



Conférence des Cours constitutionnelles européennes  
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# **CONSTITUTIONAL JUSTICE: FUNCTIONS AND RELATIONSHIP WITH THE OTHER PUBLIC AUTHORITIES**

*National report prepared for the XVth Congress  
of the Conference of European Constitutional Courts by  
The Supreme Court of Cyprus*

## **I. THE CONSTITUTIONAL COURT'S RELATIONSHIP TO PARLIAMENT AND GOVERNMENT**

- 1. The role of Parliament (as the case may be, of the Government) in the procedure for appointing judges to the Constitutional Court. Once appointed, can judges of the Constitutional Court be revoked by that same authority? What could be the grounds/ reasons for such revocation?**

The Constitution of Cyprus provided for the Supreme Constitutional Court and the High Court. Following inter-communal troubles the two Courts were amalgamated into the present Supreme Court of Cyprus which has all the powers and jurisdiction of both Courts, in accordance with the Administration of Justice (Miscellaneous Provisions) Law of 1964.

Parliament has no role in the appointment of judges to the Supreme Court. The members of the Supreme Court are appointed by the President of the Republic. But the President seeks the Court's advice which, as a rule, is followed. Judges of the Court shall be retired on account of such mental or physical incapacity or infirmity as would render them incapable of discharging the duties of their office either permanently or for such period of time as would render it impracticable for them to continue in office. A judge of the Court may be dismissed on the ground of misconduct.

The Supreme Council of Judicature, which is composed of the members of the Supreme Court, has exclusive competence to determine all matters relating to the retirement, dismissal or otherwise the termination of the appointment of the President and the members of the Court.

- 2. To what extent is the Constitutional Court financially autonomous - in the setting up and administration of its own expenditure budget?**

The Supreme Court is financially autonomous. According to the Management of Revenues, Expenditure and of the Accounting System of the Republic Law of 2002 (L. 112/02), the Accounting Department of the Supreme Court, followed by the approval of the Chief Registrar, sends to the Ministry of Finance on a prescribed form, the estimates of revenues and expenditure of the judiciary for the following financial year.

The Minister of Finance shall, upon receipt of the estimates, prepare a Comprehensive Budget of the Republic, which when approved by the Council of Ministers shall be presented before the House of Representatives (Article 167 of the Constitution).

Following the submission of the Budget to the House of Representatives, the President of the Supreme Court together with the Chief Registrar and the representative of the Accountant General will appear before the Parliamentary Committee on Financial and Budgetary Affairs.

There is a separate account with the budget allocated to the judiciary. The Treasury department of the Supreme Court is authorised to control it. The Chief Registrar, as the Controlling Officer can also exercise control over the expenditures.

**3. Is it customary or possible that Parliament amends the Law on the Organization and Functioning of the Constitutional Court, yet without any consultation with the Court itself?**

The practice that is followed is that Parliament, before amending any law on the organization of the Supreme Court, seeks the views of the Court. The president of the Court is called before the relevant parliamentary committee to set out the position of the Court.

**4. Is the Constitutional Court vested with review powers as to the constitutionality of Regulations/ Standing Orders of Parliament and, respectively, Government?**

The Supreme Court was given jurisdiction in the following areas. First, to resolve pre-emptively questions that might arise between the President of the Republic on the one hand and the House of Representatives on the other on whether a law was, before promulgation, repugnant to or inconsistent with any provision of the Constitution. Second, to adjudicate upon disputes that might arise between the House of Representatives and any organs or authorities in the Republic. Third, to decide on the constitutionality of already existing laws. The Supreme Court acts, lastly, as an Administrative Court i.e. “to adjudicate finally on recourses made on a complaint by anyone that a decision, act or omission of any organ, authority or person, exercising any executive or administrative authority, is contrary to any of the provisions of the Constitution or of any law, or is made in excess or in abuse of powers vested in such organ or authority or person”. This revisional jurisdiction is dealt with under Article 146 which also sets out the prerequisites for its exercise and the relevant powers attaching to it.

