

**Conference of European Constitutional Courts
XIIth Congress**

*The relations between the Constitutional Courts
and the other national courts,
including the interference in this area
of the action of the European courts*

**Report of
the Supreme Court
of the Republic of Cyprus**

I. The constitutional court, the other courts and the constitutionality review

A. The judicial organization of the State

1. The judicial system

1. The judiciary of Cyprus, its structure, jurisdictional basis and organization are presented in a diagram attached hereto.

2. The Constitutional Court

2. The Constitutional Court jurisdiction is entrusted to the Supreme Court of the country. The Supreme Court is at the top of the pyramid of the judicial power of the State. It is vested with the jurisdiction of a Constitutional Court. Also it is vested with the jurisdiction of the highest Appellate Court and High Court jurisdiction respecting prerogative writs (corrective orders) and such original jurisdiction as may be vested in it by law. Furthermore it is vested with revisional jurisdiction, that is jurisdiction to review the legality of acts, decisions and omissions issued or noticed in the exercise of executive or administrative power of organs and authorities of the State.

The machinery for the exercise of jurisdiction on constitutional issues is provided for by Articles 139-151 of the Constitution.

The principal features of constitutional control of legislation are:

- a) Prior or pre-emptive control of the constitutionality of laws.
- b) Subsequent or incidental or remedial control of the constitutionality of laws.

B. The respective jurisdictions of the constitutional court and the other courts in the area of constitutionality review

1. Review of laws and other acts

§ 1. Type of review

3. The principal domains of the jurisdiction of the Supreme Court in the exercise of its functions as a Constitutional Court are the following:

- (i) Adjudication upon the constitutionality of laws which takes the form of:
 - a. Prior or pre-emptive control of constitutionality of Laws, i.e. before their promulgation.
 - b. Subsequent or incidental or remedial control of their constitutionality.
- (ii) Resolution of conflicts between organs and authorities of the Republic.
- (iii) Review of the legality of administrative decisions, acts, or omissions of organs, authorities or persons exercising executive or administrative authority (Article 146).

- (iv) Providing an authoritative interpretation of the Constitution in case of ambiguity (Article 149).
- (v) Adjudication upon Election Petitions, (Article 145) (Electoral Court Jurisdiction).

4. The jurisdiction of the constitutionality of laws may be exercised by first instance courts referred to in the Constitution as inferior Courts. If they do so their decision is subject to appeal to the Supreme Court. Another way of first instance courts dealing with questions of constitutionality is to reserve a constitutional issue arising in the course of proceedings before them by way of case stated for the opinion of the Supreme Court before resolving the issue in hand.

5. As already indicated the review of constitutionality of legislation carried out by the Supreme Court is both pre-emptive and remedial. Prior or pre-emptive review is provided for by Article 140 of the Constitution. It is exercised upon a reference to the Supreme Court by the Head of State before the law is promulgated. If the law is found to be contrary to or inconsistent with any provisions of the Constitution or the principle of separation of powers enshrined therein, it is declared to be unconstitutional and on that account it is not promulgated; it does not become law.

Subsequent or incidental or remedial review is possible only after the publication of the law. It has been firmly established by the case-law of the Supreme Court that after the publication of a law its constitutionality may be tested before both the Supreme Court and inferior Courts. The Court addresses the issue of constitutionality raised if its resolution is material for the determination of the case before it.

6. Questions of constitutionality are determined in the abstract. The relevant question both with regard to prior and subsequent examination of the constitutionality of a law, rule or regulation, is whether they are contrary to or inconsistent with one or more articles of the Constitution or the principle of separation of powers.

Only in the most exceptional circumstances can evidence be adduced on a question of constitutionality; where it is essential to demonstrate the implications of the legal provision impugned; otherwise ambiguous.

§ 2. Referral to the constitutional court

a. Types of referral

7. The Supreme Court can be accessed as follows:

- a) By reference raised by the Head of State to the Supreme Court for its opinion of the constitutionality of a specified enactment of the House of Representatives, submitted for promulgation.
- b) On appeal against decisions of a court of first instance affecting questions of constitutionality, (see para. 3 (i) (b) above). Decisions of civil and criminal courts as well as judicial decisions in the field of judicial review are subject to appeal at the instance of an aggrieved party.
- c) By recourse, (a) for the resolution of conflicts between organs and authorities of the Republic, (see para. 3 (ii)), and (b) for the judicial review of administrative action (para.3 (iii))

above), raised before the Supreme Court by the party or organ affected thereby with the view to voiding or annulling the objectionable act, decision or omission.

d) By referral or in the context of an appeal or any other proceeding for the purpose of providing an authoritative interpretation of the Constitution in case of ambiguity, (see para. 3 (iv) above).

e) By an election petition in the exercise of its jurisdiction under Article 145 (see para. 3 (v) above).

