Seminar organized by the Council of State of the Netherlands and ACA-Europe

"Better Regulation"

The Hague 15 May 2017

Answers to questionnaire: Cyprus

Seminar co-funded by the «Justice » program of the European Union

Mr. Justice Leonidas Parparinos, Supreme Court of Cyprus

ACA Europe Questionnaire – Better Regulation

Part 1: Input mechanisms *prior* to drafting

Input from the Courts and Advisory bodies

Introduction

Better regulation agenda requires equivalent input from all involved; that is a closer union between the three branches: Executive, Legislative and Judiciary. Its fully comprehensible objectives juxtapose Cyprus' legal system which is characterised by a strict separation of state powers. Although not dogmatically inflexible the doctrine is diffused in the entire constitution.

As per Justice Pikis (as he then was): "The separation of state powers eminent in the structure of the Constitution of Cyprus precludes the *direct or indirect or in any form* inter-institutional mixture of legislative and executive powers and vice versa. The same separation of powers is applicable for the judiciary." **(*Cyprus Broadcasting Corporation and others v. Karageorghey and others (1991) 3 C.L.R. 159)***

Explicit separation of powers - inherent constitutional constraints

The **executive power** is ensured by the President of the Republic (*Article 46 of the Constitution*) with specified executive powers vested upon him under *Articles 47, 48 and 49 of the Constitution*. All other executive powers are vested upon the Council of Ministers under *Article 54 of the Constitution* which is inter alia, responsible for the general supervision of the public sector (*Article 54(d) of the Constitution*). The Constitution however, makes a further distinction in that political or state power and administration are kept separate (*entrenched principle*)[1] to ensure administration's efficiency independent of government-elect.

Legislative powers are exercised by the House of Representatives in all matters under *Article 61 of the Constitution*.

Judicial powers are vested upon the High Court of Justice and lower courts established by law (*Article 152 of the Constitution*). Most importantly the constitution enshrines judicial independence.

Under *Article 179.2 of the Constitution*, the institutional branches must abide to the provisions of the Constitution. The doctrine of separation of powers is so apparent in the constitution that a statute may be ruled unconstitutional if it conflicts it[2] and the mere 'meddling' of one state power into the other, under any disguise, is unacceptable[3].

[1] President of the Republic v. House of Representatives (2011) 3B C.L.R. 777

[2] Cyprus Broadcasting Corporation and others v. Karageorghey and others (1991) 3 C.L.R. 159, Frangoulides (No.2) v. Republic (1966) 3 C.L.R. 676

[3] President of the Republic v. House of Representatives (1985) 3 C.L.R. 2165, President of the Republic v. House of Representatives (1986) 3 C.L.R. 1159, President of the Republic v. House of Representatives (No.3) (1992) 3 C.L.R. 458, President of the Republic v. House of Representatives (No.1) (2000) 3 C.L.R. 157

This questionnaire will be answered on this premise; that the doctrine serves as a type of 'checks and balances' to the role of the judiciary in both pre-drafting and post-drafting stages of legislation. The extent and form of such judicial involvement are interlinked with the doctrine.

Better Regulation agenda

In July 2001, the European Commission adopted the White Paper on European Governance, which stated that the European Union "must pay constant attention to improving the quality, effectiveness and simplicity of regulatory acts"[4]. As part of the Lisbon strategy, Cyprus applies Better Regulation Guidelines prior to drafting, approved by the Council of Ministers since July 2009. The guidelines are a form of Code of Practise. The Code's main objective was to change the overall legislative culture as pursued by the Commission. In doing so the guidelines reinforce principles like:

- openness, transparency, consultation (5 minimum standards of consultation: (a) clear content of the consultation process, (b) consultation of target groups, (c) publication, (d) time limits of participation, (e) acknowledgment and feedback), general public engagement (principle of subsidiarity) which improves the representation of the public interest
- evidence-based bills and amendment bills for an improved decision-making process
- cost and benefit analysis in going no further than required (principle of proportionality)
- eliminating red-tapes, lessening bureaucracy and impact assessment

All of them are designed to lead to better law-making by effectively implementing common standards for better legislation at every stage of the policy and law-making cycle. While better regulations are vital for achieving policy objectives effective implementation, compliance and enforcement are vital for actually meeting them.

