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## **CYPRUS**

### **I. National practices concerning law-making procedures in case of urgent and/or exceptional circumstances**

#### **1/ Does your national legal order identify urgent and/or exceptional cases as the justification for applying special law-making procedures?**

The legal order of Cyprus does identify urgent and/or exceptional cases as the justification for applying special law-making procedures. In particular, the Constitution of Cyprus itself recognizes urgent and exceptional cases as the justification for applying special law-making procedures. This recognition is distinctly expressed in Article 183 of the Constitution. Beyond Article 183 of the Constitution, laws have been enacted to safeguard the smooth function of the Republic of Cyprus, upon the Turkish Cypriot public servant's abandonment of their offices in 1963. This situation has been faced as a temporary necessity which had to be urgently dealt with in order ensure the smooth function of the State. The so called doctrine of the "law of necessity" has since been the main constitutional doctrine of Cyprus.

#### **Are the concepts of "urgency" and "exceptionality" used cumulatively or alternatively as conditions for the special law-making procedures?**

The concepts of "urgency" and "exceptionality" are used without having a different meaning. What both of these terms connotes in the Cypriot Constitutional law is the meaning of "a pressing necessity" and emergency which goes beyond the predicted regular course of matters.

#### **Are there distinct or common law-making procedures applying in urgent and/or exceptional cases?**

There are distinct procedures applying in urgent and/or exceptional cases according to Article 183 of the Constitution. The laws which are enacted based on the "law of necessity" follow the procedure already prescribed by the Constitution with the main difference that Turkish Cypriot public officers are not part of the procedure. The reason is that the representatives of the Turkish Cypriot community left their offices in 1963 and they have never returned.

#### **2/ Do the eventual special law-making procedures in case of urgent and/or exceptional circumstances derive from de facto practices or are they set out in the Constitution and/or in ordinary legislation?**

Article 183 of the Constitution provides the eventual special law-making procedures in case of urgent and/or exceptional circumstances which fall within its scope of applicability. As has already been mentioned, the laws which are enacted based on the “law of necessity” follow the procedure which is prescribed by the Constitution of enacting laws and amending the Constitution. However, the main difference is that Turkish Cypriots are no longer involved in the corresponding procedures. This de facto derogation of the Constitution has been justified by the doctrine of the “law of necessity”.

**What are the main principles and the concrete proceedings of law-making in urgent and/or exceptional circumstances in your national legal order?**

I will first present the main principles and the concrete proceedings of law-making in urgent and/or exceptional circumstances in Cypriot legal order, as they are provided by Article 183 of the Constitution. I will then present the main principles based on the law of necessity and the concrete proceedings of law-making in urgent and/or exceptional circumstances which fall within and justified by the doctrine of the “law of necessity”.

**Article 183 of the Constitution**

Article 183 of the Constitution refers to the “case of war or other public danger threatening the life of the Republic or any part thereof.”<sup>1</sup> In this case “the Council of Ministers shall have power, by a decision taken in this respect, to issue a Proclamation of Emergency”.<sup>2</sup>

Against the decision of the Council of Ministers, “the President and the Vice-President of the Republic shall, separately or conjointly, have a right of veto.”<sup>3</sup> The right of veto against the decision of the Council of Ministers shall be exercised within forty-eight hours of the date when the decision has been transmitted to the offices of the President and the Vice-President of the Republic. <sup>4</sup> In the current state of matters of Cyprus there is no Vice-President of the Republic. Thus, the right of veto can be exercised only by the President. According to the Constitution, the President and the Vice-President of the Republic, and in the current reality only the President, shall promulgate forthwith such

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<sup>1</sup> Article 183, para.1 of the Constitution of Cyprus, 1960 (hereinafter the Constitution of Cyprus). It provides:

1. In case of war or other public danger threatening the life of the Republic or any part thereof, the Council of Ministers shall have power, by a decision taken in this respect, to issue a Proclamation of Emergency: Provided that the President and the Vice-President of the Republic shall, separately or conjointly, have a right of veto against any such decision which they shall exercise within forty-eight hours of the date when the decision has been transmitted to their respective offices.

[...]

