US-China Law Review, May 2023, Vol. 20, No. 5, 197-207
doi:10.17265/1548-6605/2023.05.001

Comparative Study of Constitutional Law

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The Greek Constitution of 1822 was a constitution adopted by the First National Assembly of Epidaurus on January 1, 1822. The economic analysis of the constitutional law of property and expropriation analyzes the way in which the amount of compensation can internalize or not the respective external cost or benefit in order to make an optimal distribution of resources with socio-economic criteria. Especially in the current Constitution of the Republic of Cyprus we have the vesting of property and the establishment of forced expropriation. The provision of Article 23 of the Constitution of Cyprus protects property in all its modern forms. The concept of ownership includes all property rights, both real and debt, i.e. all economically valued rights.

Keywords: property, expropriation, constitution, comparative law, compensation

Introduction

The Greek Constitution of 1822 was a constitution adopted by the First National Assembly of Epidaurus on January 1, 1822. It was officially called the Provisional Government of Greece. It was an attempt to achieve a temporary governmental and military organization until the establishment of an independent state. In Paragraph g of Section B it states: “The property, honor and safety of every Greek are under the protection of the Laws” (Greek Constitution Law). The Greek Constitution of 1827 was signed and ratified in June 1827 by the Third National Assembly during the last stages of the Revolution and was the first step towards the creation of a central administration. In Paragraph 12 of Chapter C it describes: “The life, honor and property of everyone, within the territory where he is found, is under the protection of the laws” (Greek Constitution Law).

The 5th National Assembly began its work in Argos in December 1831 (less often called the 1831 Argos National Assembly) and continued in Nafplio until March 1832, three years after the 4th Argos National Assembly (and more commonly called the 5th Nafplion National Assembly). The *Political Constitution of Greece* of 1832 was voted in the National Assembly. In Par. 4.28 *Common Rights and Debts of the Greeks*, it is stated that: “All Greeks have the right to acquire part of the material and moral goods, namely estates and money and education and to enjoy with security the fruits of pains of...” (Greek Constitution Law). The first constitution of the Kingdom of Greece was the Hellenic Constitution of 1844. On September 3, 1843, the military garrison of Athens, with the help of the citizens, revolted and demanded from King Otto the granting of a Constitution. The Constitution proclaimed in March 1844 came from the proceedings of the *National Assembly of the Third of September of the Greeks in Athens* and was a Constitutional Pact, i.e. a contract between the monarch and the Nation. This Constitution restored the Constitutional Monarchy and was based on the French Constitution of 1830 and the Belgian Constitution of 1831. In No. 12 it states characteristically: “No one is deprived of his

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property due to public necessity, duly proven, when and as the law orders, but always with previous compensation" (Chrysanthis, 2020, p. 120).

After the overthrow of Otto, the 1864 Constitution was passed in Athens, which introduced the institution of the reigning democracy. The Article 17 repeats the text of Art. 12 of the Constitution of 1844: "No one is deprived of his property due to public necessity, duly proven, when and as the law dictates, but always with prior compensation" (Chrysanthis, 2020, p. 120).

The Greek Constitution of 1911 was an important step forward for the constitutional history of Greece. After the rise of Eleftherios Venizelos to power after the revolution in Goudi in 1909, Venizelos dedicated himself to the effort to reform the state. The main result was a major revision of the Greek Constitution of 1864. In No. 17 it states:

> No one is deprived of his property, if it is for a public benefit that is proven, whenever and as the law dictates, and always with previous compensation. Compensation is always determined through the judicial process. In case of urgency, it may also be temporarily determined judicially, with a hearing, the invitation of the beneficiary, who may be obliged, at the discretion of the judge, to provide a similar guarantee, in the manner prescribed by law. Prior to the payment of the definitive or provisionally determined compensation, the rights of the owner are always kept intact, no occupation being allowed. Special laws regulate the ownership and disposal of mines, mines, archaeological treasures and thermal and flowing waters. (Theocharis, 2020, p. 100)