The number of references, coming under (a) above, since the establishment of the constitutional jurisdiction, in August 1960 is 71: No statistical data are kept with regard to (b), (c) and (d) above. What can be said without reference to numbers is that determination of the constitutionality of laws, rules and regulations, was the subject of very many decisions of the Supreme Court.

b. Actions for annulment

8. No direct recourse lies to the Supreme Court for the review of the constitutionality of statutes or regulatory acts. Their constitutionality may be the subject of review, incidentally if material for the determination of any matter at issue in the particular proceedings pending before the Court.

9. Such actions can be brought by physical (individual) or legal entities (legal persons). Actions (recourses) relating to the revisional jurisdiction of the Supreme Court have to be brought within 75 days from the date when the decision, act, or omission subject-matter of the recourse, comes to the knowledge of the person or legal entity having recourse to the Supreme Court (Article 146.3 of the Constitution).

10. A law found to be unconstitutional, upon reference to the Supreme Court by the Head of State, is not promulgated. In the exercise of its subsequent or incidental or remedial review the Supreme Court cannot suspend the enforcement of a statute, rule or regulation, pending consideration of its constitutionality. However, as indicated above (see para. 6), if the plea of unconstitutionality is sustained, the law, act or regulation in question is disregarded and the dispute is resolved without reference to the unconstitutional law, act or regulation.

c. Preliminary issues – plea of unconstitutionality

Who can refer cases to the constitutional court?

11. Under article 144 of the Constitution a party to any judicial proceedings including proceedings on appeal, “may, at any stage thereof, raise the question of the unconstitutionality of any law or decision or any provision thereof material for the determination of any matter at issue in such proceedings and thereupon the Court before which such question is raised shall reserve the question for the decision of the Supreme Constitutional Court and stay further proceedings until such question is determined by the Supreme Constitutional Court”. However, following the decision of the Supreme Court in the case *Attorney-General of the Republic v. Mustafa Ibrahim and Others (1964) C.L.R. 195* the procedure for reference under Article 144 of the Constitution, by all courts ceased to be applicable or necessary and all questions of alleged unconstitutionality in the sphere of

subsequent, or incidental or remedial review are treated as issues of Law in the proceedings, subject to revision on appeal in due course, so far as the inferior courts are concerned. After the decision in the above case only the Family Courts can refer the constitutionality of a law to the Supreme Court under Article 144.

The notion of “court” is always well-defined by the statute establishing the Court. So no question of giving a broad or a restrictive interpretation to the notion of court arises.

12. As already indicated (vide para. 11) the only court that can refer cases to the Supreme Court is the Family Court. It is obliged to put the question only when it is judged to be material for the determination of any matter at issue in the particular proceedings pending before the Court.

13. Yes. A reference by the President of the Republic for the invalidation of an enactment as unconstitutional is addressed to the House of Representatives who may oppose the motion by filing an opposition. In other proceedings where an issue of unconstitutionality is raised incidentally as explained above, the party raising the issue must state it succinctly, give his reasons in writing entitling the other party to the proceedings to oppose the motion of unconstitutionality likewise in writing.

14. One or both parties to the particular proceeding before the Family Court can apply for referral. The application must be in writing and the question of unconstitutionality has to be formulated specifically and with sufficient precision and particularity. The role of the parties in drawing up the preliminary question is very important and substantive for, as indicated above, responsibility for the formulation of the relevant question of unconstitutionality lies with them. The preliminary question cannot be raised ex officio.

15. No.

Screening

16. Yes. Under Article 134.2 of the Constitution and the Rules of Court when a recourse appears to be prima facie frivolous the Supreme Court may, after hearing arguments by or on behalf of the parties, concerned unanimously dismiss such recourse without a public hearing if satisfied that such recourse is in fact frivolous. Similar provisions exist in Rules of Court with respect to civil appeals and revisional jurisdiction appeals.

The proportion of cases screened in this way is insignificant.