It takes time however, to develop a well anchored institutional structure to support Better Regulation especially since an institutional partnership of any shape and form must abide to entrenched constitutional principles. The will to a better regulatory environment is shared by the 3 key national institutions; Executive (administration), Parliament and the Judiciary. This close partnership aims at projecting better legislation armoured with *legal certainty*. All three recognise that a statute of high quality will not only stand the test of time, it will also give rise to fewer problems of implementation and enforcement by the courts. In order, however, to ascertain the role, scope and extent of 'judicial participation' within this partnership a closer look to the actual law-making process must be in view.

Cyprus' law-making process- the pre-drafting cycle

The policy cycle is triggered by the competent executive centre of government, i.e. a competent Ministry (*Article 80(1) of the Constitution*)[5]. Every bill, whether it concerns legislation, statutory instruments or the transposition of an EU Directive into national law is legally scrutinised by the Attorney General's Office and needs to be accompanied by an Impact Assessment report. Impact assessments have been introduced in Cyprus in October

[4] www.ec.europa.eu

[5] In addition, a member of parliament's proposal may also be drafted in accordance with Article 80 of the Constitution

2007. Legal Revisers of the Legal Service of the Attorney-General's Office have a key role in the quality of legislation team, since they bear primary responsibility not solely in the legal scrutiny of bills but in the maintenance of juridical/legal quality, simplicity, soundness, effectiveness and enforceability of the proposed bill. Once both are concluded the bill is transferred to the parliamentary arena for further consultations/debate.

Primary stage of drafting

Consultation is initiated at drafting infancy. Public Administration is obliged to allow the airing of views of all interested parties (e.g. lobbies, NGOs, trade unions, vulnerable groups, expert groups, advisory bodies). The judiciary might be one of them. As a general rule the judiciary are reluctant to become involved in anything that would jeopardise their judicial independence like expressing views in relation to proposed legislation since they may have to interpret it at a later stage. However, consultations on matters that affect them are vital. Any prospective legislation or amendment bill that has direct or indirect effect on the judiciary and judicial procedures calls for judicial consultation. Notable examples are consultations undertaken between the judiciary and Ministry of Justice and Public Order for the establishment of the Administrative Court and in general any court of special jurisdiction (e.g. prospective Commercial Court[6]). Similarly, this would be the case when the Civil Procedure Act is under the amendment lens. The Supreme Court of Cyprus holds a Supreme Court Committee comprising of Supreme Court Justices responsible for Procedural matters. It could, in this context, be equated to an advisory body to be consulted upon when such issues arise.

Case law in particular is consulted upon when new bills or amendment bills are introduced to fill loopholes or legal lacunas. For example, in 2013 the *Extradition of Fugitives Act 97/1970* was amended as it became quite apparent from case law that there was procedural vacancy between the first instance judgment and appeal proceedings relating to detention. Also, the judiciary may address issues of enforceability and certainty of law. In ***Kafkaris v. Cyprus***[7] the *Grand Chamber* of ECtHR in assessing whether there had been a violation of Article 7 of ECHR, held that "the Court considers, therefore, that there is no element of retrospective imposition of a heavier penalty involved in the present case but rather a question of "quality of law". In particular, the Court finds that at the time the applicant committed the offence, the *relevant Cypriot law taken as a whole was not formulated with sufficient precision* as to enable the applicant to discern, even with appropriate advice, to a degree that was reasonable in the circumstances, the scope of the penalty of life imprisonment and the manner of its execution.[8]" During the appellant's habeas corpus proceedings[9], whereby he alleged that his detention was contrary to ECtHR's judgment, the Supreme Court held that since violation of Article 7 of ECHR was a matter of "quality of law" at time of committal and since the "quality" was improved by the Supreme Court's clarification of uncertainty in a subsequently decided case[10] followed by the implementation of *Prisons Act in 1996*, there was nothing further for the Republic to be done.

