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Cyprus

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Section 1: The concept of "emergency" and other associated notions in the legal orders of the Member States

Question 1

(a) Article 183 of the Constitution[1] of the Republic of Cyprus (RoC) identifies a "state of emergency" as the legal basis for the temporary suspension of specific Constitutional provisions and for the adoption, by the Council of Ministers, following a "Proclamation of Emergency," of time-limited "ordinances," possessed of the force of law, in derogation from the regular law-making process (on the modalities for the making of such Proclamations, see *infra*, Section 1, Q4 (a)).

(b) Moreover, through a long line of jurisprudence, dating back to its seminal ruling in *Mustafa Ibrahim* and cited around the world,[2] the Cypriot Supreme

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[1] The original version of the 1960 Constitution, as published in English, was first published as "Appendix D: Draft Constitution of the Republic of Cyprus," in: Cmnd. 1093: Cyprus: Presented to Parliament by the Secretary of State for the Colonies, the Secretary of State for Foreign Affairs and the Minister of Defence by Command of Her Majesty (London: Her Majesty's Stationery Office, July 1960), 91–173 (available on HeinOnline). A copy of the original English language version is available online on the website of the Law Office of the Republic, www.law.gov.cy/law/law.nsf/1D2CDD154DCF33C9C225878E0030BA5E/$file/The%20Constitution%20of%20the%20Republic%20of%20Cyprus.pdf. A copy of the English language version of the 1960 Constitution "with amendments through 2013" is also available on the website of the Law Office of the Republic at: www.law.gov.cy/law/law.nsf/1D2CDD154DCF33C9C225878E0030BA5E/$file/The%20Constitution%20of%20the%20Republic%20of%20Cyprus%20as%20amended%20until%202013.pdf. A copy of the updated 1960 Constitution in the Greek language is available on the website of Cylaw: https://www.cylaw.org/nomoi/indexes/syntagma.html

[2] *Attorney General of Cyprus v. Mustafa Ibrahim* [1964] Cyprus L.R. 195. The dispute in that case revolved around the constitutionality of Law 33/1964 on the Administration of Justice (Miscellaneous Provisions), which merged into a single court the former two Supreme courts of Cyprus (the Constitutional and Supreme Court, whose functions were constitutionally enshrined). The House of Representatives adopted the law, but only with the votes of its Greek-Cypriot elected members,

Court (hereinafter, 'the (Supreme) Court') has read into the Cypriot Constitution (and, in particular, into Articles 179, 182 and 183 thereof) the (legal) doctrine of necessity[3] (or "law of necessity" – *δίκαιον της ανάγκης* – as it is referred to in the RoC), as an implied exception to the application of certain Constitutional provisions. The aim of invoking this doctrine is to ensure the continuing functioning and the very existence of the RoC, following the outbreak, in 1963, of intercommunal unrest, and the paralysis of the State Institutions caused by the withdrawal of Turkish Cypriots from the civil service (including, as of 1966, from the posts they occupied in the judiciary).[4] The events of the summer of 1974 (Turkish Invasion of Cyprus) and the Court's ruling in *Ambrosia Oils v. Bank of Cyprus*[5] reaffirmed (and, in some respects, also developed – see *infra*, Section 2, Q5 (a)) the doctrine of necessity, consolidating its role as a core Cypriot Constitutional doctrine,[6] as the main legal foundation for all legislative and judicial activity in the territory of the RoC under the control of its lawful, internationally recognized, government,[7] and as a necessary "extension of the rule of law."[8] It is not without interest that

as their Turkish-Cypriot counterparts had withdrawn. The case was cited with approval by courts including in Canada, Pakistan, Lesotho and Grenada. See: Achilles Emilianides, *Cyprus Constitutional Law*. Wolters Kluwer, 2024, p. 45.

[3] The doctrine of necessity traces its origins in Roman Law and in the writings of Cicero, who stated that s*alus populi suprema lex esto* ("let the good of the people be the supreme law") – see: Cicero, De Legibus Book III, Part III, sub. VIII. In the common law world, this doctrine dates back to English Mediaeval jurist Henry de Bracton, who famously stated: "that which is not otherwise lawful is made lawful by necessity." On the doctrine of necessity as a rule of common law, and its application in different common law jurisdictions, including the RoC, see, generally, Peter W. Hogg, "Necessity in a Constitutional Crisis," *Monash University Law Review*, vol. 15 no. 3/4 1989 (Hogg, 1989), pp. 253–264.

