipality of Paphos, respondent No. 1.

The applicant is a Paphian and is not a displaced person. The requisition explicitly limits the range of persons to the displaced population.

In a number of cases for promotion it was held by this Court that applicants not possessing the qualifications required under the relevant scheme of service had not a legitimate interest which was adversely affected by the promotion complained of and their recourses were, therefore, dismissed. They were not entitled to contest the validity of the promotions—(See, inter alia, *Santos and Others* v. *The Republic*, (1969) 3 C.L.R. 28; *Constantinou* v. *The Republic*, (supra); *Paraskevopoulou* v. *The Republic*, (1980) 3 C.L.R. 647; *Meletis and Others* v. *Cyprus Ports Authority*, Recourses No. 103/83 and 104/83, still unreported).**

* Reported in (1985) 3 C.L.R. 1525.
** Reported in (1986) 3 C.L.R. 418.

In *Miltiadou* v. *The Republic*, (1969) 3 C.L.R. 210, Stavrinides, J., at p. 213 said:-

> "It follows that the examination relied upon by the applicant is one that does not satisfy the subject scheme and therefore the fact that he has seventeen years' experience cannot make any difference. All in all he was not qualified for appointment to the subject post and hence the application must fail on the ground that he lacks the locus standi required for an application under Article 146, para. (2), of the Constitution".

In the present case as the applicant did not possess the qualification of displaced person, he lacks legitimate interest and, therefore, the recourse for annulment of the two decisions relating to the grant and not grant of Plot 609 will be dismissed.

I turn now to the building permit. Has the applicant a legitimate interest for the annulment of the sub judice building permit?

The interested party in the summer of 1980 started, without a building permit from the appropriate authority, to dig up foundations and construct moulds for pillars for the purpose of erecting a factory. The appropriate authority —Paphos Municipality—forthwith prosecuted him in Criminal Case No. 2265/80 and secured an interim order restraining him from proceeding with such works. He stopped forthwith and on 22.8.80 Application No. 322/80 was submitted to the Municipality for a building permit. A letter dated 21.8.80 was attached thereto, addressed to the interested party and communicated to the Chairman of the Municipal Committee of Paphos, emanating from the Chairman of the District Committee for the Management of Turkish Cypriot properties of Paphos, whereby the applicant was informed that there was no objection for the erection of a building on Plot 609, provided that a building permit was secured from the Municipal Committee of Paphos. Such application was not finally determined and was ultimately withdrawn on 27.11.82.

On 29.11.82 Application No. 461/82 for a building permit was submitted to the Municipality of Paphos, the appropriate authority. The applicant, interested party, thereby applied for a permit for the erection on Plot 609 of a

shop, office, kitchen and W.C's for males and females. The proposed buildings appear also on the architectural plan accompanying the application. A letter dated 29.8.80 from the Chairman of the District Committee for the Management of Turkish Cypriot properties was also attached. In virtue of this application the sub judice building permit was issued whereby permit was given for the erection of a shop, office, kitchen and W.C's for men and women, according to the plans submitted. The following conditions were imposed: to make parking space for two cars on Plot 609, to instal mechanical ventilation for both W.C.'s and the kitchen and not to use any part of the public road for placing or storing any materials.

The building permit is attacked on the following legal grounds, as set out in the recourse:-

(1) That the application was not in accord with Reg. 5 of the Streets & Buildings Regulations, in the sense that a certificate of ownership was not attached and that the interested party is not the owner of the plot; and,

(2) That the issue of the building permit is unlawful as it is in excess of the purposes of public benefit specified in the order of requisition.

The applicant reserved the right to raise any other ground for any infringement of the Streets & Buildings Regulation Law and the Regulations made thereunder.

As it was said earlier on, a recourse to an administrative Court is not an actio popularis; it is not open to every citizen to contest the legality or to submit for judicial review every act or decision of the Administration. He is only entitled to do so if he has a legitimate interest. "Legitimate interest", though not synonymous with "right", must be adversely and directly affected by the decision attacked. For this Court to have competence to inquire and determine the validity of the sub judice decision there must be a legal relationship of the applicant with the challenged act.

It cannot be validly argued that any legitimate interest

of a neighbour is adversely and directly affected if the certificate of ownership is not attached to the application for a building permit, or if the application is not submitted, say, by the owner but by an agent whose authority might have been exceeded in applying for such a building permit.