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

Proclamation by publication in the official Gazette of the Republic.<sup>5</sup> The promulgation does not take place if the President has exercised his/her right of veto. <sup>6</sup>

It is imperative that any decision of the Council of Ministers “shall specify the Articles of the Constitution which shall be suspended.” <sup>7</sup> Not all the Articles of the Constitution can be suspended based on a Proclamation of Emergency. First, the right to life can be suspended “only in so far as it relates to death inflicted by a permissible act of war.”<sup>8</sup> The prohibition of the compulsory forced or compulsory labour can be suspended.<sup>9</sup> The right to personal freedom and security,<sup>10</sup> the right to free movement throughout the territory of the Republic, the right to residency and the right to leave temporary or permanently the territory can be suspended. <sup>11</sup> The right to dwelling house,<sup>12</sup> the right to correspondence and communication,<sup>13</sup> the freedom of speech and expression,<sup>14</sup> the right to peaceful assembly,<sup>15</sup> the right to practice any profession or to carry on any occupation, trade or business <sup>16</sup> and the freedom of contract<sup>17</sup> can be suspended. The right to just and equitable compensation after requisition of the property can also be suspended. <sup>18</sup>

The Legislature is involved in the proceedings only when a Proclamation is promulgated by the President and/or the Vice President. Only after the promulgation, can the proclamation be laid forthwith before the House of Representatives. <sup>19</sup> If the House of Representatives is not sitting it must be convened as soon as possible for this purpose.<sup>20</sup> The Proclamation of Emergency can be rejected or confirmed by the House of Representatives.<sup>21</sup> If the Proclamation of Emergency is rejected, the Proclamation shall

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<sup>5</sup> Article 183, para. 3 of the Constitution of Cyprus

<sup>6</sup> Id. As I have mentioned already, according to the Constitution the right to veto can be exercised by the President and the Vice-President, separately or conjointly.

<sup>7</sup>Article 183, para.2 of the Constitution of Cyprus.

<sup>8</sup> Id. The right to life is protected by Article 7 of the Constitution.

<sup>9</sup> Id. The prohibition to perform forced or compulsory labour is provided by Article 10 paras 2 and 3 of the Constitution.

<sup>10</sup> Id. The right is protected by Article 11 of the Constitution.

<sup>11</sup> Id. The rights are protected by Article 13 of the Constitution.

<sup>12</sup> Id. The right is protected by Article 16 of the Constitution.

<sup>13</sup>Id. The right is protected by Article 17 of the Constitution.

<sup>14</sup>Id. The right is protected by Article 19 of the Constitution.

<sup>15</sup>Id. The right is protected by Article 21 of the Constitution.

<sup>16</sup>Id. The right is protected by Article 25 of the Constitution.

<sup>17</sup>Id. The right is protected by Article 26 of the Constitution.

<sup>18</sup>Id. The right is protected by Article 23, para. 8., subparagraph (d) of the Constitution.

<sup>19</sup> Article 183, para.4 of the Constitution.

<sup>20</sup> Id.

<sup>21</sup> Article 183, para.5 of the Constitution.

have no legal effect.<sup>22</sup> If it is confirmed, the President and the Vice-President of the Republic shall promulgate forthwith such decision of the House of Representatives by publication in the official Gazette of the Republic.<sup>23</sup>

Time is a crucial factor in emergency and exceptional situations. The Proclamation of Emergency shall specify the duration of such Emergency.<sup>24</sup> As a principle, the Proclamation of Emergency shall cease to operate at the expiration of two months from the date of confirmation by the House of Representatives.<sup>25</sup> The Proclamation shall cease to operate longer, if the House, at the request of the Council of Ministers decides to prolong the duration of the state of emergency.<sup>26</sup> Against this decision of prolongation, the President and the Vice-President of the Republic, separately or conjointly, shall have a right of veto against such decision of prolongation.<sup>27</sup> The right to veto against the decision of the House of Representatives is exercised in accordance with the Constitution.<sup>28</sup>

While a Proclamation is in operation, notwithstanding anything in the Constitution, the Council of Ministers if satisfied that immediate action is required may make any ordinance strictly connected with the state of emergency having the force of law.<sup>29</sup> This power of the Council of Ministers is subject to the right of veto of the President and the Vice-President of the Republic to be exercised, separately or conjointly.<sup>30</sup> If no right of veto is exercised, the President and the Vice-President of the Republic shall forthwith promulgate by publication in the official Gazette of the Republic such ordinance.<sup>31</sup> Such ordinance if not sooner revoked shall cease to be in force at the expiration of the emergency.<sup>32</sup>

