

Litigation - Cyprus

Supreme Court's role in reviewing proposed legislation

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The debate in Cyprus regarding new legislation to streamline the procedure for the forced sale of mortgaged property illustrates the role of the courts in reviewing proposed legislation.

The memorandum of understanding that Cyprus concluded with its international creditors in 2013 committed the government to introducing a so-called 'foreclosure law' – legislation to amend the procedure for the forced sale of mortgaged property to allow for private auctions. The initial target date was the end of 2013, but this deadline was extended to require legislation to be enacted by mid-2014 and implemented by the end of the year.

The existing system allows recalcitrant debtors to delay the realisation of mortgaged property by filing strategic applications to the courts for orders to cancel auctions, by objecting to the reserve price set by the Land Registry or on a number of procedural grounds – with the result that the average time taken to enforce a mortgage is 10 years and a determined debtor can extend the delay for much longer.

Many politicians and other parties regarded the proposed foreclosure law as draconian, warning that it could have severe social consequences, and sought to insert safeguards – for example, to protect family homes. The providers of international financial support had made it clear that they viewed the enactment of the foreclosure law as a precondition for release of the next tranche of funds; and after many delays, the House of Representatives passed the foreclosure law on September 6. However, at the same time it enacted six other laws that would inevitably mitigate the foreclosure law's effects.

Article 140 of the Constitution allows the president to refer any law or decision passed by the House of Representatives to the Supreme Constitutional Court⁽¹⁾ at any time before its promulgation, for the court's opinion on whether the law or decision or any specified provision therein is inconsistent with the Constitution.

If the Supreme Court decides that the law or decision or any provision therein is inconsistent with the Constitution, the proposed law, decision or provision may not be promulgated.

On advice from the Attorney General's Office, the president has referred four of the laws passed on September 6 to the Supreme Court for review. Recognising its importance, the court has undertaken to give the matter priority.

The president of the Supreme Court has summarised the methods that the court applies in assessing the legality of executive and legislative acts as follows:

"(a) by examining the alleged inevitable urgency and need to take emergency measures or the alleged exceptional circumstances that impose the need for restriction of enshrined individual rights, taking into account of course the broad powers of the Executive in this field,

(b) by reviewing the legitimacy of the extent of those measures, based on the principle of proportionality. The measures should be proportionate to the situation at stake,

(c) by exercising judicial review based on the principle of good administration, and

(d) on the principle of equality, according to which dissimilar situations are not to be equated and arbitrary differentiations among same situations are not to be made,

(e) by applying the principle of expected trust, i.e that the citizen is entitled to expect from the Executive and the Administration that his or her case will be handled in a fair and equitable manner, and

(f) by applying the principle that all taxpayers contribute to the tax burdens, in accordance with their capacity (powers)."

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Endnotes

⁽¹⁾ Since 1964 this jurisdiction has been exercised by the Supreme Court.

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