In 1926, the *Constitution of the Thirty-Member Committee* was drawn up, which did not apply after a new one was drawn up by a revising parliament that voted for the *Constitution of the Hellenic Republic* of 1927, which transformed the state into a despotic parliamentary democracy. The Constitution of 1927 mentions in Article 19:

> 'No one is deprived of his property, as long as it is of public benefit and proven, whenever and as the law dictates, and always with prior compensation. Compensation is always determined by the ordinary courts. In case of urgency, it may also be temporarily determined judicially, with a hearing, the invitation of the beneficiary, who may be obliged, at the discretion of the judge, to provide a similar guarantee, in the manner prescribed by law. Prior to the payment of the definitive or provisionally determined compensation, the rights of the owner are always kept intact, no occupation being allowed. Special laws regulate the ownership and disposal of mines, mines, archaeological treasures and thermal and flowing waters. Special laws will likewise regulate the requisitions for the needs of the army of land and sea in case of war or recruitment, or for the treatment of immediate social need, capable of endangering public order or health. (Fortsakis & Savvaidou, 2013, p. 130)

The Constitution of 1952 basically adopted provisions of the Constitutions of 1911 and 1927. In Article 17 it mentions:

> No one is deprived of his property, as long as it is of public benefit and proven, whenever and as the law dictates, and always with prior compensation. Compensation is always determined by the ordinary courts. In case of urgency, it may also be temporarily determined judicially, with a hearing, the invitation of the beneficiary, who may be obliged, at the discretion of the judge, to provide a similar guarantee, in the manner prescribed by law. Prior to the payment of the definitive or provisionally determined compensation, the rights of the owner are always kept intact, no occupation being allowed. Special laws regulate the ownership and disposal of mines, mines, archaeological treasures and thermal and flowing waters. Also by law, the ownership and fish farming and management of lagoons and large lakes are regulated. Special laws will likewise regulate the requisitions for the needs of the army of land and sea in case of war or recruitment, or for the treatment of immediate social need, capable of endangering public order or health. Successive revisions of the present 1952 constitution lead to the current constitution. (Grigoropoulou, 2002, p. 50)

The constitution of the Crete Island State of 1907 is similar to that of Greece in 1911 and mentions features in Art. 17 the following:

> No one is deprived of his property due to a duly proven public need, when and as the law dictates, but always prior to compensation, which in case of disagreement, is arranged by the decision of the ordinary courts. Special laws regulate the ownership and disposition of mines, mines, archaeological treasures and sacred springs. No de facto right on the adjacent islands can be acquired without the permission of the Government, but the State has the right of preference in the transfer of such rights. (Grigoropoulou & Steinhauer, 2004, p. 45)

The Cypriot Constitution

The economic analysis of the constitutional law of property and expropriation analyzes the way in which the amount of compensation can internalize or not the respective external cost or benefit in order to make an optimal distribution of resources with socio-economic criteria. Especially in the current Constitution of the Republic of Cyprus we have the vesting of property and the establishment of forced expropriation. Content of the constitutional right to property is the authoritative relationship between a subject (the bearer of the individual right to property) and a good with economic value. The right to property is guaranteed by Article 17 of the Universal Declaration of Human Rights, by Article 1 of the First Additional Protocol to the European Convention on Human Rights, and by Article 17 of the Charter of Fundamental Rights of the European Union (Spiliopoulos, 2021, p. 28).

The Article 23 of the Constitution, which guarantees the right to property in the Cypriot legal order, includes a fairly detailed law and detailed network of provisions that determine the regulation and protection of property as a set of legal relationships that can be valued monetarily. The provision of Article 23 of the Constitution protects property in all its modern forms. The concept of ownership includes all property rights, both real and debt, i.e. all economically valued rights. The said article guarantees the right of anyone to acquire, own, possess, enjoy, or dispose (in life or cause of death) of any property, whether movable or immovable. In fact, this right is a special aspect of the individual's economic freedom (Michaelidis, 2006).

