

1987 February 27

(TRIANAFYLLIDES, P., MALACHTOS, SAVVIDES, LORIS, PIKIS, JJ.)

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR,

Appellant,

v.

LOULLA VASSIADOU,

Respondent.

(Revisional Jurisdiction Appeal No. 602).

Revisional Jurisdiction Appeal — Leave to withdraw — Discretion of Court — In the circumstances of this case the leave applied for was granted.

Constitutional Law — Right to property — Constitution, Art. 23(8)(c) — Order of requisition resulting in prolongation of the the total period of consecutive requisitions of the same property for longer than three years — Whether unconstitutional.

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Respondent's property was requisitioned for a period of one year (1.1.85 - 31.1.86), but the relevant order was found by the Judge, who tried respondent's recourse, to be unconstitutional, as being inconsistent with Art. 23.8(c) of the Constitution, in that it resulted in prolonging the total period of consecutive requisitions of the property in question for longer than the period of three years referred to in the said Article.

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The respondent in the recourse appealed. The appeal was heard and judgment was reserved.

After the judgment was reserved and after a date for its delivery was fixed, counsel for the appellant applied for leave to withdraw the appeal.

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Held, granting leave to withdraw the appeal, Pikis, J. dissenting*: (A) Per Triantafyllides, P., Malachtos, J. concurring: The correct course is to grant leave to withdraw the appeal.

(B) Per Savvides J.: Bearing in mind the circumstances of the present case, the fact that the respondent did not oppose the application and also the fact

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* Pikis, J. having refused leave to withdraw the appeal, delivered a judgment on the merits, dismissing the appeal Triantafyllides, P., with whom Malachtos, J. concurred, and Loris, J. expressed their approval of the judgment relating to the unconstitutionality of the sub judice Order of Requisition

that the withdrawal of the present appeal will not act in any way detrimental to the interests of the respondent as the judgment of the trial Court after the withdrawal of the appeal is to her benefit and her claim is fully satisfied by such judgment, leave should be granted to the appellant to withdraw the appeal.

5 (C) Per Loris, J.: Undoubtedly this Court has a discretion with a view to allowing or refusing the present application for the withdrawal of this appeal. The Deputy Attorney-General rightly applied for the withdrawal of the appeal. In the circumstances the leave applied for should be granted.

10 *Leave to withdraw the appeal granted.
£50 costs against the appellant.*

Cases referred to:

The President of the Republic v. Louca (1984) 3 C.L.R. 241;

Payiatis v. The Republic (1984) 3 C.L.R. 1239;

Branco Salvage Ltd. v. Attorney-General (1967) 3 C.L.R. 213.

Application.

15 Application for leave to withdraw an appeal from a judgment of a Judge of the Supreme Court of Cyprus (Kourris, J.) given on the 6th June, 1986 (Revisional Jurisdiction Case No. 456/85)* whereby appellant's decision to requisition respondent's immovable property for a period of one year was annulled.

20 *L. Loucaides, Deputy Attorney-General of the Republic, for the appellant.*

No appearance for the respondent.

Cur. adv. vult.

The following decisions were read:

25 *TRIANTAFYLLIDES P.:* Counsel for the appellant has applied for leave to withdraw this appeal and has already informed the Court, in writing, that there will be compliance with the first instance judgment, against which this appeal has been made, by returning to the respondent the property which is the subject-matter of these proceedings.

