

Chypre
Cour suprême

Cyprus
Supreme Court

HIERARCHY OF NORMS IN CYPRUS LAW

I. NORMS COMPRISING THE CYPRUS LEGAL SYSTEM (BY DECREASING ORDER OF AUTHORITY)

1. European Union Law

Until EU accession, the Constitution of Cyprus was the supreme law of the country, capable of annulling national laws if these were deemed by the courts to be 'unconstitutional'. In July 2006, the Cyprus Constitution was amended giving supremacy to all European Union Law (primary as well as derivative) (fifth amendment of the Constitution, Law (127(I)/06)

Constitutional references:

Article 1A of the Constitution of Cyprus provides that no provision in the Constitution can be deemed as overriding any legislation, acts or measures enacted or taken by the Republic which are obligatory as a member state of the European Union, nor does it hinder Regulations, Directives or other binding provisions or measures of a legislative nature enacted by the European Union from having legal force in the Republic.

Case Law

Civil Appeal 221/13 Michaelides v. AG, 2.September 2013: The amendment of the Constitution laid the foundation for the supremacy of EU law over the Constitution.

2. The Constitution.

The Constitution of Cyprus was adopted in 1960 and according to Article 179 it constitutes the supreme Law of the Republic, subject to the provisions of Article 1A.

Case law

Reference of the President of the Republic (2009)3 CLR 648: subject to the provisions of Article 1A, the Constitution is the superior law of the Republic and no law, action or decision should contravene or be in conflict with it.

3. International Law

Under Article 169 of the Constitution, international conventions, treaties are of superior status to any other law either prior or consequent. They are inferior to the Constitution and are subject to judicial review in the sense that the Constitutional provisions prevail in case of any inconsistency between them and the provision of the Constitution.

4. Parliamentary laws.

- a. Ordinary laws are enacted by the House of Representatives which exercises legislative power and must be in conformity with EU law and the Constitution.
- b. Colonial Laws which have been constitutionally preserved by virtue of Article 188 of the Constitution, unless some provision has been or will be made pursuant to a law which applies or is passed by the House of Representatives after independence and to the extent that these are not inconsistent with or repugnant to the Constitution.

Constitutional Reference: Article 188 :Subject to the provisions of the Constitution and to the following provisions of this Article, all laws in force on the date of the coming into operation of this Constitution shall, until amended, whether by way of variation, addition or repeal, by any law or communal law, as the case may be, made under this Constitution, continue in force on or after that date, and shall, as from that date be construed and applied with such modification as may be necessary to bring them into conformity with this Constitution.

Constitutional review of a law may take 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.

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 President 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. The Supreme Court in the exercise of its functions as a Constitutional Court can adjudicate on the constitutionality of a law.

The jurisdiction on the constitutionality of laws may be exercised by first instance courts, however 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.

Constitutional reference: **Article 140** of the Constitution: The President and the Vice-President of the Republic acting jointly may, at any time prior to the promulgation of any law or decision of the House of Representatives, refer to the Supreme Constitutional Court for its opinion 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, otherwise than on the ground that such law or decision or any provision thereof discriminates against either of the two Communities or is repugnant to or inconsistent with the law of the European Communities or of the European Union.

Article 144 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.

Case Law ***Nicolaou v. Nicolaou (1992) 1 CLR 1338*** on the constitutional review of laws.

5. **Subsidiary legislation** :Regulatory Acts are legislative acts issued by the executive pursuant to statutory powers vested in them.

6. Case law of the Supreme Court

The unwritten law of Cyprus consists of judicial precedents. According to the common Law doctrine of stare decisis, Cypriot courts are bound by judgments of the Supreme Court. Therefore a judgment by the Supreme Court interpreting a rule of law is construed as a source of law.

7. Common law and equity

The principles of common law and equity as applied by the jurisprudence of the courts in England are applicable to the extent that these are not repugnant to the constitution.

II HIERARCHY OF NORMS IN CYPRUS

Each source of law exists only in the context set by laws at a higher level. A norm cannot limit or eliminate a higher level norm. There is a pyramid at the top of which is the European Law, following the Constitution, International Law, Common Legislature and other Administrative Acts.