However, Article 23.1 expressly preserves the right of the Republic in relation to underground water, mines, and antiquities. The second paragraph of Article 23 clarifies that no deprivation and no limitation can be imposed on the right to property except as provided and in the manner provided for in the specific article. The constitutional right to property establishes, in principle, a claim against the public authority, establishing a corresponding obligation not to interfere in the property relationship, unless and to the extent permitted by the Constitution.

The bearer of the right protected by Article 23.1 of the Constitution can be any subject who can constitute an ownership relationship in his favor. Thus, this right applies to any person, natural or legal (e.g. company, cooperative, association, institution), regardless of whether they are a Cypriot citizen or a foreigner, whether they have residence in Cyprus or abroad, regardless of religion, race, sex, national or social origin, language, political or other beliefs, wealth, social class, or any other reason. The right to equal treatment and prohibition of discrimination is enshrined anyway in Article 28 of the Constitution (Barbas, 2014).

The institutional guarantee of property has an objective effect since it means that private property as an institution is constitutionally guaranteed. This guarantee is directed specifically at the legislator and obliges him to establish a core of legal rules that make possible the existence, functionality, and private utility of property, in itself and in relation to other constitutional provisions. The institutional guarantee means that private property cannot be wholly or mainly converted into public property, except in the case of forced expropriation which is allowed only in specific cases under the substantive and procedural conditions provided for in Article 23 of the Constitution and the laws consistent with it (Michaelidis, 2006).

It is argued that the Constitution does not protect the property of the state since it does not mean protection of the state against itself. However, in the case of legal entities under public law, we must distinguish between their public and private property, the latter is protected but not the former.

The claim of protection underlying the constitutional right to property as protected by Article 23 is directed against the public legislative, judicial, and executive power. Contrary to what is accepted with respect to other fundamental rights and freedoms, it seems that the opinion that the right in question is third-party is not accepted, i.e. it cannot protect against every individual. The protection of property against insults originating from other private individuals is provided by civil and criminal law, while Article 23 of the Constitution emanates a constitutional obligation of the legislator to provide for such protection (Barbas, 2014).

The right to property is also protected by Article 1 of the First Additional Protocol to the European Convention on Human Rights. The jurisprudence of the ECtHR regarding the interpretation of Article 1 of the First Additional Protocol is, naturally, a continuously renewable source for the renewal and interpretation of Article 23 of the Cypriot Constitution (Finokaliotis, 2014).

For reasons related both to the protection of property in accordance with the Convention, and to the legal force that the Convention has in the Cypriot legal order, the framework for the protection of property in accordance with the Convention, as determined by the ECtHR, is legally binding. So this context must be taken seriously when the Cypriot legislature imposes restrictions on property and the Cypriot judge is asked to review their constitutionality.

The right enshrined in Article 1 of the First Additional Protocol is the right to the peaceful enjoyment of property, i.e. the right of every person, natural or legal, to have, use, dispose of, pledge, lend, and even destroy his property. The enjoyment of the right to property is protected mainly from interventions by the state, although in some cases the protection can be extended to impose the positive obligation of the state to protect the owner of the property from interventions by private third parties.

The concept of property based on ECtHR jurisprudence is very broad and the ECtHR, admittedly, proceeds with an impressively, one could argue, expansive interpretation of the concept of property. According to the relevant ECtHR jurisprudence, the concept of property, protected by the said article, includes both movable and immovable property. It has been legislated that the concept of possession includes, for example, the following: planning permission, economic interests deriving from the license to sell alcoholic beverages, shares, intellectual property rights (including patent rights), and hunting rights on specific land, contractual rights including rents and rights arising from court decisions.