### **The doctrine of the Law of Necessity**

It was only 4 years after Cyprus' independence from British colonists. In 1964 Cyprus faced an exceptional and urgent case which has influenced the whole constitutional life of the new born, that time, Republic. In particular, the first major crisis in the legal and judicial system of the Republic of Cyprus arose in 1964, after the inter-communal troubles of 1963-64 and the mass exit of Turkish Cypriot representatives from the institutions of the state. The Law on the Administration of Justice (Miscellaneous Provisions, Law No. 33/64), was enacted in order to address the enormous

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<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Article 183, para.2 of the Constitution of Cyprus.

<sup>25</sup> Article 183, para.6 of the Constitution of Cyprus.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id. Article 50 of the Constitution of Cyprus.

<sup>29</sup> Article 183, para.7, subpara. 1 of the Constitution of Cyprus.

<sup>30</sup> Id. Article 57 of the Constitution of Cyprus.

<sup>31</sup> Article 183, para.7, subpara. 2 of the Constitution of Cyprus.

<sup>32</sup> Article 183, para.7, subpara. 3 of the Constitution of Cyprus.

constitutional and legal difficulties that arose in the functioning of the State, with the withdrawal of the Turkish Ministers, Members of Parliament and Judges from the institutions of the Republic.

Law No. 33/64 made several changes in the justice system, among which was the amalgamation of the Supreme Constitutional Court and the High Court in the present Supreme Court.<sup>33</sup> The leading case in our Constitutional Law, the Attorney General of the Republic v Ibrahim and Others (1964) CLR, 195 considered that the abovementioned Law 33/64 was constitutional under the doctrine of necessity. Mr A.M. Beberoglou, for the respondent, argued that the Court, as constituted, had no jurisdiction to hear the appeals as the relevant provisions of Law 33/1964, setting up a unified Supreme Court, were contrary to the Constitution for these reasons: that the composition of the three Judges of the Court was only empowered to hear appeals and not questions regarding the constitutionality of laws, that the Law had not been duly promulgated and published in accordance with the provisions of Articles 47(e) and 52 of the Constitution (since the Turkish Vice President had taken no part in either the promulgation or the publication of the Law, as expressly required by the Constitution), that the Law had not been published in Turkish in the Official Gazette of the Republic (contrary to the provisions of Article 3.1 and 2) and that consequently the challenged Law had not come into force.<sup>34</sup> Therefore, the leading case of the constitutional law of Cyprus was about preliminary objections.

Unanimously, the Judges finally interpreted the constitution to include the doctrine of necessity, “which is an implied exception to particular provisions of the Constitution”, in exceptional circumstances, and this occurs in order to ensure the very existence of the State. The following prerequisites must be satisfied before this doctrine may become applicable:

- (a) an imperative and inevitable necessity or exceptional circumstances;
- (b) no other remedy to apply;
- (c) the measure taken must be proportionate to the necessity; and
- (d) it must be of temporary character limited to the duration of the exceptional circumstances.<sup>35</sup>

They thus supported the theory that the necessity is not a defense but an autonomous source of Law<sup>36</sup> and that this Law is based on the maxim “salus populi est suprema

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<sup>33</sup> See preamble of this Law where the emergency, urgent and temporary nature of its inaction is explained under the abnormal situation in Cyprus in 1963.

<sup>34</sup> Polyvios G. Polyviou, *The Case of Ibrahim the Doctrine of Necessity and the Republic of Cyprus*, Chrissafiniw & Polyviou, Nicosia, 40 (2015).

<sup>35</sup> Ibrahim, at 265.

