



## LAW AND VALUATION OF COMPULSORY PURCHASE IN THE REPUBLIC OF CYPRUS AND RECOMMENDATIONS FOR IMPROVEMENT

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## 1. INTRODUCTION





Area: 9,252 KM<sup>2</sup>  
Population: 877,800

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## INTRODUCTION (cont.)



### MILESTONES OF THE CYPRUS REPUBLIC

- 1960 – Independent State
- 1974 – Invasion and occupation of 36% of the territory of Cyprus by Turkey



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 **INTRODUCTION (cont.)** 

**1.5.2004 Member of the European Union**



**1.1.2008 Accession to EURO Currency** 

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 **2. INTERNATIONAL AND EUROPEAN LAW ON PROPERTY RIGHTS** 

**A. UN adopted a Universal Declaration of Human Rights as a common standard of achievement for people and nations on 10.12.1948. Specifically, Article 17 provides that**



- 1. *Everyone has the right to own property alone or in association with others***
- 2. *No one shall be arbitrary deprived of his property***

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## INTERNATIONAL AND EUROPEAN LAW ON PROPERTY RIGHTS (cont.)




**B. At European Level, the first protocol, namely the Enforcement of certain Rights and Freedoms, was signed in Paris on 23.3.1952 and under this Protocol, Article 1, has laid down the following fundamental declaration:**

***« Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided by law and by the general principles of the international law »***

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## INTERNATIONAL AND EUROPEAN LAW ON PROPERTY RIGHTS (cont.)



**An example of those property rights that have been protected by UN Charter and Resolutions is the case of Cyprus**

**In November 1983, the illegal Turkish Cypriot Authorities under the encouragement of Turkey, declared the creation of an independent state in “North Cyprus”, by drafting its own constitution. The constitution provided that all Cypriot properties after 13<sup>th</sup> February 1975, be the properties of the “Turkish Republic of Northern Cyprus”.**

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**INTERNATIONAL AND  
EUROPEAN LAW ON PROPERTY  
RIGHTS (cont.)**



**The UN Security Council issued the Resolution 541(1983) on the aforementioned action stating that :-**

- **The declaration is incompatible with 1960 Treaty of Establishment**
- **An attempt to create a “TRNC” is invalid**
- **Condemns the declaration of the Turkish Cypriot Authorities of the purported Succession of part of the Republic of Cyprus.**
- **Considers the declaration invalid and calls for withdrawal**

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**INTERNATIONAL AND  
EUROPEAN LAW ON PROPERTY  
RIGHTS (cont.)**



**EUCHR case in Titina Loizidou V Turkey 40/1993, 28.11.1996**  
Decided among other things that:

- **The refusal of having access to her property and the loss of use for that period, found Turkey liable and not to the Turkish Cypriot Authorities.**



- **There is a violation of Article 1 of the Protocol of the European Convention of Human Rights**

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## INTERNATIONAL AND EUROPEAN LAW ON PROPERTY RIGHTS (cont.)



Another case appeared in the Cyprus District Court and the Court of Appeal in UK

**Meletios Apostolides V David and Linda (British Couple)**  
**15.11.2004**

- **The verdict found the def. liable for trespass in the property of the pl., ordering to demolish the villa and other buildings erected on the property in the occupied area of Cyprus, surrender vacant possession and to pay damages.**
- **Pursuant to EU Regulation 44/2001, the judgment of the Civil Courts of the Republic of Cyprus can be enforced in any EU member state against the assets of Def. in that state**

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## INTERNATIONAL AND EUROPEAN LAW ON PROPERTY RIGHTS (cont.)






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### 3. PROPERTY RIGHTS AND COMPULSORY ACQUISITION PROV. OF CY CONSTITUTION




Section 1 of Article 23 provides that

**“ every person, alone or jointly with others, has the right to acquire, own, possess, enjoy or dispose of any immovable property and has the right to respect for such right ”**

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### PROPERTY RIGHTS AND COMPULSORY ACQUISITION PROV. IN THE CY CONSTITUTION (cont.)



Section 3 provides that

**“ restrictions or limitations, which are absolutely necessary to the promotion of the public benefit or for the protection of the rights of others, may be imposed by the law on the exercise of such right ”**

**“Just compensation shall be promptly paid for any such restrictions or limitations which materially decrease the economic value of such property; such compensation to be determined in the case of disagreement, by the civil court”**

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## PROPERTY RIGHTS AND COMPULSORY ACQUISITION PROV. IN THE CY CONSTITUTION (cont.)