Thus, in the concept of property, ECtHR jurisprudence includes not only real rights but also all property rights and acquired “economic interests”. Tort property rights are covered and in particular either claims recognized by court or arbitration decision or simply born under national law, as long as there is a legitimate expectation, based on the law in force until the appeal to the court, that they can be satisfied judicially.

With expropriation, the person is deprived of the rights deriving from his constitutionally protected property, while he is compensated for the economic value, with the payment of “just and reasonable” compensation which must fully correspond to the property rights he is deprived of. This deprivation is essentially removal of the property from the individual and its transfer to the Expropriating Authority which now acquires ownership. Rather, property restrictions consist in the loss of some but not all of the rights arising from the bundle of property rights, and compensation correspond to the loss of the economic value of the property rights in question removed or restricted (Michaelidis, 2006).

In practice, the distinction between “deprivation” and “restriction” of property is not always easy as it can often cause significant difficulties. However, it is important to emphasize that although the restrictions are constitutionally permissible, they cannot, however, shrink the right to property to the point of exhaustion. In other words, the restrictions cannot weaken the right or empty it of the individual benefits to such an extent that it remains a right in name only. Restrictive terms of the use of property, which leave the intact core of the right to property, constitute a restriction and not a deprivation. On the other hand, restrictions on the use of property result in deprivation only when they render the property inactive.

The jurisprudence of the Supreme Court therefore accepts that the constitutional protection of property does not preclude the imposition by law of restrictions on the set of rights deriving from the right to property, as long as these restrictions are absolutely necessary for the protection of the public interest and do not make property inactive.

Whether the imposed restrictions on property result in the deprivation of the owner, within the meaning of the constitutional provision, depends on the particular facts of each case. The restriction on the use of land, which stems from the Town Planning legislation, does not in principle constitute a deprivation of property. However, if in a specific case the limitation takes the extent of nullifying the right, then it must be considered a deprivation, which can only be legally achieved with the substantive and procedural conditions and against the payment of compensation according to the mechanism of forced expropriation.

With regard to the type and extent of the restriction, it has been jurisprudentially established that the Court does not intervene in the evaluation and assessment of the administration, unless it is convinced that the latter acted in violation of the law or in abuse or in excess of authority. The Court also does not control technical issues that were taken into account by the administration in issuing the decision, because it is the best knower and judge of the technical issues involved in it (Michaelidis, 2006).

With Article 23.1 the Constituent Legislator defined the protected right and then with Article 23.2 it determined that “deprivation or limitation of any such right cannot be imposed, except as provided for in this article” (Michaelidis, 2006). Subsequently, with Paragraph 3, he provided for the case of limitation, but not of the injunction.

According to Article 23.3 of the Constitution, in order to set conditions, commitments, or limitations on the exercise of the right to property, these should be set by a law passed by the House of Representatives and should be absolutely necessary in the interest of public security or of public health or public morals or town planning or the development and use of any property for purposes of public benefit or to protect the rights of third parties.

The regulation of Article 1 of the First Additional Protocol to the Convention is certainly an integral part of the Cypriot legal order and is, in the context of Article 169.3 of the Constitution, binding on the Cypriot legislator. Thus, depriving a natural or legal person of their property rights is only permitted on the basis of law and if there are reasons of public interest, which, according to the principle of proportionality and fair balance, have priority over the private interest of the beneficiary.

The Article 23.4 of the Constitution provides the mechanism to legally achieve permanent deprivation of property. It provides that any movable or immovable property or right or interest in such property may be compulsorily expropriated.

Forced expropriation is the deprivation of property by a unilateral act of the Expropriating Authority, for the purpose of public benefit determined by the relevant law and justified by a reasoned decision of the Expropriating Authority and in return for fair and reasonable compensation which, in the event of a dispute, is

determined by the civil court and which is paid in cash and in advance. The power to expropriate immovable property to fulfill purposes of public utility is an aspect of the executive power and is exercised through the issuance of decrees.