<sup>36</sup> They referred among others to the “theory of exceptional circumstances “ in France and the case HEYRIES(C.E.28 July,1918 Rec.651), Consiller d’État Raymond Odent “Contentieux Administratif “University of Paris (1961)Volume 1, at 136, to eminent writers inn Italy like C. Mortati, Professor in the University of Rome: “Dirritto Pubblico (1962), 6<sup>th</sup> edition, at 174 where the necessity “...has been treated as an autonomous juridical situation by itself capable of legalizing an otherwise illegal act”; and R.Alessi, professor of administrative Law in the University

lex”<sup>37</sup>. In particular, the Judge Triantafyllidis had the opinion that “...the doctrine of necessity in public law is in reality the acceptance of necessity as a source of authority for acting in a manner not regulated by law but required, in prevailing circumstances, by supreme public interest, for the salvation of the State and its people. In such cases, “salus populi” becomes “suprema lex”.

Law 33 of 1964 came into operation on the day of its publication in the Greek language in the Gazette, namely on the 9th July 1964.<sup>38</sup> An enacted law based on the law of necessity is thus subject to the control of the judiciary to decide whether the aforesaid prerequisites are satisfied, i.e. whether there exists such a necessity and whether the measures taken were necessary to meet it.”<sup>39</sup>

### **3/ What is the respective role of the legislative and the executive power, and eventually of other institutions, in dealing with urgent and/or exceptional circumstances?**

#### **Do the Head of the State, the Parliament and the Government retain a particular role?**

The letter of Article 183 of the Constitution provides as I have already presented for the role of the Council of Ministers, the Head of the State and the Parliament in dealing with urgent and/or exceptional circumstances.

As far as the laws enacted based on the law of necessity are concerned, the legislature acts according to a procedure which has been de facto applied since 1964, while it however constitutes a derogation from the letter of the Constitution. In particular, all the laws of the Republic since 1964 are enacted without the participation of the Turkish Cypriot members of the Parliament, even if the letter of the Constitution requires such participation. The reality of the absence of the Turkish Cypriot officials does not permit the fulfillment of the requirement of the written Constitution and the smooth function of the State is preserved through the law of necessity. Similarly, the Head of the State exercises his duties according to the Constitution, while there is no any Vice President in the Republic. In particular, the President of the Republic may at any time prior to the promulgation of any law or decision of the House of Representatives, refer to the Supreme Constitutional Court to ask whether there is any unconstitutionality or incompatibility with the law of the European Union.<sup>40</sup>The Court, again acts based on the absence of any Turkish Cypriot members of the judiciary. As already mentioned, the

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of Bologna: “Dirritto AdministrativoItaliano” (1960), 3<sup>rd</sup> edition, at 218. ,to Laband and W. Jellinek and the Article 48 of the Weimar Constitution(see Jellinek, “Gesetz und Verordnung” 1887, at 376, to the English Criminal Code where necessity is considered as a complete defense , an article entitled “The Defense of Necessity” by Dr. Glanville Williams 1nd 68/1945 in “Current Legal Problems 1953”at 216 et seq. , to the Greek cases No. 43 of 1919, 2/1945, 13/1945. Ibrahim case at 258 -264, also at 231.

<sup>37</sup> See also declaration by Archbishop Makarios, April 1st 1961, in “Peculiarities of the Constitution of Cyprus and the impact in the smooth function of the State”, Criton G. Tornaritis, Attorney General of the Republic, Nicosia, 1980, Annex I, at 38.

<sup>38</sup> Law 33/64, *E.E., Παρ.Ι(Ι), Αρ.331, 9/7/1964*, See also, Polyviou, *supra*, at 43.

<sup>39</sup> Ibrahim, at 265.

<sup>40</sup> Article 140 of the Constitution, as it has been amended.

Court may be called to determine whether the law enacted based on the law of necessity meets the criteria of applicability required by the doctrine of the “law of necessity”.

#### **4/ On what occasions and how frequently have the urgent and/or exceptional law-making procedures been applied in your national legal order?**

Article 183 has never been used<sup>41</sup> while the doctrine of the law of necessity has been the main constitutional doctrine in Cyprus, since 1963. Since 1964, the doctrine of the law of necessity was invoked many times, including those cases when the Constitution of the Republic of Cyprus was amended. There is no doubt any more that the smooth functioning of the State requires to amend the constitution, if this is necessary, without the participation of the Turkish Cypriots.<sup>42</sup> Any amendment of the Constitution so far affects-at least expressly- non basic articles of the Constitution. All the Laws amending the Constitution refer to the Law of Necessity in their preambles and they are enacted without the participation the Turkish Cypriot Members of the House of the Representatives required by the letter of the Constitution.