Section 4 provides that property can be compulsorily acquired by the Republic or by other bodies which such rights have been conferred by law, and only

- (a) For the public benefit and must be provided in the general law for compulsory acquisition
- (b) when such purpose is established by the decision of the Acq. Ath., it must state clearly the reasons of acq.
- (c) Upon the payment in cash and in advance of just equitable compensation to be determined in the case of disagreement by the civil court

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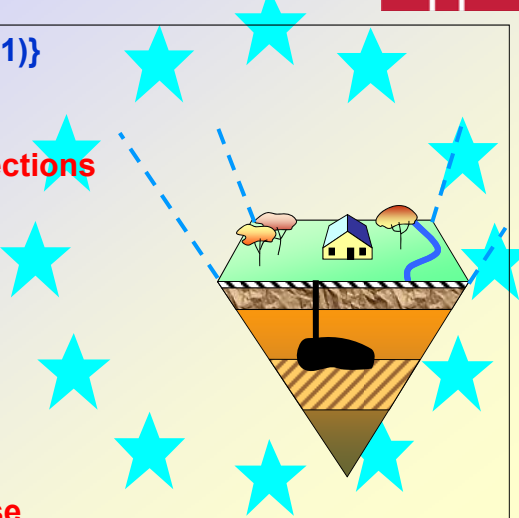


## 4. COMPULSORY ACQUISITION LAW AND VALUATIONS




Immovable Property {S.2 (1)}

- land
- Buildings and other erections
- Water rights
- Undivided shares
- Privileges
- Liberties
- Easements
- Rights restricting the use




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## COMPULSORY ACQUISITION LAW AND VALUATIONS (cont.)




**The Acquiring Authority (A.A) {S 2.(1)}**

- **The Republic**
- **Municipal Authorities**
- **Communal Chamber**
- **Public Corporations**
- **Public Utility Bodies**


**Purpose of Acquisition {S. 4}**

**A list is described in the law (e.g defense, security, agricultural reform, town planning, transport)**

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## Compulsory Acquisition Law and Valuations (cont.)




**Notice of Acquisition {S.4}**


**A.A issues a notice of intended acq. in the Official Gazette of the Republic that includes:**

- **description of property**
- **purpose of acq.**
- **reason of acq.**
- **informing the owners of their right to object within 30 of the notice issued date to the A.A**
- **Also a copy is posted individually to all affected owners, if not found, it is published in the press.**

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## Compulsory Acquisition Law and Valuations (cont.)




### Preliminary Investigation {S. 5}


Any officer of the A.A, or other person authorized by A.A, can enter to survey or value the property or other act for the purpose of acq. provided that

- a judicial warrant duly reasoned is needed for dwelling house
- a notice of 8 days must be served to the occupier of any building other than dwelling.
- one day notice to the occupier for any other immovable property

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## Compulsory Acquisition Law and Valuations (cont.)




### Order of Acquisition {S.6}


After the expiry of the 30 days of objections specified in the notice and the examination of them by the appropriate Ministry -

- the acquisition is authorized by an Order published in the Official Gazette of the Republic
- the Order shall be published not more than 12 months from the date of the notice of acquisition

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## Compulsory Acquisition Law and Valuations (cont.)




### Revocation and abandonment of Acquisition {S.7}

- Can happen any time after the publication of the notice of acq. and before the payment of compensation
- Shall be published in the Official Gazette of the Republic, either for whole or part of property
- If Order of Acq. is not published within 12 months of the date of the notice or the formal offer is not made within 14 months the acq is considered abandoned

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## Compulsory Acquisition Law and Valuations (cont.)



### Obligation of the A.A to enter into Negotiations {S.8}

- Within 12 months from the date of Notice
- By a private treaty
- If no agreement within 12 months, offer shall be made to the owner by the A.A
- If owner accepts the compensation, he has the right within the period of 75 days to apply to the Court for the determination of compensation.

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 **Compulsory Acquisition Law and Valuations (cont.)** 

Reference of compensation to Court {S.9}


**Without prejudice of S. 8, if until the publication of the order of acquisition, no agreement has been reached, the A.A or the interesting parties shall apply to the Court for the determination of compensation.**




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 **Compulsory Acquisition Law and Valuations (cont.)** 


Rules of Assessment of Compensation {S.10} – 14 rules

**(a) M.V at the date of the notice of acquisition** 

**(b) No allowance on account that acq. being compulsorily except for mining purposes.**

**(c) If in possession of the A.A before the notice under requisition law, compensation shall be estimated without regard to any increase in value on account of works or constructions or development or improvements** 

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## Compulsory Acquisition Law and Valuations (cont.)