[6] Supreme Court's Annual Report, June 2016, page 35
[7] 21906/04, 12/2/2008
[8] (supra), § 150
[9] (2009) 1A C.L.R. 1
[10] Hadjisavvas v. The Republic of Cyprus (1992) 1 B C.L.R. 1134

Informal consultations may conclude the matter if it leads to uniformity of opinions. Otherwise, the issue will continue to be consulted upon through a formal consultation process within the public domain. Formal consultation tools may be used in combination with additional or alternative means of consultation, for example:

- Meetings, - Public hearings, - Public meetings, - Public research, - Target groups, - Gatherings/Exhibitions, - Informative campaigns, - Expert groups, - Public questionnaires, - Personal Interviews, - Market watch, - Web technology, - Public Presentations[11]

This is a step-change in the way administration engages with interested parties, the public and other national institutions when preparing new initiatives, policies, or evaluating existing ones and in general when initiating the law-making process. Stakeholders and citizens could even participate in web-based public consultations. One example would be Ministry of Labour, Welfare and Social Insurance's initiative to call for web-based public consultation in the drafting of Adoption bill or Tax Department's initiative for consultation on transfer pricing rules in Cyprus.

Public consultation is excluded, however when the proposed bill relates to:

- Annual budget and public finance (also excluded from impact assessment obligation)
- Direct applicability of EU Regulations (also excluded from impact assessment obligation)
- Criminal Code
- Consumers Tax
- Austerity measures, Natural Disasters, Force Majeure, National Security and Health
- Defence and National Guard (also excluded from impact assessment obligation)
- Foreign Affairs of the Republic (also excluded from impact assessment obligation)[12]

All consultation papers and contributions made by the participants and interested parties are quickly and easily accessible to the public and all involved interested groups through the website of the competent administrative authority (transparency enhancer). Upon conclusion of consultations the bill together with the Impact Assessment report which seeks to gauge the benefits of future legislation and the cost of implementing it, are passed on to the Attorney-General's Office for technical legal scrutiny.

Secondary stage of drafting

As an independent service of the state, the Legal Service of the Attorney-General's Office makes its own contribution to better law-making at an early stage by checking both the legality of the proposed legislation and its drafting. This responsibility is undertaken by Legal revisers who are also Counsels of the Republic. Legal revisers are responsible for checking the quality of drafting and in particular:

- Constitutionality of bill/amendment bill and intra vires' of statutory instruments
- Ascertain that the right choice of legislative instrument has been made
- Ensure the necessity and proportionality of the bill/amendment bill

[11] Better Regulation Code of Practise, Ministry of Finance, Republic of Cyprus, page 29
[12] (supra) page 19

- Simplicity and clarity of context
- Compatibility with EU and international law
- Ascertain soundness, effectiveness and enforceability
- Ascertain transparency in its making
- Examine the possibility of non-regulatory options
- Width of public consultation/participation and consenting views and opinions
- Possible gender implications of the bill/amendment bill

Once Legal revisers fulfil their role the bill/amendment bill accompanied by an Explanatory Memorandum is passed to the Council of Ministers for approval in order to continue its way through Parliament. In its explanatory memorandum the Attorney-General's Office will explain how the measures proposed are justified in the light of the principles of subsidiarity and proportionality, the scope and results of consultations and the undertaken impact assessment on the economy, environment and society based on the best available evidence. Hence, any input from the judiciary will be filtered into the Explanatory Memorandum. Legal revisers of the Attorney-General's Office are requested to attend parliamentary consultations.

Ultimate stage of drafting

Once a bill/amendment bill reaches Parliament it is published in the Official Gazette of the Republic. In essence, this serves as an announcement to the public and potential interested parties to participate in the prospective parliamentary consultations. Parliament is both constitutionally and institutionally responsible to legislate for the general public (*Article 61 of the Constitution*) and is therefore accountable for all legislation enacted. Parliament's goal is to ascertain *legal certainty* and for that, national legislation should be well drafted in order to reflect the intention of the legislature and achieve its legislative purpose.