#### **Have they been activated in abusive ways and has there been a political criticism against their application?**

After *Ibrahim* no one in Cyprus denies the existence of the doctrine of the law of necessity as a source of our constitutional law. The cases followed dealt with the satisfaction of the conditions at the particular case or with the utility of the doctrine in certain cases but not with the existence of the doctrine itself. In the same way, any criticism to *Ibrahim* or to the whole application of the doctrine in Cyprus was regarding the satisfaction of the requirements.<sup>43</sup>

On the other hand, the application of the doctrine has been under criticism regarding mainly the following questions: which organ is finally competent to decide; when there is necessity and where are the limits of the relevant judicial review<sup>44</sup>; if in the certain cases the proportionality requirement was really satisfied or if the legislative or executive organs went beyond the limits put by the certain necessity<sup>45</sup>; question over

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<sup>41</sup> See Andreas N. Loizou, *Constitution of the Republic of Cyprus*, 420-422 (2001). As he points out reference to Article 183 was made in *Ibrahim*, as illustrating that the Constitution itself includes the doctrine of the law of necessity in exceptional circumstances, which is an exception to some provisions of the Constitution. Id. at 422.

<sup>42</sup> *President of the Republic v. House of representatives* (1986) 3 C.L.R. 1439, *Nikolaou a.o v. Nikolaou a.o* (No 2) (1992) 1 C.L.R. 1338, *Koulounti a.o v. House of Representatives a.o.* (1997) 1 C.L.R.1026, *Rita Mesaritou v. the Cyprus Broadcasting Corporation* [1972] 3 C.L.R. 100. For an extent analysis see *Constitutionalism –human rights-Seperation of powers, The Cyprus Precedent*, Georgios M. Piki, Martinus Nijhoff Publishers, Leiden / Boston, 2006, at 36.

<sup>43</sup> «Το δίκαιο της ανάγκης και η συνταγματική τάξη στην Κύπρο» (“The Law of Necessity and the constitutional order in Cyprus”) Nicosia, 1995 by Loukis Papafilippou at p.235-248.

<sup>44</sup> Reference 1/86 and the cases 17/90 and 24/90.

<sup>45</sup> Particularly there was criticism to the creation of a New Committee of Public Services which is established by the Law 33/67 article 4(3) which in case .... was judged as being in consistence with the Constitution. Also, the merger of the Constitutional Court and the High Court to the Supreme court which is created by the Law ... which in *Ibrahim* case was judged as being in consistence to the Constitution, is under a criticism as a non-proportional solution. See Papafilippou *ibid.* p.242-246.

the form of the taken measures<sup>46</sup>, and where the use of the doctrine stops and whether it can be invoked in some cases e.g. the amendment of the Constitution.

The criticism actually regards the fundamental question of the edge lines of the law and politics, the balanced function of the three powers and the abuse of the doctrine. If one takes into account the fact that the measures in question were taken as temporary while they continue to exist till today<sup>47</sup>, one could reasonably doubt of whether the requirement of the law of necessity regarding the temporariness of the measures is satisfied. These doubts are enhanced by the fact that no one knows if the constitutional order as had set by the Constitution in 1960 would be ever restored and when and if so, if it would be capable to continue under the terms set up by the Constitution. After the events in 1963, a Turkish invasion in 1974 resulted the occupation of 36, 43% of the territory of the Republic by the Turkish. Thus, the sine qua non premise of the Constitution for the cooperation of the two communities in the basic structure of the State has not been a part of our constitutional reality since 1963. The opinion that prevails is that we are still in an urgent constitutional situation until a solution to an international problem of illegal invasion and occupation is found regarding the Turkish invasion in Cyprus in 1974 and the resulting illegal occupation of the 36,43% of the island by the Turks.