**(d) Special suitability or adaptability of the property shall not be taken into account**


**(e) Value of property is increased by use which is restrained by court or is contrary to law or detrimental to public health such increase is disregarded (e.g hashish plantation, illegal planning use)**

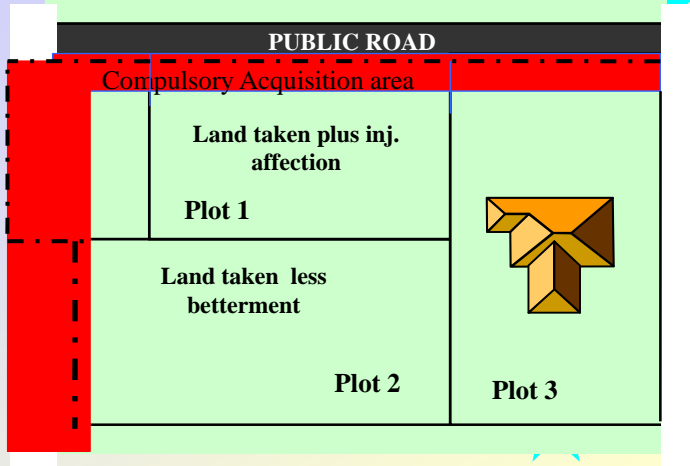
**(f) In case of part property is acquired, account shall be taken of the increase or decrease in the value of other property held by the owner**

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## Compulsory Acquisition Law and Valuations (cont.)





**PUBLIC ROAD**

Compulsory Acquisition area

Land taken plus inj. affection  
Plot 1

Land taken less betterment  
Plot 2

Plot 3

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**Compulsory Acquisition Law and Valuations (cont.)**

**FIG**

**Held together situation**

Held together

Plot 2

Plot 1

Road

Proposed Sterilizing strip

Before: Both properties had access

After: Both properties have no access

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**Compulsory Acquisition Law and Valuations (cont.)**

**FIG**

**(g) Account shall be taken of the damage...by reason of severance to other property**

Compulsory acq.

Plot 1

Plot 2



Plot 3

Manufacturing Plant Process A

Severed plot

Manufacturing Plant Process B

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 **Compulsory Acquisition Law and Valuations (cont.)** 


(h) Where property is affected by any other restrictions by law e.g ( ancient monument law, planning etc), every compensation payable according to S. 23 of the Constitution is also calculated.

(i) With the view to the avoidance of the payment of double compensation, every compensation is calculated under the Rent Control Law.

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 **Compulsory Acquisition Law and Valuations (cont.)** 

(j) Property which at the date of the notice of acq. would continue to be devoted for that purpose, and there is no demand or market for that purpose, reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement.



(k) Easements, privileges, or liberties over any immovable property account shall be taken for any diminution in value.

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## Compulsory Acquisition Law and Valuations (cont.)




**(l) Loss of business, trade, profession or vocation**

- Total extinguishment or temporary loss of profits including goodwill (trade disturbance)
- Cost of removal to other premises
- Depreciation in value of fixtures

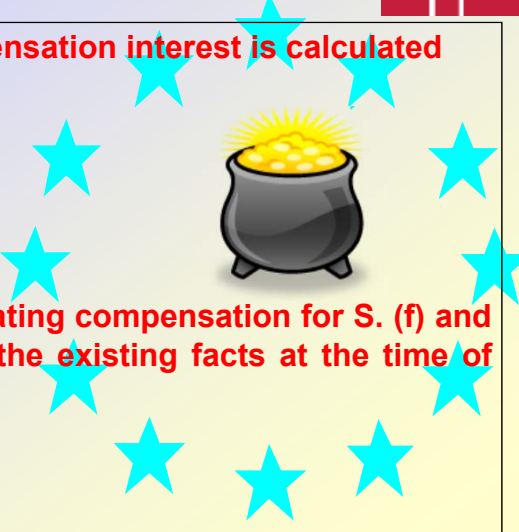
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## Compulsory Acquisition Law and Valuations (cont.)




**(m) On the payable compensation interest is calculated yearly at 9%**




**For the purpose of calculating compensation for S. (f) and (g), regard shall have to the existing facts at the time of the notice of acquisition**

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## Compulsory Acquisition Law and Valuations (cont.)



**Persons entitled to Compensation {S.11 }**

- **Owners**
- **Mortgagee**
- **Judgment creditor**
- **other person to be proved by an application to the court**

**Payment of Compensation {S. 12}**

**Payment in cash and promptly. If person is not possible to receive compensation, subject to the directions of the court, the amount is deposited to the Accountant General. No taxes are levied on compensation – Capital Gains Tax**

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## Compulsory Acquisition Law and Valuations (cont.)



**Vesting the property {S. 13}**


**On payment or deposit with the A.G of the sum agreed:**

- **the property is vested in the A.A free from any encumbrances.**
- **The owner has the right to apply to the Court for the determination of compensation with 75 from the date the compensation is paid (agreement conditional).**


**Purpose of property acquired that may be used {S.14}**

**Only for the purpose acquired**

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## Compulsory Acquisition Law and Valuations (cont.)