The decision to expropriate must be justified and the reasons for it must be specified in the Notification of Expropriation. Of course, according to the well-established principles of administrative law, certain aspects of the reasoning can be replaced by the elements of the file, if the reasoning clearly emerges from the file.

The act by which the administration proceeds with the forced expropriation of private property is an act of discretion, but, in terms of its object, which consists in the complete removal of an individual right, it must appear as thoroughly justified, in order to provide the possibility to judge, in case of questioning its legality, to exercise its control within the limits of his jurisdiction. It is, according to the court, a thoroughly justified act of forced expropriation, as long as the administrative authority that issued it has established with reasons: (a) That there is a need for the Administration to acquire space to satisfy public benefit. (b) That the site chosen is in principle capable of meeting the identified need. (c) That the venue selected is the most suitable of the many venues offered. (d) That the space chosen is, in terms of its extent, the required one (Michaelidis, 2006).

Compulsory expropriation is a permissible violation of the individual right to property for purposes of public benefit. It is the last measure to which the management must resort to achieve the goal. In the exercise of its discretion, the administration must exhaust every suitable means to find a property in another way, either a public property, or a property that it will buy with a voluntary offer from the owner, otherwise it violates the extreme limits of its discretionary power and the act is voidable. The administration, in selecting the proper property, must inquire whether there are other properties equally suitable for satisfying the purpose of the compulsory expropriation, and prefer that whose expropriation will cause the least burdensome deprivation to the owner, compared to the deprivation which will cause the expropriation of an equally suitable property to another owner.

The Article 23.4 (a) of the Constitution contains the Basic Guiding Principle of the law of compulsory expropriation and states that deprivation of property is possible only for public benefit. Because compulsory expropriation is an onerous measure involving the total deprivation of property, the public benefit should certainly outweigh the general interest in limiting ownership.

The purpose of the expropriation must be specified in a reasoned decision of the Expropriating Authority. The decision in question must be issued pursuant to and within the framework of the Expropriation Law. It must further clearly include the reasons for the expropriation. The consequence of this special wording is that the general principle of Administrative Law that the rationale for an administrative act can be replaced by the elements of the file has no place and cannot be applied to save the validity of the expropriation.

The power to expropriate immovable property to fulfill a purpose of public benefit is an aspect of the executive power. The determination of the necessity for the expropriation of land for the realization of purposes of public benefit is reduced in accordance with the provisions of Article 23.4 of the Constitution and the provisions of the laws on forced expropriation to the discretion of the competent administrative authority. The selection of the land, the promotion of the expropriation as well as the use of the property for the purposes for which it was acquired is a task referred to the area of responsibility of the Executive Power.

Matters of a technical nature taken into account by the administration in making the decision to expropriate are not reviewed by the court because the administration is considered to be the best knowledgeable of the technical issues involved in the decision. The judgment of the Expropriating Authority remains outside the

control of the Administrative Court regarding the necessity of the project, the planning and execution of which aims to serve the public interest or benefit.

The payment of just and reasonable compensation for the loss caused to the owner as a result of the expropriation is the constitutional measure of compensation based on Article 23.4 (c) of the Constitution. Thus, the owner of property that is expropriated is entitled to fair and reasonable compensation paid "in cash and in advance", which in case of dispute is determined by a civil court.

Right from the start, it should be emphasized that in the case of restriction of ownership, the obligation of the authority imposing the restriction is to pay compensation "as soon as possible". However, in the case of expropriation, the drafting legislator, aiming at the rapid and timely realization of the purpose of the expropriation, determined that the advance payment of the compensation is a prerequisite for the legal effect of the expropriation, i.e. the transfer of the property to the Expropriating Authority. Thus the completion of the expropriation is brought about by the payment of full compensation for each expropriated property. The partial or conditional payment of compensation does not entail any legal effect.