Scope of referral of the constitutional court

17. The (Family) Court that puts the question does not express any opinion on its constitutionality. Once satisfied that the question of unconstitutionality raised by the party or parties is material for the resolution of any matter at issue in the proceedings before it, the court has to refer the question to the Supreme Court without expressing any opinion on the matter, or making any comments thereto.

The Supreme Court cannot raise ex officio or at the request of the party any matter not raised by the referral.

18. Only the legal issues are referred to the Supreme Court.

Relevance of the question

19. Yes.

Interpretation of the question

20. No, but it can refer back the question to the Family Court for re-formulation of the question.

Interpretation of the reviewed regulation

21. The Supreme Court adheres only to the interpretation of the reviewed regulation which is given by it.

Jus superveniens

22. A legislative amendment subsequent to the decision of referral or subsequent to the raising of the question of unconstitutionality has been held by the Supreme Court to violate the doctrine of separation of powers (*Christodoulides v. Republic* (1967) 3 C.L.R. 356 and *Charalambous and Another v. C.Y.T.A.* (1974) 3 C.L.R. 175).

Parties

23. Only the parties to the particular proceeding can participate in the procedure before the Court. Very rarely the Attorney-General of the Republic may, at the invitation of the Supreme Court, be heard as *amicus curiae* in matters of exceptional importance for the public. The way parties are heard is by means of oral or written submissions, as the Court may direct. They are informed by the secretariat of the Court ordinarily by means of a written notice. The answer to the last question is “No”.

24. Yes. In civil cases there is a counsel for the plaintiff and counsel for the defendant. In criminal cases there is counsel for the prosecution and counsel for the defense. In recourses for annulment there is counsel for the applicant and counsel for the organ that issued the decision subject matter of the recourse. In prior or pre-emptive constitutional control there is counsel for the Head of State, who is usually the Attorney-General of the Republic, or a member of his staff and counsel for the House of Representatives.

Points of law in the constitutional proceeding

25. The withdrawal or abandonment of a civil action does, as a rule, put an end to the proceedings. The withdrawal of a criminal suit, except at the instance of the Attorney General, is subject to the leave by the Court. A criminal appeal may be withdrawn at the instance of the appellant at any time before it is heard. The prevalent view is that a reference by the President of the Republic may also be abandoned at his instance.

d. The constitutional appeal (for example recours d'amparo, Verfassungsbeschwerde etc.)

Object of the constitutional appeal

26. As earlier explained, save in the case of preemptive constitutional control by a reference of the Head of State to the Supreme Court, questions of constitutionality are determined as legal issues and may be the subject of appeal if an appeal is taken against the decision of the Court that resolves the case. There is no specific proceeding for appeal, as such, in matters of constitutionality.

Allowability of the appeal

27. Any one of the parties to the particular proceeding can take an appeal to the Supreme Court by using the form prescribed for the purpose by the relevant Rules of Court (notice of appeal).

28. A direct appeal to the Supreme Court is possible at the instance of any one of the parties.

Screening

29. The answer to this question is the same as that given to question No. 16 above.

Parties

30. Both the plaintiff, and the other parties to the proceedings, take part and are heard by the Supreme Court. They can do so by the submission of written or oral addresses as the Court may direct. The only public authority that may intervene in the proceedings is the Attorney-General of the Republic who may, in cases relating to questions of unconstitutionality, be invited by the Court to express his views as *amicus curiae*.

31. The answer is the same as that given in respect of question No. 24.

2. Settlement of conflicts between courts

32. The Supreme Court does not directly circumscribe the respective jurisdictions of the other courts.

In our legal system the doctrine of judicial precedent or stare decisis applies. Hereunder all Inferior Courts are bound to adhere to and abide by any decisions given by the Supreme Court on constitutional, as well as on other issues. The subject of judicial precedent is the legal principle emerging from the resolution of the case.

II. The relations between the constitutional court and the other courts

A. The organic link

33. The appointment, promotion, transfer, termination of appointment, dismissal and the disciplinary jurisdiction over all judges of inferior courts are exclusively within the competence of the Supreme Council of Judicature which is composed solely of the President and Judges of the Supreme Court.

B. The procedural link

34. There are no procedural links. The appeal is decided by reference to the grounds of appeal as formulated in the particular notice of appeal. In cases of referral the Supreme Court may refer the case back to the referring Court for re-formulation of the constitutional question. There is no a judge-to-judge meeting in order to clarify or refine the question raised.