During the legislative process, parliamentary consultations take place between Parliamentary Committees and interested parties. Bills may be discussed in a single or in multiple permanent Parliamentary Committees (*Regulation 41(1) of Parliamentary Regulations*) and the responsibility for checking the quality of drafting passes to the Legal revisers of Parliament. Parliamentary Committees may request the submission of information and documentation or call upon any interested party, organisation, authority, trade union, lobby and in general any legal or natural person to express views and opinions (*Regulation 42(4)*). Additionally, any person wishing to air his opinion may request leave to do so from the President of the competent Parliamentary Committee(s) (*Regulation (42 (6)).* Therefore, interested parties involved during administrative consultations as well as new ones may feed their views into the legislative debate. Hence, if the judiciary is an interested party in the drafting of a new bill or amendment bill it will be invited to participate in parliamentary consultations. Having said that, this potential judicial participation is in no way an 'arrangement' to acknowledge an institutional role of the judiciary in the legislative process. Otherwise institutional balance would be sacrificed; encroaching on the doctrine of strict separation of powers and trespassing judicial independence and parliamentary accountability.

All information and documentation submitted to a Parliamentary Committee by any person are considered public unless the holder requests to be classified (*Regulation 42(8)).*

During a recent Parliamentary announcement on 23/1/2017, the House of Representatives communicated its intention in establishing a solid cooperation with universities, NGOs, experts and state institutions to deliver better results[13]. Within its remit, the President of Parliament has also announced cooperation on an advisory basis with a former Chief Justice of the Supreme Court to offer expert legal advice[14].

In both the primary and ultimate stage of drafting the public sector as well as Parliament systematically hold public consultations. The former to collect opinions to be presented during the legislative process and the latter to conclude the policy under its legislative prerogatives. The epilogue of legislative drafting is brought by parliamentary enactment followed by Presidential assent (with a right to veto under *Article 52 of the Constitution* on particular matters or right for Parliamentary re-examination under *Article 51 of the Constitution* or right of referral to the Supreme Court under *Article 140 of the Constitution*) and subsequent publication in the Republic's Official Gazette (*Article 82 of the Constitution*). Upon enactment and publication, the 'better act' is ready to deliver better end results in full force to citizens, the economy and the judiciary. If acts of Parliament are clear they can be implemented effectively, citizens know their rights and obligations and the courts can enforce those rights and obligations with *legal certainty*.

In conclusion, the mechanisms and all its tools are there for the judiciary and advisory bodies to participate in the consultation process on the making of a new bill/amendment bill during the pre-drafting cycle, on matters that affect them. Quality enhancers include inter alia, case law, enforceability concerns, legal lacunas and legal certainty. Consultation at this stage takes a rather incidental form directed to administration and the legislature with notable immediacy or indirectly through the Reports of the Supreme Court, the competent public authority, the Explanatory Memorandum or Legal Revisers of the Attorney-General's Office. Regardless of its form all input takes place within the public domain and in full compliance to the entrenched constitutional doctrine of separation of powers and judicial independence. As specified above and it is further stressed here, possible judicial participation during the consultation cycle is in no way an acknowledgement of an institutional role of the judiciary in the legislative process.

Part 2: Input mechanisms *post*-drafting

Feedback from Courts and Advisory bodies

Conclusion of drafting and enactment of legislation

After legislation, has acquired full force emphasis shifts towards its *juridical quality* rather than its *procedural* one. The Supreme Court of Cyprus is undoubtedly the key guardian of legislation's juridical quality in both phases of the process. The process can be split into two stages for a more comprehensive overview.

1. Conclusion of drafting and Parliamentary assent

Once the proposed act has received Parliamentary assent the President of the Republic is under a constitutional obligation to issue it. For the act to acquire full force issuance must take place within 15 days, via publication in the Republic's Official Gazette in accordance

[13] http://www.parliament.cy/easyconsole.cfm/id/2410
[14] Politis Newspaper, 28/1/2017

with the provisions of *Article 52 of the Constitution*. Within this time period however, the Constitution provides for a structural, preventive scrutiny on the constitutionality of an act alone, under *Article 140*. In essence, the President of the Republic may refer the act to the Supreme Court for an opinion on constitutional issues. Since this stage is prior to the act coming into force there will be no real, tangible evidence deriving from its enforcement. Constitutionality in this context entails a thorough examination of the proposed act's compatibility with the constitution as well as with EU law and extends to well entrenched constitutional principles[15], such as separation of powers, natural justice (*audi alteram partem*)[16], proper administration and human rights[17]. However, the Supreme Court does not examine the consequences the act in question will have in the 'legal sphere' after it is put into force[18]. Therefore, all other issues (including issues of practical conundrums) other than the constitutionality of the bill, cannot be examined within this concept. This scrutiny however does serve as a guardianship to the quality of constitutional democracy.