30 The said property was requisitioned from 1 February 1985 till 31 January 1986 by means of an order published (see No. 131) in the Official Gazette on 1 February 1985, but such order was found

* Reported in (1986) 3 C.L.R. 955.

by the learned trial Judge to be unconstitutional as being contrary to Article 23.8(c) of the Constitution, in that it resulted in prolonging the total period of consecutive requisitions of the property in question for longer than the period of three years which is envisaged as the maximum period of requisition by the said Article 23. 8(c). 5

I think that the appellant was well advised to apply for leave to withdraw this appeal because, having considered this case with a view to giving the judgment which was reserved, I am of the view that the interpretation and application to this case of Article 23.8(c) of the Constitution were correctly decided by the trial Judge. 10

I am of the opinion that the correct course is to grant leave to the appellant to withdraw the present appeal and, in this respect, I regard the cases of *The President of the Republic v. Louca*, (1984) 3 C.L.R. 241, and *Payiatis v. The Republic*, (1984) 3 C.L.R. 1239, as being, in any event, clearly distinguishable. 15

I, also, think that there should be made an order of costs against the appellant which should be for the sum of £50 towards the costs of the respondent.

MALACHTOS, J.: I agree with the judgment just delivered by the President of this Court and I have nothing to add. 20

SAVVIDES J.: The issue posing for consideration before us at this stage of the present appeal is whether leave should be granted to the appellant to withdraw the appeal.

The appeal is directed against the judgment of a Judge of this Court in the exercise of the original jurisdiction of the Court whereby he accepted the recourse of the respondent, applicant in Case No. 456/85 before the trial Court and annulled the decision of the appellant published in Supplement No. 3, Part II, of the official Gazette of the Republic of 1st February, 1985, under Notification 131, whereby certain immovable property of the respondent was requisitioned for a period of one year. 25 30

The learned trial Judge decided that the order of requisition was invalid because, in the circumstances and bearing in mind the fact that the property of the respondent was continuously and uninterrupted subject to requisition orders renewed annually as from 10th March, 1972, till 1st February, 1985, which involved the requisition of the property for a period exceeding three years, was unconstitutional. As a result the appellant, respondent before the 35

trial Court, filed the present appeal challenging the above decision.

5 The appeal was fully argued and its hearing was concluded on the 18th December, 1986, when judgment was reserved. The members of the Full Bench sitting in the appeal had conferred as to the fate of the appeal and the appeal was fixed for delivery of the reserved judgment on the 27th February, 1987.

10 Before the date fixed for the delivery of the judgment and in fact on 30th January, 1987, the Deputy Attorney-General who was handling this appeal on behalf of the appellant, applied in writing, with notice to counsel for the respondent, for leave to withdraw the appeal. Such application was fixed for hearing on the 27th February, 1987, the date on which the reserved judgment was to be delivered. Counsel for the respondent did not oppose the
15 application, rightly so in my view, as by the withdrawal of the appeal the first instance judgment of the trial Court would remain final as unchallenged.

20 The question touching the power of this Court to allow the withdrawal of a Revisional Appeal has not been raised in this appeal as counsel for the appellant made his application on the assumption that such leave was necessary.

The question of leave for the withdrawal of a Revisional Appeal was considered by the Full Bench in the cases of *The President of the Republic v. Louca and Others* (1984) 3 C.L.R. 249 and *Payiatis v. The Republic* (1984) 3 C.L.R. 1239. *Louca* case is
25 distinguishable from the present one. In that case in the course of the hearing of the appeals and the cross-appeals and before the hearing was concluded counsel for the appellants and cross-appellants informed the Court of their intention to abandon the appeals and the cross-appeals in view of an overall settlement reached. Furthermore the two applicants, respondents in the
30 appeals, stated in Court that they did not wish to pursue their recourse any further and asked for leave to withdraw same. As a result a question arose as to whether leave from the Court was required for the withdrawal of the appeals, the cross-appeals and the recourses. The majority of the Court (Pikis, J. dissenting) held
35 that the respondents were entitled to withdraw their recourses and the appellants and cross-appellants to withdraw their appeals and cross-appeals as in view of the overall settlement of the claim of the applicants and the acceptance of same by them, they had been
40 deprived of a legitimate interest to pursue their recourses.

