

**WCCJ QUESTIONNAIRE – 4<sup>TH</sup> CONGRESS**  
**CYPRUS**

**I. The different concepts of the rule of law**

1. What are the relevant sources of law (e.g. the Constitution, case-law, etc.) which establish the principle of the rule of law in the legal system of your country?

**Constitutional provisions are the paramount law and supersede and prevail every other legal provision or regulation inconsistent with them. The genesis of laws, rules and regulations is dependent on observance of the Constitution and laws made thereunder. There is no room for legitimacy outside that framework or authority. International treaties properly become part of the domestic law and have superior force to any other domestic law enacted by Parliament.**

**A detailed list of the constitutionally safeguarded fundamental rights is included in Part II of the Constitution of Cyprus (Articles 6-35) under the Heading: fundamental rights and Liberties". It should be noted that Part II of the Constitution is modelled on the European Convention for the protection of human rights.**

**Human rights provisions give individuals the right to confront the government and at the same time, ensure that the State governs according to the law, and it does not violate the rule of law.**

**Legislative measures which contravene any provisions of the Constitution safeguarding human rights may be declared unconstitutional by the Courts. It has been held that the fundamental rights and liberties safeguarded by the Constitution have to be narrowly construed and in case of doubt, they should always be interpreted in favour of the individual protected rather than in favour of the state. Article 33 of the Cyprus Constitution explicitly provides that fundamental human rights and liberties guaranteed by the Constitution shall not be subject to any other limitations or restrictions other than those provided in Part II of the Constitution. Such limitations may be introduced by legislation enacted by Parliament or legislation which forms part of European Union Law.**

**Our Constitution has been amended by law 127(I)/2006 giving supremacy to Union Law even over the Constitution. It provides, in essence,**

**that no provision of the Constitution is considered to invalidate any laws, acts or measures which are deemed necessary due to the obligations of the Republic of Cyprus as a Member state of EU or impede the legal effect and application, in the Republic, of Regulations, Directives, or other EU, or European Communities' legal instruments of a binding nature.**

**As a result, EU and European Community Law now has an intra constitutional effect, in the sense that it is considered to be an integral part of the Constitution and no constitutional provision may invalidate any provision of a binding nature of European Community or European Union Law. Moreover the EU Charter of Fundamental Rights is given legal recognition by the Treaty of Lisbon (having the same legal force as the Treaties). The EU has set out in one place the existing fundamental rights that can benefit every EU citizen. It covers the whole range of civil, political economic and social rights of European citizens in the EU.**

**2. How is the principle of the rule of law interpreted in your country? Are there different concepts of the rule of law: formal, substantive or other?**

**The rule of law is reflected in our Constitution. In particular, in the fundamental rights and liberties of the individual known as human rights entrenched in Part II of the Constitution which contains a Charter of fundamental Rights based on the European Convention on Human Rights. For example Article 12 incorporates fundamental norms of justice that there shall be no conviction for conduct that is not criminalised by Law and that punishment cannot be heavier than that provided by law at the time of the commission of the offence. Unimpeded access to the Court for the assertion or vindication of ones rights is acknowledged by Article 30 of the Constitution. The Cyprus Constitution (Article 33.1) provides that human rights cannot be limited except for a purpose specifically prescribed by the constitution. The principle of institutional separation of the State powers is also organic in our jurisdiction. In accordance with this principle , each of the "three powers of the state , the Legislature, the Executive and the Judiciary is invested with power to act over the entire field of action covered by the corresponding domain of authority except to the extent that provision to the contrary is made to the constitution". While the principle of separation of power is not mentioned explicitly in the**

**constitution, several constitutional provisions underline that such a principle is embodied in the Constitution.**

**Article 146 accords with the principle of the separation of powers. The judicial review is confined to ascertaining the legality of the action of the administration.**

**Article 35 of the Constitution imposes a positive obligation upon each one of the three powers of the State to ensure the effective application of human rights in the sphere of their respective competences. It is a general principle of our law that Courts will seek, where possible, to interpret domestic legislation as compatible with the international obligations into which Cyprus has entered. This is based upon the reasonable assumption that Parliament is not lightly to be taken to have legislated so as to place our country in breach of those obligations. Our national jurisprudence confirms an extensive application of the provisions of the Convention in the domestic law and the recognition of the jurisprudence of the European Court of Human Rights as an important source for the interpretation of human rights. Our constitutional law safeguards that no one is above the Law and that everyone is equal before the Law.**

3. Are there specific fields of law in which your Court ensures respect for the rule of law (e.g. criminal law, electoral law, etc.)?

**Our Court ensures respect for the rule of law in all fields of law. Specifically in criminal law, the presumption of innocence is fully respected as well as the maxim “Nullum crimen, nulla poena, sine lege”**

4. Is there case-law on the content of the principle of the rule of law? What are the core elements of this principle according to the case-law? Please provide relevant examples from case-law.

