

Litigation - Cyprus

Supreme Court declares municipality laws unconstitutional

Contributed by **Andreas Neocleous & Co LLC**

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In a recent case⁽¹⁾ the full bench of the Supreme Court decided by a majority that laws enacted by the House of Representatives in 2010, amending the Municipality and Communities Law to allow civil servants to participate in local elections, were unconstitutional.

Three opinions were presented, two of which (presented by Judges Demetrios Hadjihambis and Mironas Nikolatos) concluded that the amending laws were unconstitutional. However, the president of the Supreme Court, Judge Artemis, presented the minority opinion that the laws were fully consistent with the provisions of the Constitution.

Hadjihambis stated that "the... laws are in conflict with the separation of powers and notably, the separation of political and executive power". The other Supreme Court judges (Nikolaides, Kramvis, Erotokritou, Nathanael, Pampalis, Clerides and Paschalides) agreed with Hadjihambis's judgment. Hadjihambis referred to earlier case law, particularly a judgment of Piki, in which he stated that "the Constitution of the Republic of Cyprus separates political and administrative powers, and this separation is reflected institutionally in all the governing levels of the country".

In his opinion, Judge Nikolatos stated that "the amending laws for the first time try to secure a parallel or dual role [for civil servants]. One role is impartial and must transcend politics, but the other directly concerns political authority". The other judges (Kramvis, Erotokritou, Nathanael, Pampalis, Clerides and Paschalides) agreed with Nikolatos's judgment that the laws were unconstitutional. Nikolatos stated that:

"We deem that the amendments which are under examination are in breach of the principles of good governance due to the reason that people who hold positions in civil or education services will simultaneously have to perform various duties which fall under the responsibilities of the members of the municipal and community councils with relevant fees."

He added that:

"This decision defines the distinction which is found in the Constitution of the Republic between the powers of the state and the functions of administration, in order to keep the public service free of political influence... This distinction is based on established principles of the Constitution, which are determined by referring to specific provisions of the Constitution."

The minority opinion of the president of the Supreme Court - supported by Costantinides, Papadopoulou and Fotiou - was that while the Constitution bars the president, the vice-president and members of Parliament from holding potentially conflicting positions, it does not contain similar restrictions on members of local councils; therefore, the amending laws are not in conflict with the provisions of the Constitution. The president of the Supreme Court also quoted specific case law according to which the existence of a general scope of Constitutional separation has never been recognised in relation to the separation of political and executive power.

The court's decision will have significant immediate effects - many public servants have expressed an intention to contest the local elections to be held in December 2011. Following the ruling, any public servant who is elected to a council and chooses to serve on it must resign from his or her public service position. This will inevitably discourage civil servants from running in the elections.

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Endnotes

⁽¹⁾ *President of the Republic of Cyprus v Parliament*, Referral 5/2010 and 6/2010, November 7 2011.

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