Mr. Talarides referred the Court to *Odent-Contentieux Administratif*, p. 1293, where it is stated:-

> "Le propriétaire d'un immeuble a intéret á attaquer un permis de construire accordé pour un immeuble voisin (S. 12 novembre 1955, dame veuve Gaillard, p. 540)".

The full text of the decision on which this statement is based is not available. I would not introduce in this country such an unqualified interest in administrative law. In all cases in Greece where a legitimate interest was found to exist, the ownership of the neighbour was in some way or another adversely affected and injured by the permit attacked.

In *The Conclusions of the Jurisprudence of the Greek Council of State*, 1929-1959, p. 265, we read:-

> "Also the owner of a neighbouring site has a legitimate interest to attack an act permitting the erection of a building contrary to the existing statutory provisions, whereby his ownership is injured".

A number of decisions of the Greek Council of State are cited at the footnote in support of this statement. I had opportunity to look into these decisions. In every single one of them the owner of the neighbouring property is adversely affected as such owner or possessor thereof—(See, also, *Dendias*, 5th Edition, Volume "C", p. 273 et seq.).

In *The Supplement of Jurisprudence by Zacharopoulos*, 1953-1960, p. 149, a number of cases are set out where it was held that the owner of a neighbouring immovable had a legitimate interest.

In Case No. 1477/56 the owner of the neighbouring building had a legitimate interest to attack the sub judice permit for the erection of a multi-storey building as by the

construction of the said multi-storey building the ventilation and light of his neighbouring building would be adversely affected.

In Case No. 1124/57 the owner of an adjacing building was held to have a legitimate interest to challenge the validity of a building permit because a staircase, the balconies, etc., according to the building permit, would be such as in the future would hinder the heightening of the building of the applicant, the functionability of each one of the adjoining buildings would be hampered and nuisance would be caused, and furthermore the distances between the buildings, as provided by Law, were not kept.

In Case No. 488/59 it was held:-

«... απορριπτέοι όμως τυγχάνουσι λόγοι ακυρώσεως αναφερόμενοι εις παραβάσεις (αριθμόν ορόφων εν προσόψει, ύψος εν προσόψει , κλπ.), ένεκα των οποίων δεν θίγεται η αιτούσα, άτε μη επηρεαζομένου και του εις την οπισθίαν πλευράν ύψους της οικοδομής».

("... the grounds for annulment related to breaches (number of storeys at the front, height of the front of the building) whereby the applicant is not affected, by reason of the fact that the height of the back side of the building is not affected, have to be dismissed").

(See, also, Cases No. 459/73, 2487/72, 1332/72, 62/74, and 2385/72 in *Digest of Cases of the Greek Council of State,* (1971-1975), Volume 1, pp. 131-32). In all these cases the owner of the neighbouring immovable property was adversely affected; the building to be erected constituted interference with his right of light, view or ventilation, thus the recourses were held admissible.

The criminal law is another branch of public law with different objectives than the administrative law.

In *Ttofinis* v. *Theocharides and Another,* (1983) 2 C.L.R. 363, the right of the citizen to institute criminal proceedings, that is, the right to a private prosecution, and the implications of the provisions of the Streets & Buildings Regulation Law, Cap. 96, on the exercise of this right in relation to infringements of this Law, or regulations made

thereunder were considered by the Supreme Court. Triantafyllides, P., held that a private individual whose immovable property is actually encroached upon unlawfully as a result of a violation of the provisions of the Streets & Buildings Regulation Law or of delegated legislation made thereunder is entitled to resort not only to his remedies in civil law but, also, to the remedy by means of a private criminal prosecution. Pikis, J., with Loris, J., concurring, held that only where the rights of an individual are directly affected, as in that case, where, allegedly, the illegal structure was erected upon his land, a right to prosecute accrues and that in every other case the body entrusted by law for its enforcement is the appropriate authority.

Though this was a criminal case and there is always a differentiation between a legitimate interest and a right to prosecution, nevertheless it is of some guidance as to the trend of judicial opinion in this country about the right of the neighbour where there is any infringement or violation of the Streets & Buildings Regulation Law or delegated legislation made thereunder.

Ownership of neighbouring immovable per se does not create a legitimate interest. The owner simply by his such ownership has no legitimate interest to attack a permit for erection of a building contrary to the existing statutory provisions where his ownership is not injured. He is only entitled to attack by recourse such permit if his rights in respect of the neighbouring immovable are adversely and directly affected.