**5. Constitutionality review: specify types / categories of legal acts in regard of which such review is conducted.**

Article 179 of the Constitution provides that no Law or Decision should be enacted by the House of Representatives and no act or decision by any organ, authority or person exercising executive or administrative jurisdiction, shall in any way be repugnant to or inconsistent with the Constitution.

Article 146 of the Constitution gives exclusive jurisdiction to the Supreme Court to adjudicate finally on complaints in the form of a recourse to the court, that a decision, act or omission of any organ of the state exercising executive or administrative authority is contrary to the law.

- 6. a) Parliament and Government, as the case may be, will proceed without delay to amending the law (or another act declared unconstitutional) in order to bring such into accord with the Constitution, following the constitutional court's decision. If so, what is the term established in that sense? Is there also any special procedure? If not, specify alternatives. Give examples.**

Following the declaration of a law as unconstitutional by the Supreme Court, the House of Representatives may proceed with amending it, if only some parts were declared unconstitutional, or may repeal it, but is under no obligation to do so. The Law, in any case, ceases to have effect.

- 6. b) Parliament can invalidate the constitutional court's decision: specify conditions.**

No. Such action would constitute interference with the judicial power and would result in the infringement of the doctrine of the separation of powers.

- 7. Are there any institutionalized cooperation mechanisms between the Constitutional Court and other bodies? If so, what is the nature of these contacts / what functions and powers shall be exerted on both sides?**

No such mechanisms exist in our legal system.

## **II. RESOLUTION OF ORGANIC LITIGATIONS BY THE CONSTITUTIONAL COURT**

- 1. What are the characteristic traits of the contents of organic litigations (legal disputes of a constitutional nature between public authorities)?**

Disputes between public authorities mainly involve conflict or contest of power or authority.

- 2. Specify whether the Constitutional Court is competent to resolve such litigation.**

The Supreme Court, under Article 139 of the Constitution, has jurisdiction to adjudicate finally on such a recourse.

- 3. Which public authorities may be involved in such disputes?**

Article 139 of the Constitution provides that the Supreme Constitutional Court shall have jurisdiction to adjudicate finally on a recourse made in connection with any matter relating to any conflict or contest of power or competence arising between the House of Representatives and the Communal Chambers or any one of them and between any organs of, or authorities in, the Republic.

According to the case law of the Supreme Court, organs or authorities are specific juridical creations, bearing the features of individual and concrete organic institutions of government and functioning for and on behalf of a primary legal entity such as the Republic of Cyprus (municipalities, semi governmental organizations).

- 4. Legal acts, facts or actions which may give rise to such litigations: do they relate only to disputes on competence, or do they also involve cases when a public authority challenges the constitutionality of an act issued by another public authority? Whether your constitutional court has adjudicated upon such disputes; please give examples.**

So far we only had cases relating to disputes on competence.

- 5. Who is entitled to submit proceedings before the Constitutional Court for the adjudication of such disputes?**

Recourse to the Court, under Article 139 may be made by the President of the Republic, the House of Representatives or any other organ of, or authority in, the Republic, if involved in such conflict or contest.

**6. What procedure is applicable for the adjudication of such dispute?**

Such recourse shall be made within thirty days of the date when such power or competence is contested.

The Supreme Constitutional Court Rules of 1962 provide that the application must contain a statement of the case of the applicant setting out in a summary form all the material facts relied upon, the requested remedy and the legal grounds of the application. The application must be accompanied by copies of all the documents, referred in the application, which are in the possession or power of the applicant.