Article 23.5 of the Constitution provides that when immovable property is compulsorily expropriated for a specific purpose, it shall be used exclusively for that purpose and only. The reasons that lead the administration to decide to carry out a specific expropriation are strictly and narrowly interpreted so as not to allow the expropriated property to be used for any reason other than the specified purposes of public benefit. The provision of Article 23.5 clearly provides that if the purpose of the expropriation is not achieved within three years, the expropriating authority is obliged to offer the property upon payment of the purchase price to the person from whom it was expropriated. In such a case, that person is entitled within three months to notify his intention as to whether or not he accepts the return (Michaelidis, 2006).

It is clear that the return of the property is inextricably linked to the objectively judged "possibility" of the purpose: What the applicant must prove is that the purpose of the expropriation was not abandoned or became unfeasible, but that the administration has not taken those actions which would be reasonably necessary for the implementation of the project. In the event that the property has not actually been used for the purpose of public benefit, the expropriation becomes ex post facto unconstitutional. The act of expropriation cannot fulfill the goals of the state for an indefinite period of time or have as a justification or purpose the regulation of the financial interests of the state. It should be emphasized that the expropriation in terms of the fulfillment of its purpose is considered to be under a dissolving constitutional doctrine.

Therefore, although the legality of the expropriation implies that it is already possible to achieve its purpose, the administration is nevertheless given a three-year period so that in practice, now having legal authority over the estate, it can take those actions which are reasonable and according to the project follow for its implementation.

It has been interpreted that the term "feasible" does not mean the purpose realized, but the purpose that can be realized or achieved. The concept of feasible to carry out refers not to the subjective intentions or wishes of the administration but to the objective data of the thing concerning the actions of the administration to implement the project. So by this interpretation the term "possible" means "has become possible". So, according to the jurisprudence, the obligation to offer a refund does not arise simply because the three years have passed without the project being carried out, e.g. the construction of the road.

The properties being expropriated must be used exclusively for the purpose of the expropriation and in particular if the purpose of the expropriation provides and/or implies that buildings should be erected to achieve the purpose of the expropriation, these buildings should be erected. The proof of the impossibility of the execution

of the work of public utility, either before or after the expropriation has taken place, overturns the justifying reason (cause) of the "burdensome" measure of expropriation at the expense of the individual right to property. The tolerance for a long period of time of the expropriation measure at the expense of the individual right to property causes the public's sense of justice and is not in accordance with Article 23 of the Constitution. The expropriation decision is now an illegal insult and obliges the state, according to the principles of good administration, to remove the illegality by revoking the expropriation. The opposite would ultimately be equivalent to the legalization of the declaration of forced expropriation, with only a simple mention of the phrases of the law that allows it to be declared for public benefit, which, however, proved to be illegal, as unable to be carried out.

The principle of proportionality which is reduced to the authentic "limitation of the limitations" and which governs the entire function of the administration requires that the solution be necessary and appropriate to serve the intended purpose. The long-term inactivity of the Administration and its continuous failure to act to achieve its achievable goal breaks the relevance and the legitimate ratio between measure and goal, since it exceeds the constitutionally guaranteed period of three years. At the same time, in accordance with Article 23.5 of the Constitution and Article 15 of Law L. 15/62, there is also an obligation to offer the expropriated property to the person from whom it was acquired at the purchase price.

The general imperative of "appropriate measure" indicates the continuous control of the necessity of the restriction during all stages of the expropriation and until the end of the purpose, since the invocation of the public benefit cannot be pretentious and uncontrolled so as to be transformed from a restriction in setting aside the constitutional right to property.

Therefore, the management's obligation is permanent and ongoing. More specifically, its obligation to offer the return of property, the purpose of expropriation of which was not achieved, as imposed by constitutional force in Article 23.5 is inseparable and permanent following of the administration's obligation. Unsuccessful appeal of such decision or failure to appeal it in time maintains its legitimacy as an administrative judgment on its data. However, it does not remove the fundamental obligation of the administration to make possible the purpose of the expropriation and the possibility of the former owner to come back with a new request for return. It is also well established in Supreme Court jurisprudence that paving or marking are not imposed as necessary acts, the failure of which would betray the abandonment of the purpose of the expropriation.