In view of the above and having regard to the grounds of law on which the recourse for the annulment of the building permit is based, the applicant has no legitimate interest to attack the validity of the sub judice building permit on the ground of the alleged violation of Regulation 5 of the Streets & Buildings Regulations or that it is contrary to and in excess of the purposes set out in the order of requisition and the provisions of the Constitution and the Requisition of Ownership Law, 1962 (Law No. 21 of 1962) relating to requisitions.

In the statement of facts—paragraphs 7, 8 and 9—

there are certain allegations about adverse affectation of the applicant's property by the erection of the building authorised by the sub judice building permit. These allegations combined with legal ground 1(b) relating to other infringements of the Streets & Buildings Regulation Law and the Regulations made thereunder, on the face of them create a legitimate interest for the applicant. This Court has jurisdiction to consider the validity of the subject building permit on the aforesaid ground only.

POINT (C) IS THE RECOURSE OUT OF TIME?

Paragraph 3 of Article 146 of the Constitution provides that a recourse shall be made within 75 days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse.

This is a provision in the public interest, mandatory in nature, that has to be strictly applied in all cases.

The acts complained of were neither published nor was it necessary for them to be published. In order to find as from when the period of 75 days began to run, it is necessary to ascertain when such acts came to the knowledge of the applicant.

There is a long line of authorities in Cyprus and in other jurisdictions governing the interpretation of the word "knowledge" in a context such as paragraph 3 of Article 146.

In *John Moran* v. *The Republic*, 1 R.S.C.C. 10, at p. 13, the Supreme Constitutional Court expressed the opinion that " 'knowldege' means knowledge of the decision, act or omission giving rise to the right of recourse under Article 146 of the Constitution and not knowledge of evidential matters necessary to substantiate before this Court an allegation of unconstitutionality, illegality or an excess or abuse of power".

In *Kyriacopoulos—Greek Administrative Law*— Fourth Edition, Volume 3, p. 131, we read:-

"The time-limit in case of an act for which no publi-

cation or notice is necessary starts running from the knowledge of the act by the applicant. The knowledge of the act must be complete and must appear mainly from the material in the file of the case, provided that it can be inferred safely by the nature and circumstances in the particular case".

"Complete" is the knowledge that allows the person interested to ascertain with certainty and precision the material and moral damage that he suffers from the published or communicated act. The communication must be complete, because if the interested person does not become aware of the whole of the contents of the act, he cannot judge and decide about the exercise or not of the recourse. Communication, therefore, of only the operative part without the reasoning for the act is not complete and the time does not run. Complete knowledge may be inferred from a statement or action of the interested person, especially from the submission of an application for remedy, containing the defects of the impeached act or omission.

The onus of proof that an applicant came to the knowledge of the act or omission impeached rests on the party who alleges that the recourse is out of time. In case of doubt the Court has to lean in favour of the applicant-citizen.

(*Neophytou* v. *The Republic, through the Public Service Commission*, 1964 C.L.R. 280; *Anastasis Cariolou* v. *Municipality of Kyrenia and Others*, (1971) 3 C.L.R. 455; *Irrigation Division "Katzilos"* v. *The Republic*, (1983) 3 C.L.R. 1068).

The letter of 25.10.82, rejecting the request of the applicant for allotment to him of Plot 609, is an unsurmountable obstacle to allow the applicant to contend that the time with regard to Reliefs (2) and (3) started running in 1983 or at any time after October, 1982. The letter is presumed to have been delivered to the applicant in the ordinary course of post—(See s. 2 of the Interpretation Law, Cap. 1). The applicant admitted in his testimony before this Court that he received this letter. From his evidence it emerges that he received this letter shortly after 25.10.82.

Therefore, the right of the applicant, if he had any, to challenge by recourse the allotment of Plot 609 to the interested party and the non-allotment of same to him, is barred by the lapse of time.

The application for the sub judice building permit was submitted on 29.11.82 and the building permit issued is dated 30.12.82.

Andreas Kareklas, the interested party, Nicos Hji-Panayiotou, a salesman in his employment, and Savvas Savva, a tractor driver, were called as witnesses by respondent No. 1. The applicant was the sole witness for his case on the issue of "the knowledge" of the building permit.