C. The functional link

§ 1. The review and its effects

35. Yes absolutely.

36. In cases of prior or pre-emptive constitutional control a ruling of the Supreme Court that the law, rule or regulation, is contrary to or inconsistent with the provisions of the Constitution or the principle of separation of powers, signals the end of the law or a particular provision of it, if the objectionable part of it is severable from the remaining part of the law.

In cases of a subsequent or incidental constitutional control a finding of unconstitutionality makes the law inapplicable and the issue in hand is determined without reference to it.

In revisional jurisdiction proceedings an act, decision or omission found to be unconstitutional is declared to be invalid.

37. The constitutionality of a law is judged from the view point of its compatibility with the Constitution or the principle of separation of powers. If incompatible, it is unconstitutional at all times. It has been judicially acknowledged as impermissible to give effect to a judicial ruling on the unconstitutionality of a law from a future date. Any such principle, it was decided in *Mavrogenes v. House of Representatives* (1996) 1 C.L.R. 315, would violate the principle of separation of powers, it would undermine the rule of law and defeat the supremacy of the Constitution as the ultimate norm.

A law found to be unconstitutional by the Supreme Court, in the context of extant proceedings, is not automatically expunged from the statute book. A law must be enacted to remove it. It goes without saying that after a ruling of unconstitutionality by the Supreme Court, the authority of the unconstitutional law is reduced to nothingness.

38. The authority of the ruling of the Supreme Court is always respected by courts. The principle of the rule of law requires that it should be adhered to by all. Decisions of the courts may be the subject of criticism in the press and the media as in every free country.

§ 2. Interpretation by the Constitutional Court

a. The case law of other courts accepted by the constitutional court in the exercise of its own jurisdiction

39. The unified structure of the Cyprus judiciary makes the question asked theoretical. Decisions of the Supreme Court in all areas of its jurisdiction are of like authority and equally binding.

b. The effects of the interpretation of the constitutional court and the acceptance of the case law of the constitutional court by the other courts in the exercise of their own jurisdiction

40. Yes. In case of non-adherence by any Court, to the interpretation adopted by the Supreme Court, a first instance decision is set aside by the Supreme Court upon appeal by a party to the proceedings aggrieved thereby.

41. There is a principle of interpretation, that the House of Representatives seeks to legislate within the framework of the Constitution; so if there is a way of reconciling an ambiguous provision with the Constitution, the law is saved. There is no distinction between living and notional law. The law can have only one face.

The interpretative decision is binding on all the other courts.

III. The interference of the European courts

A. The constitutional court and the other courts vis-a-vis the European Convention on Human Rights and the case law of the European Court of Human Rights

43. The Supreme Court is not bound by the case law of the European Court of Human Rights. However the Supreme Court considers that such case-law is of high persuasive authority and it constantly applies it in cases concerning the application of Human Rights. It must be noted that a comprehensive code of human rights is embodied in the Cyprus Constitution. Laws contravening human rights, contravene the Constitution and may on that account be declared unconstitutional. Human rights are a dominant feature of the case law of the Supreme Court. They are expansively interpreted while constitutional provisions enabling their limitation, under certain circumstances, are restrictively interpreted. Article 35 of the Constitution binds all three powers of the State, legislative, executive and judicial:

“The legislative, executive and judicial authorities of the Republic shall be bound to secure, within the limits of their respective competence, the efficient application of the provisions of this Part.”

Not only Cyprus Courts follow closely the case law of the European Court of Human Rights but in certain areas they have gone much further. For example, no evidence obtained directly or indirectly by breach of the fundamental rights of the individual is admissible in any court of law.

44. No court can deviate from the action of the Supreme Court. It should, however, be noted that our code of Human Rights, as embodied in our Constitution (vide Articles 6-35), is modeled on the European Convention, save that the list of rights is more extensive and they are defined in greater detail. Furthermore the European Convention on Human Rights was adopted as part of domestic law since 1962, (Law 39/62).

45. Yes. Local remedies have to be exhausted before the recourse to the European Court of Human Rights.

B. The Constitutional Court and the other courts vis-a-vis the case law of the Court of Justice of the European Communities.

46. Cyprus is not yet a member of the European Union. Consequently neither directly nor indirectly are Cyprus Courts linked to the jurisdiction of the Court of the European Communities. However, decisions of the latter court have persuasive authority. Be it noted that Cyprus is a candidate for joining the European Union.

47. No because Cyprus is not yet a member of the European Community.

48. No because Cyprus is not yet a member of the European Community.