The Article 23.6 concerns the distribution of land to the community to which the owner of the forcibly expropriated land belongs in the case of agrarian reform and touches, as is understood, on the bi-communal form of the Cypriot Constitution. However, such an issue has never been raised since the establishment of the Republic (Michaelidis, 2006).

The provision of Article 23.7 provides that the expropriation provisions do not apply in relation to any tax or penalty imposed by a court in connection with the enforcement of a court order or the enforcement of contractual obligations or the prevention of a life-threatening risk to property.

Taxes, fees, or contributions which are not otherwise unconstitutional, cannot be held to violate Article 23, merely because they result in the deprivation of money for the purpose of paying them, for otherwise Article 23 would make the Article 24.1 without any effect. Article 23.8 of the Constitution specifically refers to the requisition of property. In contrast to the mechanism of forced expropriation which is a permanent measure of deprivation of property for the purposes mentioned in the Constitution, the requisition is considered a measure of an exceptional and temporary nature since it is a temporary deprivation of the possession, use, and fruition of

the property. According to the law, requisition means the forced acquisition of possession of property or the act by which it is required that property be placed at the disposal of the requisitioning authority.

The Paragraph 8 of Article 23 provides that the Republic and the Community Assembly (in the latter case only at the expense of the members of the respective community) for educational, religious, charitable, sports associations, organizations, or institutions subject to its jurisdiction, are entitled to request. It should be emphasized that public law legal entities do not have the possibility of subpoena (Michaelidis, 2006).

However, under the current conditions in the Republic of Cyprus and due to the fact that the Community Assemblies have ceased to function, the ordering authority can only be the Republic and the power is exercised by the Council of Ministers by virtue of Article 54 of the Constitution. The making of a confiscation order is independent of the power to make a decree of expropriation, although in most cases the requisitioning of a property as the object of expropriation becomes necessary to effectuate the purpose of the expropriation.

Therefore, the requisition of property can be done in order to facilitate the entry of the Expropriating Authority into it, provided that the rights of the owner are not neutralized. Given the different legal nature of the two decrees, the annulment of the expropriation decree does not automatically imply that the confiscation decree was legally incorrect. Moreover, given the time limitation of the requisition to three years, the requisition for a longer-term or permanent purpose is excluded.

The conditions for the legality of the warrant are: (a) to serve a purpose of public benefit specifically defined by a general law on warrants, which according to the Constitution should have been enacted within one year. In practice, however, as already mentioned, Law 21/1962 was enacted late, (b) the purpose in question must be specified by a reasoned decision of the Authority deciding the requisition and must clearly include the reasons for the requisition, (c) for a period not exceeding three years, and (d) upon payment in cash as soon as possible of “just and reasonable compensation determined in the event of a dispute before a civil court”.

As in expropriation, so in requisition, the requisitioned property must and can only be used for the purpose of public benefit for which it was requisitioned and not for any other purpose. The opposite makes the demand illegal and therefore invalid according to Article 7 of Law N.21/62.

The phrase “upon payment in cash as soon as possible” in Paragraph 8 (d) of Article 23 has been interpreted not to mean payment of the reasonable compensation at the same time as the publication of the writ. However, the correct interpretation of the phrase in question inevitably leads to the obligation of the Republic through the ordering authority to pay, and indeed in cash, the compensation as quickly as possible and only in case of disagreement is the Civil Court involved to resolve the correct measure of compensation.

The Article 23.9 of the Constitution fully protects the Church from any deprivation or limitation, with the exception of the terms of limitations or commitments imposed in the interest of Urban Planning. The result is that even for enforcement to collect a tax or penalty or to enforce a court order, church property is protected. As can be seen from the provision of Paragraph 10 of Article 23, a similar regulation to that of Paragraph 9 of the same article is provided, this time in favor of Muslim religious institutions, as long as it is provided that no deprivation, condition, limitation, or restriction of the right to property on any movable or immovable waif property, including the objects and subjects of waifs and properties belonging to mosques or any other Muslim religious institutions or any right or interest therein, except with the approval of the Turkish Community Assembly and in accordance with laws and the principles of endowments.