#### **5/ Are the urgent and/or exceptional regulatory procedures and measures subject to judicial review in your country?**

As far as the laws enacted based on the law of necessity, the judicial review extends even in the issue of whether there is the existence of the necessity. As it has been often said, "the Judiciary is the guardian of the Constitution"<sup>48</sup>. Thus, the judicial review is not restricted only over the question of whether the measures taken are necessary for facing the necessity.<sup>49</sup> Proportionality is a basic principle of the law of necessity. The court should thus examine whether the measures taken are proportional, that are appropriate, respective, necessary and proportional *stricto sensu*, that is not disproportional, for its fulfilment.<sup>50</sup>

#### **In particular, is this review the task of a constitutional court?**

Every judge is obliged to answer whether a law is constitutional, if this law is the applicable law in the case before the judge and the issue of constitutionality is necessary to be answered for the outcome of the decision. Any law which is based on the law of necessity can be challenged that it does not satisfy the requirements set out by the doctrine of the law of necessity. This can happen before any court, as far as this law is

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<sup>46</sup> The judge Pikiş has a very interesting opinion that another requirement of the law of necessity and the deviation of its provisions is the pre-existed law. This, however, is not the prevailing opinion in Cyprus.

<sup>47</sup> See criticism by Loukis Papafilippou, *supra*, 235-248.

<sup>48</sup> e.g., Polyviou, *supra*, at 193.

<sup>49</sup> Ibrahim case at p. 265, Papadopoulos v. the Republic 1985 C.L.R. 165.

<sup>50</sup> Rita Messantou v The Cyprus Broadcasting Corporation 1972 3 CLR 100, Solomou v Republic 1984 3 CLR 677, Makrides and another v Republic 1984 3 CLR 677, Kritiotis v Ministry of Paphos and Others 1986 3 CLR 322, Aziz v the Republic 369.01, 23/05/2001.



applicable in the certain case and the question of the constitutionality is necessary to be answered for the outcome of the case.

The situation was different before the amalgamation of the High Court and the Supreme Constitutional Court into a single Supreme Court, upon the abandonment of the Turkish Cypriot officials of their offices. However, Article 144 of the Constitution which requires a referral to the Supreme Constitutional Court, is not applicable, upon the abandonment of the Turkish Cypriot officials of their offices. There is not a Constitutional Supreme Court composed of one Turkish Cypriot judge, one Greek Cypriot and one neutral in the current constitutional reality, since 1963. In this reality, there is solely a Supreme Court composed of Greek Cypriot judges and therefore, there is no anymore the necessity to refer the question of the constitutionality of the law before a neutral judge.<sup>51</sup>

**Is the existence of the “urgent” and/or the “exceptional” situation a factual or a legal issue?**

The issue of whether the existence of the “urgent” and/or the “exceptional” situation is a factual or a legal issue has been controversial. However, in *Papadopoulos v. the Republic* 1985 C.L.R. 165, the majority of the Court decided that it is the Judiciary who should judge both the existence of the necessity, and the measure which are necessary for facing the necessity.

**Is there a special duty for the executive to give reasons for the application of an urgent and/or exceptional regulatory procedure? Are these reasons subject to judicial control, and, if so, to what extend?**

The general principle of the administrative law for reasoned decisions is well established in the administrative law in Cyprus. The law of necessity loses its basis when the criteria of application are violated and when the reason of applying the law of necessity is eliminated. In such a case, the rule of law is violated.<sup>52</sup> The rule of law still

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<sup>51</sup> Article 144 reads as follows:

1. 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.
2. The Supreme Constitutional Court, on a question so reserved, shall, after hearing the parties, consider and determine the question so reserved and transmit its decision to the Court by which such question has been reserved.
3. Any decision of the Supreme Constitutional Court under paragraph 2 of this Article shall be binding on the court by which the question has been reserved and on the parties to the proceedings and shall, in case such decision is to the effect that the law or decision or any provision thereof is unconstitutional, operate as to make such law or decision inapplicable to such proceedings only.

<sup>52</sup> *Republic v Nicolaos Sampson* 1977 2 CLR 1, *Apostolides v Republic* 1983 3 CLR 928, *President of Republic v House of Representatives* 1991 3 CLR 252.

applies even the law of necessity applies.<sup>53</sup>Therefore, the duty to give reasons are always valid, in order to be able to assess whether the reasons of applicability continue to exist.