In a notable case, ***President of the Republic v. House of Representatives (No.1) (2009) 3 C.L.R. 23*** the legislature attempted with an amendment bill to interpret a constitutional provision relating to matters of judicial review under *Article 146 of the* Constitution on the premise that it was merely codifying precedent law. The Supreme Court under the powers vested upon it under *Article 140 of the Constitution* ruled that the amendment bill in question was an unacceptable attempt of interpreting constitutional provisions which in essence constituted to a constitutional amendment through the backdoor. The aforementioned case demonstrates that first precedence is consulted upon by the legislature but ultimately the Supreme Court will not accept, under any circumstances, the manipulation of its case law. The doctrine of separation of powers explains why the Supreme Court defends the judiciary's role as the rightful interpreter of legislation. As highlighted in ***Diagoras Development v. National Bank (1985) 1 C.L.R. 581*** "… there is a constitutionally entrenched Separation of Powers [principle] between the Legislative Power and the Judicial Power in our Republic; and the separation of the two Powers in question has been stressed in, inter alia, the judgment of Pikis J., in ***Malachtou v. Attorney General of the Republic (1981) 1 C.L.R 543, 549***, … The interpretation of laws- and that includes the Constitution and statute law- is by its nature a judicial function... Consequently, any attempt by the legislature to interpret its own laws is unconstitutional for lack of authority to do so. It is not their power to interpret the laws."

Likewise, nor is the role of the judiciary to legislate when a statute or even the constitution falls into legal lacunas. In the case of ***Dias United Publishing Ltd v. Republic (1996) 3 C.L.R. 550*** the Supreme Court by an *enlarged bench* held that the judiciary is not allowed to 'fix' arbitrary omissions of the legislature, 'legislating' on its behalf. In ***Sigma Radio T.V. Ltd v. Republic (2009) 3 C.L.R. 268*** the Supreme Court followed the same *ratio decidendi* and held that completion of statute law through adjudication is not acceptable. Similarly, the same doctrine dictates why the Supreme Court is hesitant to supply the deficiencies of statutes.

[15] Cyprus Broadcasting Corporation and others v. Karageorghey and others (supra), President of the Republic v. House of Representatives (2011) 3B C.L.R. 777

[16] President of the Republic v. House of Representatives (2014), Referral no. 2/2014, 31/10/2014

[17] President of the Republic v. House of Representatives (2014 (supra)

[18] President of the Republic v. House of Representatives (No. 1) (1993) 3 C.L.R. 1,5

Thus, the brief mention of the aforementioned cases exhibits once again that in line with the doctrine of separation of powers, policy makers, legislature and courts have very different institutional capacities. Yet, their respective inputs to legal fabrics might not be totally exclusive in that the output of Parliament's work, is subject to the scrutiny of the latter, through *judicial review* once of course, the bill has been made into an act. However, to what extent can judicial review provide a 'feedback-tool'?

2. Full enactment of legislation

At this stage, government policy has been contained in a body of law ready to be enforced by the courts to adjudicate upon. The common-law system, based on the principle of *stare decisis* means that precedent handed down by the judiciary plays a key role in the practical application and development of legislations. But how bound are the courts to the policy-maker's commitment to better regulation-conformed bills? The answer to this question is vital because if the judiciary are not bound then any form of feedback through the adjudication process of judicially reviewed administrative acts, is by all means excluded.

Judicial review

Judicial review on administrative decisions could be an important instrument on quality control of legislation. Citizens' access to judicial review procedures raise issues relating to rules that bind them. Under *Article 146 of the Constitution* the Administrative Court is the court of competent jurisdiction to judicially review acts or omissions of an administrative or executive nature on a number of grounds as laid down in *General Principles of Administrative Law Act 158(I)/1999,* with a subsequent right to an appeal to the Supreme Court, on points of law alone (*Administrative Court's Act 2015 131/2015 Act*). Most importantly, within Cyprus' legal framework for an administrative/executive act to be contested, leave of the court is not required.