The provision of Article 23.11 of the Constitution provides for the right of any interested party to appeal to the court in relation to any provision of Article 23. This provision does not neutralize the provision of Article

146 of the Constitution. Thus, if the owner concerned disputes the validity of the act of expropriation, requisition, or imposition of restriction, then he must file an appeal under Article 146 of the Constitution. If he seeks compensation, then he must resort to a civil Court. The Appeal against the validity of the expropriation automatically suspends the expropriation process, resulting, among other things, in the impossibility of starting a process to determine the compensation. It is worth noting that the notification of expropriation as well as the rejection of the objection provided by law against it is considered a preparatory act and is therefore not enforceable. Only the decree of expropriation, which is the final act, is an enforceable administrative act and the only one which can be challenged on the ground of appeal under Article 146 of the Constitution. Neither the offer of compensation after the publication of the expropriation decree can be appealed because it is considered an act of execution which is also not enforceable (Michaelidis, 2006).

Comparative Study of Constitutional Law

In the current constitution of Germany, the right to property is mentioned in Art. 14:

> Ownership and the right of inheritance are guaranteed. Their content and limits are determined by law. Ownership entails obligations. Its use will also serve the common good. Expropriation is permitted only for the public benefit. It can only be ordered by or in accordance with a law that determines the nature and extent of compensation. This compensation is determined by establishing a fair balance between the public interest and the interests of the stakeholders. In the event of a dispute regarding the amount of compensation, an appeal may be made to the ordinary courts. (Michaelidis, 2006)

In the current constitution of Belgium, property is protected by the content of Article 16, which characteristically reads: “No one can be deprived of his property, except in the case of expropriation for a public purpose, in the cases and in the manner prescribed by law and in exchange for just compensation paid in advance” (Michaelidis, 2006).

In the current constitution of Spain and specifically in Article 33 it states:

> Rights to property and inheritance are recognized. The content of these rights is determined by the social function they fulfill, according to the law. No one can be deprived of his property and rights, except for justified reasons of public utility or social interest and with appropriate compensation in accordance with the provisions of the law. (Michaelidis, 2006)

In the constitution of the Russian Federation the right to property is equally protected and is specifically mentioned in Article 35 as follows:

> The right to property is protected by law. Everyone has the right to property, to own, use and manage it individually or jointly with other persons. No one can be deprived of his property except by court order. Confiscation of property for state needs can only be made on the condition of equal compensation preceding the seizure. (Michaelidis, 2006)

The right of inheritance is guaranteed. While in Article 36 it refers to the ownership, possession, and use of land by citizens as follows*:*

> Citizens and their organizations have the right to own land. Freedom to own, use and manage land and other natural resources is granted to their owners as long as this does not harm the environment and does not violate the rights and legal interests of other persons. Conditions and procedure of land use are determined by the federal law. (Michaelidis, 2006)

Also in the constitution of Albania and specifically in Article 42 Par. 1 states the following: “Freedom, property and rights recognized by the Constitution and bylaws may not be violated without due process” (Michaelidis, 2006).

In the constitutional history of Greece, the concern of the respective constitutional legislator for the securing of property but also the way of removing property from the state to satisfy a higher public need is noteworthy.

In Article 17 of the Greek Constitution, the constitutional legislator defines, among other things, the criteria for compensation of the expropriated person. Compensation will be determined by criteria that will not take into account the surplus or minus values that the resulting public project will cause. That is, the compensation does not take into account the positive or negative externalities that the resulting public project will cause. This fact will result in the non-optimal distribution of financial resources during the expropriation transaction.

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