The evidence of these witnesses stripped from all irrelevant matter in brief is as follows:-

Kareklas was anxious to have the building permit issued as soon as possible. He was ringing up the Municipal Engineer. On 30.12.82 he was informed on the phone that the building permit had been approved. Accompanied by Hji-Panayiotou he went to the offices of the Municipality where, after a short meeting with the Municipal Engineer, he went to the cashier's office and paid the prescribed fees; the permit was signed by the Municipal Engineer, handed to him and together with Hji-Panayiotou they returned to his shop. Kareklas stated further that on that same day—30th December, 1982—before even going to his shop, he went to the applicant to inform him about the building permit. He crossed Plot 609; he called for the applicant; he informed him that he had obtained a building permit and shortly he would start building. After the angry reaction of the applicant he sent Hji-Panayiotou, who was always with him, to fetch a tractor driver who would do certain work for the removal of soil as a preparatory work for the building operations. Hji-Panayiotou returned with a certain Savva (A.W. 3).

Savva observed that the funnel of the kebab apparatus, which was partly on the blind alley, was obstructing the way of the tractor to Plot 609 and that it should be removed. The applicant strongly objected and there and then Kareklas showed to the applicant the building permit and

the plans in respect of which it was issued and he expained everything about the building, the space that would be left and the actual line of the building to be erected on the spot.

Hji-Panayiotou repeated, with some variations, the story of the interested party about the obtaining of the permit from the Municipality. He stated further that when they returned to the shop of Kareklas, Kareklas unrolled the plans, he examined them and he suggested to go and see whether the applicant would remove his things which were in the blind alley on the way to Plot 609. Kareklas said to the applicant: "I intend to build here and these railings are obstructing". The applicant retorted that he would resort to the Constitutional Court. Kareklas said: "I have a building permit and I shall build," and he opened the plans there and then and he showed to the applicant where he would build. He said: "Here are the plans", and he showed actual points of the plan and on the spot for the proposed building whereupon the applicant retorted: "This paper I shall tear up and I am not afraid of such building permits". These were done before the arrival of Savva.

Savva, a refugee tractor driver, stated that early in January—he could not specify how many days after New Year's Day—he was called by Hji-Panayiotou. He went on the spot. The applicant and the interested party were there but at no time did the interested party show any documents or anything to the applicant.

The applicant pretended complete ignorance of the fact of the issue of such a building permit. At some stage in his long evidence he said that in February he heard from a customer of his that his neighbour, meaning the interested party, was about to build and thereupon he went to the District Officer. He stated that in March, 1983, when he and Kareklas were before the District Committee, Kareklas was holding plans which he unrolled there and then. In cross-examination, in a moment of instinctive frankness, he admitted that he knew of the issue of the building permit in question in the first week of January, 1983.

On 12.1.83 he addressed a letter to the District Officer

(Blue 55 in exhibit No. 4), requesting a personal interview —if possible, on the following day, 13.1.83—for an urgent personal case. He gave three different conflicting and unconvincing explanations for the writing of this letter.

The interested party and the applicant moulded their evidence to suit each one's case respectively. I watched very carefully the demeanour of all the witnesses. Having regard to their demeanour in the witness-box, the contents of their evidence, the contradictions and discrepancies, I accept that sometime early in January and at any rate before 12.1.83 the interested party brought to the knowledge of the applicant that a building permit was issued by the Municipality for erection on Plot 609. I reject, however, that the interested party Kareklas showed to the applicant either the plans or the extent or the nature of the buildings or the building permit itself. What was brought to the knowledge of the applicant was only that a building permit was issued. Nothing more, nothing less.

With regard to the letter of 12.1.83, the applicant gave different, conflicting, unsatisfactory and unconvincing explanations. Nevertheless, neither the contents nor the sending nor the timing of this letter are sufficient for a Court of Law to conclude that the applicant at the time had the knowledge required by the Constitution for the time to start running against him.

Respondent No. 1 did not discharge the burden cast on him that the applicant had knowledge—complete knowledge —to enable him to file his recourse earlier. Therefore, the recourse with regard to the building permit is not out of time.

In view of all the aforesaid Reliefs No. 2 and 3 are hereby dismissed. The Court will proceed with Relief No. 1 on the sole ground stated in this judgment when dealing with legitimate interest.

No order as to costs.

Order accordingly.