

Recent Developments and proposed reforms affecting the legal profession in the European Union

Ladies and Gentlemen, Honourable guests,

I accepted the invitation to address the present conference, with great pleasure and I feel really honoured, for the opportunity given to me by the persons who organized the present conference to present before this audience, the key developments of the Cyprus Criminal law, which affect either directly or indirectly the legal profession, both in Cyprus and in the EU generally.

Having said that, I must now turn to explain briefly what are the recent development and reforms, which have already taken place in our country the last few years, in the field of law.

Cyprus, has faced three **key** developments and reforms in their national legal system, within the last 5 years.

The first such development, concerns the addition of Article 1A in the Constitution of the Republic of Cyprus, which took place in 2006. The aforementioned amendment, allowed the Republic of Cyprus to function under normal conditions as a Member State of the European Union, exercising all the rights and complying with all obligations of such Member State.

Article 1A of the Constitution Provides that:

“No provision of the Constitution shall be deemed to have annulled laws enacted, acts done or measures taken by the Republic that are deemed necessary due to its obligations as a Member State of the European Union, neither does it prevent Regulations, Directives or other Acts or binding measures of a legislative character, adopted by the European Union or the European Communities or by their institutions or competent bodies thereof on the basis of the Treaties establishing the European Communities or the Treaty on European Union, from having legal effect in the Republic.”

Note: That development, helped the Republic of Cyprus to comply with all its obligations towards the European Union, including its obligations to conform with the legislation concerning Criminal law, i.e the power to extradict a person to another Member State, in the case of issuance of a European Arrest Warrant, which previously, faced problems of enforcement, due to lack of adequate provisions to that effect, either in the Constitution or any other national law.

The second such development, concerned the amendment in 2006, of Article 11 (2)(f), which was substituted by a new sub-paragraph, so as to enable the competent bodies or authorities in the Republic of Cyprus to arrest, detain and finally deport/ extradite / surrender Cypriot nationals/citizens to other Member States, under a European Arrest Warrant, in relation to events that occurred or acts done following the date of accession of the Republic of Cyprus to the European Union.

This provision however, puts safeguards against the deportation / extradition and surrendering of a Cypriot national / citizen, for the purpose of prosecuting or punishing a person on grounds of his race, religion, ethnic origin, political opinion, or of any legal claims of collective or individual rights in accordance with international law.

Article 11(2)(f) of the Constitution, provides as follows, after its substitution in 2006:

“(f) the arrest or detention of a person to prevent him effecting an unauthorized entry into the territory of the Republic or of an alien against whom action is being taken with a view to deportation or extradition or of a citizen/national of the Republic with a view to extraditing or surrendering him, subject to the following provisions:

(i) The arrest or detention of a citizen/national of the Republic for the purpose of surrendering him under a European arrest warrant is possible solely in relation to events that occurred or acts done following the date of accession of the Republic to the European Union.

(ii) The arrest or detention of a citizen/national of the Republic for the purpose of extraditing or surrendering him pursuant to / in compliance with an international agreement binding the Republic is possible solely in relation to events that occurred or acts done following the publication of the Fifth Amendment of the Constitution Law, 2006.

(iii) The arrest or detention of any person for the purpose of extraditing or surrendering him pursuant to / in compliance with an international agreement is not possible if the competent body or authority according to / under the law, has substantial grounds for believing that a request for extradition or surrender has been made for the purpose of prosecuting or punishing a person on grounds of his race, religion, ethnic origin, political opinion, or of any legal claims of collective or individual rights in accordance with international law.

Note: That development, also helped the Republic of Cyprus to comply with all its obligations towards the European Union, including its obligations to conform with the legislation concerning Criminal law, i.e the power to extradite a person to another Member State, in the case of issuance of a European Arrest Warrant, which previously,

faced problems of enforcement, due to lack of adequate provisions to that effect, either in the Constitution or any other national law. A notable example of the problems faced by the Republic of Cyprus to extradict/deport a Cypriot national, before the amendment of that law, can be found in the judgment of the Supreme Court in the case *Attorney General v Costas Constantinou* (2005) 1B CLR 1356. In this case the Supreme Court of Cyprus was provided the opportunity to clarify its position regarding the Supremacy of EC and EU Law. In its judgment, however the Supreme Court chose to join the long tradition of a rather uneasy relationship between national Constitutional Courts and the European Court of Justice. The case concerned the issue of a European Arrest Warrant against the respondent, who was a citizen of the Republic of Cyprus and his surrender to the British Authorities. The Cyprus Constitution did not allow deportation or extradition of Cypriot citizens. Consequently, according to the Supreme Court, the national legislation transposing the Framework Decision for the European Arrest Warrant (EAW), could not be applied since it was incompatible with the Constitution. Although the Supreme Court did mention in its judgment the Judgment of the ECJ in *Maria Pupino* where the ECJ underlined the obligation of the Member States and especially of the national courts under Article 10 of the EC Treaty to take all the necessary measures to comply with their obligations under the Treaty including the respect of the Framework decisions adopted by the authorities of the European Union, in essence by its judgment, the Supreme Court deprived that ECJ's Judgment of its 'effet utile' in the Cyprus Legal System. Not surprisingly, the Supreme Court did not choose to refer the matter to the ECJ for a preliminary ruling.

However the Supreme Court's Judgment in *Constantinou* did indirectly send a 'message' to the Competent Authorities that the Principle of Supremacy of EC Law over the Constitution of the Republic of Cyprus. The only way to achieve that was through the amendment of the Cyprus Constitution. As a result of the *Constantinou* Judgment the House of Representatives inevitably proceeded to the fifth amendment of the Constitution Law 127/06 amended the Constitution to expressly provide for the precedence of EC and EU Law over the domestic law. This amendment intends to settle in a definite manner the hierarchy of norms in Cyprus, by setting EU and EC law at the top of the scale, followed by the Constitution and the ordinary legislation.

The third such development, concerns the amendment of Article 17(2) of the Constitution of Cyprus, which provides for the right to respect for, and to the secrecy of, his correspondence and other communication of any nature if such other communication is made through means not prohibited by law. This law, was amended in 2010, under the law 51(I)/2010, so as to empower the competent bodies and Authorities in Cyprus, to interfere with the communication and correspondence of persons, once they apply to the Court through the Attorney General's office and obtain a relative order, to that effect.

This order should only be issued, if it is related with the crimes of pre-meditated murder and manslaughter, trafficking of persons under or over 18 years old, child pornography, crimes concerning drugs as well as, crimes concerning corruption offences.

Note: That development helped the competent bodies and authorities to use various legal means for purposes of preventing the commission of serious crimes like those mentioned above, as well as, to detect the same crimes, which have already been committed.

Thank you.

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