Payiatas case (supra) on the other hand, has no relation at all with the present case as in that case the appellant insisted to have his appeal decided notwithstanding the revocation of the administrative decision in the meantime, prior to the pronouncement of the judgment, as he wanted his legal rights arising out of the termination of his interdiction preserved.

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Bearing in mind the circumstances of the present case, the fact that the respondent did not oppose the application and also the fact that the withdrawal of the present appeal will not act in any way detrimental to the interests of the respondent, as the judgment of the trial Court after the withdrawal of the appeal is to her benefit and her claim is fully satisfied by such judgment, I find that leave should be granted to the appellant to withdraw the appeal. In view of such course I consider it unnecessary to go into the merits of the case and express any opinion on the matter. I agree that the sum of £50. - costs should be awarded in favour of the respondent.

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LORIS J: Undoubtedly we have a discretion with a view to allowing or refusing the application for the withdrawal of the present appeal.

I had the opportunity to consider at an earlier stage, after the judgment in the present appeal was reserved, with the learned president and the learned Members of this Court, the merits of the present appeal, and I must say that I agree with the construction placed by the learned Trial Judge on Article 23.8(c) of the Constitution; in the circumstances I hold the view that the learned Deputy Attorney-General rightly applied for the withdrawal of the present appeal and I consider that this is a proper instance to exercise our discretion in favour of the applicant-appellant; I would therefore allow the appellant to withdraw present appeal.

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Once the cases of *The Republic v. Louca and others* (1984) 3 C.L.R. 241 and *Payiatas v. The Republic* (1984) 3 C.L.R. 1239 have been referred to us in dealing with the present application, I wish to make it clear that I consider those cases distinguishable and I would even go further and say that *Payiatas'* case (Supra) is absolutely unconnected with the issue raised in the present application for leave to withdraw the present appeal; *Payiatas* was the appellant in the aforesaid case and insisted on appeal, through counsel, to have a judicial pronouncement on his appeal notwithstanding the revocation of the administrative decision in

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the meantime prior to the pronouncement of the judgment in that appeal.

In the result I would allow the application for leave to withdraw present appeal and I am in agreement with the amount of costs referred to by the learned President of this Court i.e. £50. - to be adjudged in favour of the respondents.

PIKIS. : For my part I am unable to uphold the application made on behalf of the appellants for leave to withdraw the appeal. The appeal raises a question of great constitutional importance affecting the interpretation and application of article 23.8(c) of the Constitution which provides that property may be requisitioned «for a period not exceeding three years». The property of the respondent (applicant before the trial Court) was continuously and uninterruptedly requisitioned between 10/3/72 and 1/2/85 by successive yearly orders renewing requisition of the property. The legality of the last order was challenged and Kourris, J., decided that the order was invalid because it involved the requisition of the property for a period exceeding three years and as such was unconstitutional. In the judgment of the trial Court the aim of the constitutional legislator to limit requisition of the property for a maximum period of three years, would be defeated if by a process of prolongation requisition was allowed to run beyond three years. Allowing the prolongation of requisition orders for longer than three years would, according to the learned trial Judge, provide an avenue for frustrating the explicit intention of the constitutional legislator to disallow deprivation of property except through acquisition and subject to the safeguards associated with such measure.

Mr. Loucaides disputed on appeal the interpretation placed by the trial Court on the provisions of article 23.8(c) and argued that the object is to prohibit the requisition of property at any one time for a period longer than three years and that there is no constraint as such upon amenity to prolong in a proper case the period of requisition for more than three years. Mr. Loucaides, in seeking leave to withdraw the appeal, informed us that while he came to agree that in the circumstances of this case the prolongation of the requisition order contravened the provisions of article 23.8(c), he could not accept that requisition of property for longer than three years is, under any circumstances, unconstitutional for breach of the provisions of article 23.8(c). And he submitted no useful purpose would be served by allowing the appeal to continue to a

conclusive end. But he was not prepared to make any binding statement on behalf of the Republic that article 23.8(c) of the Constitution prohibited the requisition of property, under any circumstances, for a period exceeding three years.