**There is a voluminous body of case law on the content of the principles of the rule of law. The core elements according to case law vary on the context of the case in adjudication. However core and central elements of the principle of the rule of law are the supremacy of the law, the constitution as the supreme law, the independence of Judiciary and courts, access to justice before an independent and impartial court**

**including judicial review of administrative acts, equality before Law. The classification of powers for the purpose of ascertaining the respective domain of each of the three powers of the State and the issue of legality in exercising their respective powers and the prohibition of arbitrariness has been also addressed by the Supreme Court. The Supreme Court has held that a law is unconstitutional if it is contrary to the principle of separation of powers as this is enshrined in a number of constitutional provisions.**

**The interpretation of human rights, their range of application and impact on the legal order of the country have also attracted a voluminous body of case law. A number of judgments were given on the approach of the Court in relation to the width of human rights and the consequences of their breach. The case law of the Supreme Court emphasizes that respect for human rights as well as non-discrimination and equality before the law must be primary in the mind of the administration.**

5. Has the concept of the rule of law changed over time in case-law in your country? If so, please describe these changes referring to examples.

**It has been strengthened and enhanced by the impact of constitutional justice through the Court's interpretation of its core elements and the extent of their applicability. The rule of law has been a cardinal principle of our Legal System, since 1960 (our independence) but recently it has developed so as to include e.g. the principles of good administration and good governance.**

6. Does international law have an impact on the interpretation of the principle of the rule of law in your country?

**Yes, for example the EU Charter of Fundamental Rights which is given legal recognition by the Treaty of Lisbon (having the same legal force as the Treaties). The EU has set out in one place the existing fundamental rights that can benefit every EU citizen. It covers the whole range of civil, political economic and social rights of European citizens in the EU. Article 52(3) of the Charter requires "the ECJ to interpret fundamental rights cases in conformity with ECHR (subject to the caveat that Union Law can provide more extensive protection, although the ECJ has**

tended to follow the Strasbourg court's interpretation of the ECHR in its own case law)".

With respect to human rights, (e.g. migration, terrorism) the Supreme Court is regularly guided by the case law of the European court of human Rights. In addition with respect to the interpretation of a constitutional provision, the Supreme Court has been at times guided by the case law of the Supreme Court of the United States of America.

## **II. New challenges to the rule of law**

7. Are there major threats to the rule of law at the national level or have there been such threats in your country (e.g. economic crises)?

**When the State is faced with a calamity which has surpassed the remedial scope of a Proclamation of Emergency under Article 183 of the Constitution, the State can resort to measures entailing the limitation or restriction or even deprivation of the fundamental rights and liberties guaranteed by Part II of the Constitution and that it can do so by virtue of the "law of necessity". Of course, resort to any legislative measures, is and should, always, be subject to judicial control so as to ensure that such measures are justified by the calamity in relation to which they have been enacted. The economic crisis of 2013 (bail-in) has created many legal problems, which are dealt with by the Courts which balance the need for maintaining the rule of law and the need to save the State's economy.**

8. Have international events and developments had a repercussion on the interpretation of the rule of law in your country (e.g. migration, terrorism)?

**The great number of asylum seekers put a burden on the Administration and the Courts. Nevertheless, the Courts apply the law equally and without discrimination.**

9. Has your Court dealt with the collisions between national and international legal norms? Have there been cases of different interpretation of a certain right or freedom by your Court compared to regional / international courts (e.g. the African, CDL-WCCJ-GA(2016)005 . Inter-American or European Courts) or international bodies (notably, the UN Human Rights Committee)? Are there related difficulties in implementing decisions of such courts / bodies? What is the essence of these difficulties? Please provide examples.

**Our Supreme Court is very keen in the protection of Human Rights and in some instances it provides higher protection than the European Court of Human Rights. One example is the recognition, by our Supreme Court, of pension rights, as property rights, that cannot be deprived or adversely affected, by legislation.**

### **III. The law and the state**

10. What is the impact of the case-law of your Court on guaranteeing that state powers act within the constitutional limits of their authority?

**The impact of the case-law of our Court on guaranteeing that state powers act within the constitutional limits of their authority is significant and authoritative. The doctrine of Separation of Powers is applied strictly and no State Power can intervene in the field of activity of another State Power.**

11. Do the decisions of your Court have binding force on other courts? Do other / ordinary courts follow / respect the case-law of your Court in all cases? Are there conflicts between your Court and other (supreme) courts?