**6/ Do you think that any general or particular feature of your national special law-making procedures could be used at a European level for the management of urgent and/or exceptional circumstances?**

**Which criteria could be apt to guide this transposition?**

It seems that enacting an urgent legislation on a European level is inherently problematic. Questions of people's sovereignty and proportionality can be arisen. Even more, the urgent legislation needs speedy decisions, while the European Union is a supranational legal order. However, it may be some cases where the urgent legislation on a European level may be justified. In such hypothetical case, the requirements set out by the doctrine of the law of necessity can constitute the main substantive criteria to be satisfied in order to enact an urgent legislation on a European level. *Ibrarhim* is a case of international recognition and importance in case law and bibliography. It is remarkable that the Supreme Court of Canada in the case of Language Rights under the Manitoba Act 1870 (1985) 19 DLR 4<sup>th</sup> 1 decided that *Ibrahim* sums up the principles of the law of necessity in its traditional form.

**7/ Do you think that under the current circumstances your national Government would be willing to grant competence for urgent and/or exceptional legislation to the EU?**

My assessment of whether the Cypriot government would be willing to grant competence for urgent and/or exceptional legislation to the EU is beyond any political assessment. However, I can present the current legal basis and ethnic philosophy towards the law of the European Union within the Constitution of Cyprus.

First, a potential grant of competence for urgent and/or exceptional legislation to the EU would fall within the notion of the "options" and not the "obligations" of the membership of Cyprus within the EU. If the options are based on the Treaties of the European Union and the Treaty of the Functioning of the European Union or other Treaties which amend or replace them and which are concluded by the Republic are covered by Article 169, para. 4 of the Constitution Law of 2006.<sup>54</sup> This a relatively recent provision which was added by the Fifth Amendment of the Constitution. It provides:

4. The Republic may exercise every choice and discretion provided for in the Treaties the European Communities and the Treaty on European Union and in any Treaties which amend or replace the above and which are concluded by the Republic.

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<sup>53</sup> *Aloupas v National Bank of Greece* 1983 1 CLR 55.

<sup>54</sup> Law No. 127(I)2006, official Gazette No. 4090, 28.7.2006, Annex I(I), p. 1372.

Second, Article 169 of the Constitution should be understood within the general framework of the Fifth Amendment of the Constitution.<sup>55</sup> The central provision which was added by the Fifth Amendment is Article 1A of the Constitution which provides the supremacy of the law of the European Union regarding the obligations of the Republic as a member of the EU.<sup>56</sup> Article 179 of the Constitution has also been amended subjecting the supremacy of the Constitution to the provisions of Article 1A of Constitution.<sup>57</sup> Article 140 of the Constitution was also amended as to allow the exercise of the right to reference of the Head of the Republic to the Supreme Court for questions of unconstitutionality or incompatibility with the law of the European Union.

One can make reference here to Article 15 of the European Convention of Human Rights. In exceptional circumstances it allows to take measures which violate the fundamental rights guaranteed by the Constitution. In cases where the Constitution of a country does not include such a provision, then the law of necessity is invoked.

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<sup>55</sup> See e.g., Constantinos Lycourgos, "Cyprus Public Law as affected by accession to the European Union," in Constantinos Kombos, *The impact of EU law on Cypriot Public Law*, Sakkoulas Publications, Athens-Thessaloniki (2015).

<sup>56</sup> Article 1A of the Constitution reads as follows:

No provision of this Constitution shall be considered as invalidating laws enacted, acts done or measures adopted by the Republic necessitated by its obligations as a Member State of the European Union or shall prevent Regulations, Directives or other acts or binding measures of a legislative character adopted by the European Union or by the European Communities or by their institutions or by their competent bodies under the provisions of the treaties founding the European Communities or the European Union, from having legal effect in the Republic.

This is a free translation of the original greek text, used also by Lycourgos, supra. at 105.

<sup>57</sup> Article 179 reads as follows:

1. Without prejudice to the provisions of article 1A, the Constitution shall be the supreme law of the Republic.
2. No law or decision of the House of Representatives or of any of the Communal Chambers and no act or decision of any organ, authority or person in the Republic exercising executive power or any administrative function shall in any way be repugnant to, or inconsistent with, any of the provisions of this Constitution or any obligation imposed on the Republic as a result of its participation as a Member State in the European Union.

This is a free translation of the original greek text, used also by Lycourgos, supra. at 105.