The hearing of the appeal was concluded on 18/12/86, 5
following which we held a conference, reached our decision and
appointed the 27th February, 1987, as the date for the delivery of
judgment. An appeal cannot be withdrawn as of right, a fact
acknowledged by Mr. Loucaides. Indeed, this is, as I perceive it, 10
the view of all Members of the Court. The withdrawal of an appeal
by the appellant is governed by the provisions of Ord. 35. r. 29(3)
of the Civil Procedure Rules, made applicable to appeals taken
under s. 11(2) of the Administration of Justice (Miscellaneous
Provisions) Law* by the Supreme Court (Revisional Jurisdiction
Appeal) Rules 1964**. 15

The discretion of the Court must no doubt be exercised
judicially by reference to the facts of the case and with a view to
promoting the ends of justice. Unlike civil proceedings, interest in
the outcome of proceedings of judicial review of administrative 20
action, is not confined to the parties immediately connected with
litigation or anyone of them in particular. Judicial review of
administrative action is primarily concerned with sustenance of
legality in the domain of public law.

In civil litigation the judicial process is the forum for the
resolution of legal disputes. The elicitation of the law is primarily 25
intended to establish the basis for the solution of the dispute.
Judicial review of administrative action on the other hand,
provides the forum for the scrutiny of legality in the domain of
public law. Therefore, the elicitation and declaration of the law are
not merely intended to establish the basis for the solution of any 30
dispute between parties to the proceedings but further aim to
establish the framework within which the Administration must
operate. As I can judicially notice from numerous orders in the
official gazette, requisition orders are often prolonged for periods
exceeding three years. Consequently, it is of the greatest 35
importance that the law in this area be authoritatively declared
from the highest judicial Authority, the Full Bench of the Supreme
Court. The importance of providing an authentic interpretation of

* Law 33/64.

** See, *Branco Salvage Ltd. v. Attorney-General* (1967) 3 C.L.R. 213.

constitutional provisions affecting fundamental rights, cannot be overstated. It is a legitimate consideration to be taken into account in exercising my discretion to grant or withhold leave. It is in the interest of administrative justice that the judicial process should in
5 this case be allowed to run its course.

In arriving at this conclusion I am reinforced by the decision of the Full Bench in *Payiatis v. Republic** where the Full Bench refused leave to withdraw an appeal notwithstanding the revocation of the impugned administrative act. The only occasion
10 when the discretion of the Court is sapped, according to the majority decision in *Republic v. Louca and Others***, is when the applicant abandons his recourse for review of the action complained of; removing thereby the substratum of judicial proceedings.

15 Having refused leave I must proceed to pass judgment on the issues raised in this appeal. I confine my judgment to pronouncing on the constitutionality of the prolongation of the order of requisition by reference to the provisions of article 23.8(c) of the Constitution. In plain language it is laid down in the
20 Constitution that no property can be requisitioned for longer than three years. Faced with such clear and unambiguous language, it would be wholly unprofitable to attempt by any process of interpretation to extract its meaning. Article 23.8(c) prohibits the requisition of property for any given purpose and under whatever
25 guise for longer than three years. If the Acquiring Authority has need of the property for a longer period, they must resort to compulsory acquisition. As the learned trial Judge rightly observed, with respect, prolongation of the period of requisition beyond three years would inevitably lead to the improvisation of
30 a substitute for compulsory acquisition in defiance to the provisions of article 23 of the Constitution viewed as a whole. I would, therefore, dismiss the appeal.

This being my decision, I find it unnecessary to debate any other aspect of the appeal except note that the remaining grounds upon
35 which the sub judice decision was annulled do not prompt my immediate concurrence.

*Leave to withdraw appeal
granted with £50. = costs against
appellant.*

* (1984) 3 C.L.R. 1239

** (1984) 3 C.L.R. 241.