**Disposal of the property acquired {S.15}**

**If within 3 yrs from the date the property is vested in the A.A:**


- **is not attained or**
- **the attaining of the purpose is abandoned by the A.A or**
- **the whole or part of such property is found by the A.A, be in excess of its actual requirements,**

**Then**

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## Compulsory Acquisition Law and Valuations (cont.)



**a) The A.A by a notice in writing must offer back the property or his heirs, who within 3 months shall reply signifying acceptance of offer or not.**

**b) If acceptance is made in writing, the person has another 3 months to return the money to the A.A, or compensation to be determined by court.**



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 **Compulsory Acquisition Law and Valuations (cont.)** 

**In any of the following circumstances:**

- a) If the person/owner does not accept the offer or**
- b) accepted the offer but fails to pay within 3 mths of the period specified or**
- c) where whole or part of property acquired, at any time after the attainment of the purpose of acq., is no longer required by the A.A, the A.A sells the property at public auction**


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 **Compulsory Acquisition Law and Valuations (cont.)** 

**The above three provisions shall not apply where if:-**

**whole or partly of the property is required for another purpose (public benefit) of the same A.A.**

**The A.A shall cause an Order of Retention to be published in the Official Gazette of the Republic with all details and the reasons for the retention.**



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## 5. RECOMMENDATIONS FOR IMPROVEMENT



**Based on**

- **Local experiences and problems faced**
- **Current European and National case law**
- **Other country's legislation**
- **International Best Practices**







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## RECOMMENDATIONS FOR IMPROVEMENT (CONT.)




**a) Purpose of Acquisition**

**Introduce special provision giving powers to the Council of Ministers to issue an order in the Official Gazette of the Republic that can cover new purposes rather than having the need to change the law every time**

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**RECOMMENDATIONS FOR IMPROVEMENT (CONT.)**



b) **Improve the transparency of information to the affected owners**

- **Inform the affected owners about remainder areas and show the scheme on cadastral map. Must be attached on formal offer**
- **Future development is to have access to view this, through the internet**



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**RECOMMENDATIONS FOR IMPROVEMENT (CONT.)**




c) **Purchase Notices**

**Where the remainder of the property acquired, can no longer be used (small size, shape etc), the affected owner shall have the right to serve a notice to the A.A, requesting acquisition for the whole of his property**

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## RECOMMENDATIONS FOR IMPROVEMENT (CONT.)



### d) Formal Offers, Payment Procedure and Time Limits

- After the formal offer, within 3 months the owner can object by submitting a valuation report .
- The A.A is obligated within further 3 months to inform the owner of the findings of the examination.
- The compensation determined after the examination of the objection is paid to the owner or deposited to the A.G. The owner has 1 year to refer the case to the court from the date of payment.

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## RECOMMENDATIONS FOR IMPROVEMENT (CONT.)




### e) Purchases by Private Agreement

The right of the A.A to enter into an agreement by a private treaty to acquire the property at any time before the compensation payment and eligibility to tax exemptions. Only for the public interest

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**RECOMMENDATIONS FOR IMPROVEMENT (CONT.)**



**f) Disposal of the Immovable Property Acquired**

**The right of first refusal should be given to the owner, if the property is surplus or no more needed.**

**Interest payable by the owner should be calculated from the date of compensation up to the date of payment to the A.A.**

**If the remainder part of the acquired property has been sold, and the returned property is not possible to be developed in its own right, the new owner of the remainder can exercise this right at a current market price.**

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**RECOMMENDATIONS FOR IMPROVEMENT (CONT.)**




**g) Home Loss Payment**


**No home loss payment is provided in the rules of assessment.**

**A recent verdict against the Republic of Cyprus by the European Court of Human Rights, in Kolona V Cyprus Appl. 28025/03, dated 27.9.2007, it was found to have violated Article 8, because it entered the owner's home (holiday home), without prior written consent. The ECHR ruled that in addition to the payment of compensation given in the first place for the comp. acqu. a further amount was awarded as compensation for loss of home. (See UK and New Zealand law)**

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**RECOMMENDATIONS FOR IMPROVEMENT (CONT.)**



**h) Mediation**

**It is recommended that the mediation process should be incorporated into the law**



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**RECOMMENDATIONS FOR IMPROVEMENT (CONT.)**



**i) Establishment of Specialized Valuation Courts**

**No such kind of courts exists in Cyprus, unlikely in other countries.**



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THANK YOU  
FOR YOUR ATTENTION



WELCOME TO CYPRUS



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