A. Constitutionality

First, judicial review allows the court to review the constitutional quality of applicable law. If the standard of proof of beyond reasonable doubt is not satisfied, the court will hold the act unconstitutional, declare it incompatible but will not override it[19]. As laid down in the leading case of ***The Board for Registration of Architects and Civil Engineers v. Kyriakides (1966) 3 C.L.R. 640*** "another maxim of constitutional interpretation is that the Courts are concerned only with the constitutionality of legislation and *not with the motives, policy or wisdom, or with its concurrence with natural justice, fundamental principles of government or spirit of the Constitution*". Furthermore, in the case of ***Cyprus Broadcasting Corporation and others v. Karageorghey and others (1991) 3 C.L.R. 159*** the Supreme Court in its *majority ruling* held that "the *purpose of the law cannot be submitted to constitutional scrutiny*, as it is within the exclusive prerogatives of Parliament…as long as the statute is within the constitutional framework the *sole judge of its content is the legislative body*". Despite the fact that the Supreme Court when scrutinising the constitutionality of an act will not concern itself with the *motives*, *policy*, *principles of government*, it can however, put pressure on the legislature to amend primary legislation that conflicts Part II of the Constitution's Fundamental Human Rights and the European Convention on Human Rights since *Article*

[19] Theodorides and others v. Plousiou (1976) 3 C.L.R. 319, 340

35 of the Constitution binds all three branches to abide to those guarantees[20]. If an act is contrary to human rights the Supreme Court can declare it incompatible but not override it. Parliament usually amends the act as a result. Also, the Courts have jurisdiction to assess whether statutory instruments are intra or ultra vires but they cannot go as far as to also assess whether rules are proportionate to their policy objectives or whether they are effective. One example amongst many is provided by the case of ***Hadjisavvas v. the Republic of Cyprus (1992) 1 B C.L.R. 1134***, which concerned an application of habeas corpus by a life prisoner who was not released on the date given by the prison authorities based on Regulations in force at the time. The Supreme Court held that *Prison (Miscellaneous) Regulations of 1981* and the *Prison (Miscellaneous) (Amendment) Regulations of 1987* were unconstitutional and ultra vires. They were subsequently repealed and primary legislation (*Prisons Act 1996*) was introduced. In essence the judiciary had indicated to legislature the proper course of action.

B. Status of better regulation requirements

Returning to the initial question; will courts regard the failure to comply with procedures and principles set out in the Code of Practise as maladministration? The answer must be in the negative. This is because better regulation requirements have no legal status and there are no legal consequences from departing from them. Since their implementation into Cyprus' legal order rests entirely on guidelines and codes of practise they produce no legally binding effects unless made mandatory through legislative implementation. Although they have been known to fall into a broader category of 'soft law'[21], in Cyprus' legal order the concept of 'soft law' instruments, is completely alien[22]. Hence, as they do not establish procedural rights they cannot be subjected to judicial review. For example, the court cannot assess whether the policy objectives set have been effectively met. On such an occasion, it would transform judicial review into a *burdensome* process since the courts would take into account procedures concerning administrative rulemaking. Judicial review encapsulates principles of essential procedural requirements and the 'principle of proper law-making' is not one of them. Otherwise the courts would run the risk of replacing policy makers while using non-statutory procedural requirements in their judgments.

On the other hand, the principle of *patere legem quam ipse fecisti* forbids administration from ignoring the principles it has itself imposed. *Article 44 of General Principles of Administrative Law Act 158/1999* provides that discretionary powers may be exercised in accordance with self-imposed guidelines and criteria that do not conflict applicable law under the condition that each individual case is examined on its own merits[23]. This aids public authority's decision-making in that a single or unified judgement measurement is used in line with the principle of equal treatment[24]. Once guidelines have been set public bodies are bound to follow them (self-imposed and self-bound) unless diversion can be

[20] Georgallas v. Hadjichristodoulou (2000) 1C C.L.R. 2060

[21] in principle, soft law instruments have no legally binding force but nevertheless might have practical effects

[22] With a notable exception; Ngassam v. Republic (2010), Case no. 493/2010, 20/8/2010 where the Supreme Court applied International Guidelines on HIV/AIDS and Human Rights 1996 as consolidated and United Nations High Commission for Refugees Note on HIV/AIDS and the Protection of Refugees, IDPs and other persons of Concern

[23] Christodoulou v. Republic (1986) 3 C.L.R. 2243,2250, Damelco (Imports) Limited v. Republic (1991) 4 C.L.R. 402