**7. What choices are there open for the Constitutional Court in making its decision (judgment). Examples.**

The Court may:

1. In the case of a reference by the President, prior to the promulgation of any law or decision of the House of Representatives, to the Supreme Constitutional Court for its opinion on the question as to whether such law or decision or any specified provision thereof is repugnant to or inconsistent with any provision of this Constitution, the Supreme Constitutional Court shall consider every question referred to it and having heard arguments on behalf of the President of the Republic and on behalf of the House of Representatives shall give its opinion on such question and notify the President of the Republic and the House of Representatives accordingly.
2. In a recourse under Article 139 relating to any conflict or contest of power or competence arising between the House of Representatives and the Communal Chambers or any one of them and between any organs of, or authorities in, the Republic, the Supreme Court may declare that the law or the decision or the act, the subject of the recourse, is void, either from the time when the conflict or contest arose or ab initio, and without any legal effect whatsoever, either in whole or in part, on the ground that such law or decision or act was made or taken or done without power or competence, and in either case the Court may give directions as to the effect of anything done or left undone under such law or decision or act.
3. In the case of a recourse under Article 146 that an act, decision or omission of the administration was in contravention to the Constitution, the court may confirm either in whole or in parts the decision, act or omission, declare either in whole or in part such decision to be null and void and of no effect whatsoever or declare that such omission either in whole or in part ought not to have been made and that whatever has been omitted should have been performed.

**8. Ways and means for implementing the Constitutional Court's decision: actions taken by the public authorities concerned afterwards. Examples.**

The authorities concerned are responsible for implementing the decision of the Supreme Court. However there are neither legal provisions specifying the methods of implementation nor any sanctions for the failure to act in accordance with the decision. Now there is a Bill providing for sanctions.

### III. ENFORCEMENT OF CONSTITUTIONAL COURT'S DECISIONS

1. The Constitutional Court's decisions are:
  - a) final;
  - b) subject to appeal; if so, please specify which legal entities/subjects are entitled to lodge appeal, the deadlines and procedure;
  - c) binding *erga omnes*;
  - d) binding *inter partes litigantes*.

The decision of the court is final. If the decision was delivered by the Supreme Court in its revisional jurisdiction is binding on all courts and organs or authorities of the Republic and shall be given effect to an acted upon by the organ or authority or person concerned. If the Supreme Court annuls an administrative action, then that decision operates *erga omnes*.

2. As from publication of the decision in the Official Gazette/Journal, the legal text declared unconstitutional shall be:
  - a) repealed;
  - b) suspended until when the act/text declared unconstitutional has been accorded with the provisions of the Constitution;
  - c) suspended until when the legislature has invalidated the decision rendered by the Constitutional Court;
  - d) other instances.

The Supreme Court declares the act (law or subsidiary legislation) to be unconstitutional and the law is disowned. The House of Representatives can repeal it or if it fails to do so the law remains in existence but should not be applied in any act or decision taken.

3. Once the Constitutional Court has passed a judgment of unconstitutionality, in what way is it binding for the referring court of law and for other courts?

The decision of the Constitutional Court is binding on all hierarchically subordinate courts as well as on the court itself.

4. Is it customary that the legislature fulfills, within specified deadlines, the constitutional obligation to eliminate any unconstitutional aspects as may have been found- as a result of *a posteriori* and/or *a priori* review?

As mentioned above the legislature is under no obligation to repeal a law that was declared unconstitutional but in practice it complies with the decision of the Supreme Court.

- 5. What happens if the legislature has failed to eliminate unconstitutional flaws within the deadline set by the Constitution and/or legislation? Give examples.**

If the legislature fails to amend or repeal an unconstitutional law then any case that comes before the Supreme Court concerning a decision or act taken in accordance with that law will be declared invalid as it was based on an unconstitutional law.

- 6. Is legislature allowed to pass again, through another normative act, the same legislative solution which has been declared unconstitutional? Also state the arguments.**

The House of Representatives has no power to enact the same legislative act that was declared unconstitutional.

- 7. Does the Constitutional Court have a possibility to commission other state agencies with the enforcement of its decisions and/or to stipulate the manner in which they are enforced in a specific case?**

No.