**Yes, the decisions of the Supreme Court have binding force on hierarchically subordinate courts. The ratio decidendi of a decision of the Supreme Court given in the exercise of its jurisdiction as a final court is subject to well recognized exceptions binding on the Supreme Court itself. Amenity to depart from earlier decisions is acknowledged whenever the Court concludes that a previous decision is founded on a**

wrong principle, a principle of law leading to manifest injustice, a principle irreconcilable to changed circumstances. Jurisdiction is vested in the Supreme Court to supervise lower courts with a view to ensuring that they operate within the limits of their jurisdiction. More specifically, by the provisions of Article 155.4 the Supreme Court is empowered to issue prerogative writs of certiorari, prohibition, and mandamus and quo warrant to ensure that subordinate courts operate within the limits of their jurisdiction and in accordance with the rules of natural justice.

12. Has your Court developed / contributed to standards for law-making and for the application of law? (e.g. by developing concepts like to independence, impartiality, acting in accordance with the law, *non bis in idem*, *nulla poena sine lege*, etc.).

The classification of powers for the purpose of ascertaining the respective domain of each of the three powers has been a subject repeatedly addressed by the Supreme Court. The source and nature of the jurisdiction of the Supreme Court was extensively decided in a lot of decisions. The Supreme Court has repeatedly held that a law is unconstitutional because it is contrary to the principle of separation of powers as this is enshrined in a number of constitutional provisions. The interpretation of human rights, their range of application and impact on the legal order of the country have attracted a voluminous body of case law. A number of judgments were given on the approach of the Court in relation to the width of human rights and the consequences of their breach. The case law of the Supreme Court emphasizes that respect for human rights must be primary in the mind of administration.

In the *Case no. 397/12 Phylactou and others v. Republic* dated 14 June 2013, the full bench of the Supreme Court stressed the need to safeguard the independence of the judiciary. The case involved deductions from the judges' salaries pursuant to an enacted law. The court held that the impugned law amounted to an impermissible adverse alteration of the judges' remuneration, in contravention of the relevant provisions of the constitution and therefore it was declared unconstitutional.

13. Do you have case-law relating to respect for the rule of law by private actors exercising public functions?

**No.**

14. Are public officials accountable for their actions, both in law and in practice? Are there problems with the scope of immunity for some officials, e.g. by preventing an effective fight against corruption? Do you have case-law related to the accountability of public officials for their actions?

**In accordance with Constitutional provisions, no criminal proceedings action can be brought against the Attorney General and the Deputy Attorney General in respect of their official functions. These officials enjoy so called functional immunity in the same way as Supreme Court judges. This functional immunity may however be lifted and proceedings be brought against these officials. This happened in 2015 in a case where the Deputy Attorney General was dismissed and subsequently was subjected to criminal proceedings. The procedure for dealing with misconduct against justices of the Supreme Court and other high officials were issued by the Supreme Court in “the Supreme council of judicature (control and procedure) Rules of 2015. The procedure is of a judicial nature and the only sanction for supreme court judges or other high officials found guilty is that of dismissal. In the case of two Members of Parliament, their parliamentary immunity was lifted by the Supreme Court. Parliamentary immunity was limited by our case law, to words and actions directly related to parliamentary duties.**

#### **IV. The law and the individual**

15. Is there individual access to your Court (direct / indirect) against general acts / individual acts? Please briefly explain the modalities / procedures.

**In determination of one's civil rights and obligations or of any of criminal charge against him every person is entitled to access to the court and fair trial. The essential features of a fair trial are laid down in Article 30.2 of our Constitution. (Competent court set by law, an independent and impartial tribunal, a court functioning in public unless the press and the public are excluded by a decision of the Court taken in the interests of (i) .security of the Republic (ii) constitutional order, (iii) public order, (iv) public safety, (v) public morals, or (vi) where the interests of juveniles or the protection of the private life of the parties so require. Furthermore the proceedings must be conducted within reasonable time and be concluded by a duly reasoned judgment. The impression of arbitrariness must be kept well outside the sphere of judicial deliberations. Judges must conduct themselves in a manner compatible with the requisites of impartiality and the impersonal character of judicial process. Departure of these standards undermine the confidence in the judiciary. Art 146 of the Constitution gives right to anyone with a legitimate interest, to challenge the legality of Administrative acts or decisions.**

16. Has your Court developed case-law concerning access to ordinary / lower courts (e.g. preconditions, including, costs, representation by a lawyer, time limits)?

**Certainly, there has been a developed case law concerning the interpretation and application of those rules and aspects that deal with this important constitutional right of access to courts. Security for costs may be ordered in certain cases, Legal aid may be granted, and time limits are imposed.**

17. Has your Court developed case-law on other individual rights related to the rule of law?

**Yes, like the right to non-discrimination and equality before the law, legal certainty, the principle of legality etc.**

18. Is the rule of law used as a general concept in the absence of specific fundamental rights or guarantees in the text of the Constitution in your country?

**Yes. It is a recognised principle, inseparable from the constitution itself. It is a fundamental constitutional principle as it requires that every act or decision should be based on the law. Nothing can be performed legally, if it is outside the Legal Framework.**