[24] Tiggiridou v. Republic (1987) 3 C.L.R. 1181, 1187

justified on severe reasons[25]. Similarly, in the EU context, in the case of ***Hüls v. Commission***[26] the Court of First Instance concluded that when the Commission imposes procedural rules on itself it "may not depart from rules which it has thus imposed itself". In this case the Commission had imposed a procedure for providing access to the files in competition cases contained in the 12th Report on Competition Policy. However, it appears that the court has reached this conclusion by relying on the principle of equal treatment rather than on that of breach of essential procedural requirements. *Patere legem quam ipse fecisti* cannot apply to codes of practise on standards relating to law-making before the law has acquired body and soul. The dominating view is that self-imposed requirements relating to proper law-making are not part of essential procedural administrative requirements as judicial review entails an assessment of compliance with both procedural (e.g. natural justice, impartiality, proportionality, good faith and adequate enquiry etc.) and substantive principles of the law (e.g. legality, constitutionality) without necessitating any review of the drafting stage of the proposed bill during the adjudication process.

The judicial body grounds legitimacy, secures the rule of law and respects the role of the executive as policy makers and legislature's as law-makers. An expansion of judicial review towards that direction would bring the judiciary face to face with the executive in unfamiliar and probably sensitive terrain by trespassing the sphere of other institutions.

Therefore, to summarise, once a bill receives parliamentary assent but before it acquires full force feedback from national courts is structurally restricted to an assessment of its constitutional quality. Once enacted, feedback on its quality on better regulation principles cannot be judicial reviewed as better regulation requirements are not directly enforceable before national courts. Hence, the judiciary has not extended its case-law to better regulation procedural rules nor has mention been made in an *obiter dictum* manner. Courts do however, adjudicate upon legal certainty, legal lacunas, legality and constitutionality, as seen in Part 1 and direct legislature to the proper course of action when these principles are found to be at risk. Beyond the sphere of adjudication, the judiciary are quite rightly careful of commenting publicly on legislation that they later on might have to interpret. Their feedback however, can be channelled through Annual Reports and Law Commissions.

Annual Reports

The Supreme Court's feedback can come indirectly in the form of Annual Reports possibly prepared by the Registry's Research Division. An Annual Report, excluding its management section could concentrate on judicial activity and include non-exhaustively:

- an engagement in legal issues
- overview and explanation on the Supreme Court's case law
- analysation of case law relating to competences and powers of national institutions
- offering statistical analysis highlighting any practical conundrums
- engagement in enforceability concerns

Annual Reports were part of Supreme Court's agenda for many years. They were however abruptly discontinued and have not been reissued since. Three Reports have been issued

[25] Selearis v. Republic (1999) 3 C.L.R. 602, 608
[26] Case T-9/89 (1992) ECR

in 1989, 2012 and 2016. All three of them, as accustomed, were communicated to the President of the Republic, the President of Parliament, the Attorney-General, Minister of Justice and Public Order and Minister of Finance before they were made available to the public. Reintroduction of Reports on an annual basis will provide the necessary feedback from the judiciary on an independent plane. It will assist in the reconstruction of feedback methods channelled to other branches. When there is lack of mechanisms – as Justice Pikis (as he then was) said- rights are undermined[27].

Permanent Law Commissions

A further prospective solution is the Supreme Court's intention of establishing Permanent Law Commissions principally consisting of former judges, lawyers, academics and legal experts aiming to contribute substantially in the review, reform and modernisation of law. The Law Commissions would summarise their findings in Annual Reports[28].

Law Commission

Law Commissions present in many countries are statutory independent bodies empowered to keep the law under review and to recommend reform where it is needed. The aim of the Commission, established in Cyprus in 1971, is to ensure that the law is fair, modern, sound, simple and effective. The Commission carries out projects to review an area of law by deciding the remit of the project, in conjunction with the relevant Ministry or government department, initiate a study of the area of law and identify its defects, approach interest groups and specialists in the area. The Commission can carry out consultations setting out in detail the existing law and its defects and invite comments encouraging feedback from any interested parties.

[27] Supreme Court's Report 2016, page 18
[28] Supreme Court's Report 2016, page 53