[4] "The Constitution of Cyprus, which dated from 1960, when Cyprus achieved independence from the United Kingdom, established a diarchical form of government, with elaborate provisions for the sharing of power between the Greek Cypriot and the Turkish Cypriot community. In particular, the constitution made provision for 'mixed' courts (with judges from both communities) to try certain criminal cases, for a Supreme Constitutional Court (also with judges from both communities) to decide constitutional questions, and for the enactment of laws in both languages. These 'basic articles' of the constitution were expressly declared to be unalterable by any means whatever" (Hogg (1989), at 261).

[5] *Ambrosia Oils v. Bank of Cyprus* [1983] 1 CLR 55. On *Ambrosia*, the reader is referred to our analysis in Section 2, Q5.

[6] The doctrine of necessity has been aptly referred to as "the unwritten cornerstone of the Cypriot legal order," one that is "nearly undisputed" (see European Commission for Democracy through Law (Venice Commission), Opinion 1060 / 2021 on Three Bills Reforming the Judiciary, 11 December 2021).

[7] It is telling that the law of necessity is invoked in the Preamble to the Constitution, as amended, and is routinely invoked in the preamble to Cypriot draft laws (in particular, those laws that have amended the Constitution). On the (continuing) importance of recourse to the doctrine of necessity as a means of resolving the intractable problems caused by the Turkish Cypriot rebellion against the RoC and its impact on the viability of State Institutions, see: Efthymiou, "The Law of Necessity in Cyprus," *Cyprus Law Review*, vol. 3, issue 12, 1985, p. 1951.

[8] The relationship between the rule of law and the doctrine of necessity is multifaceted. For a consideration of contemporary challenges to this uneasy relationship, which pre-dates Cyprus's

the doctrine of necessity has been invoked, over the years, as a justification for the amendment of several non-basic (i.e., amendable) Articles of the Cypriot Constitution,[9] without the participation of Turkish Cypriot MPs,[10] but, also, to address constitutionally unforeseen situations unrelated to the bi-communal nature of the RoC and its State Institutions: for instance, the doctrine was employed to legitimize the lowering of the voting age for legislative elections from 21 to 18 years of age[11] and changes to the RoC's family courts.[12]

(c) With respect to more recent and/or landmark attempts to invoke the doctrine of necessity, it should be noted that this was the case (although this time unsuccessfully) in a rather different context, that of the austerity measures adopted in the RoC in response to the economic meltdown caused by the dual budgetary and banking sector crises in the RoC, in early 2013.[13] In *Alexandros Phylaktou v. the Republic of Cyprus*,[14] the Attorney General of the RoC abortively invoked *Mustafa Ibrahim*, to argue that the horizontal Civil Service salary cuts mandated by the Government (also in respect of judges) were legally warranted as reactions to the imperative of an acute "economic necessity" caused by exceptional (economic) circumstances. Rejecting the Attorney General's argument, the Court ruled that the law imposing pay cuts on judges was unconstitutional and could not be salvaged by invoking the doctrine of necessity.[15]

EU accession, see the work of the Jean Monnet Centre of Excellence for the Rule of Law and European Values CRoLEV available at: https://crolev.eu/. See also, *ex multi*, Polyvios Polyviou, "The case of Ibrahim the Doctrine of Necessity and the Republic of Cyprus" (Nicosia: Chrysafinis and Polyviou, 2015).

[9] The Constitution of the RoC distinguishes between basic Articles, which cannot be amended, and non-basic ones, which are subject to amendment following the dedicated (special 2/3 majority) constitutional process of Article 182(3). The basic Articles are exhaustively listed in Annex III of the Constitution. The permissibility of amending the basic Articles of the Constitution by invoking the legal doctrine of necessity is a complex question, which does not lend itself to an analysis in the responses to this Questionnaire, beyond some thoughts are as expressed in this report.

[10] *Koulountis and others v House of Representatives* [1997] 1 CLR 1026. The amendment of the Constitution at stake in that case related to Article 66 para. 2 with the addition of a provision allowing for the filling, by the first runner-up candidate of a parliamentary seat left vacant for any reason, rather than running a new election to fill the vacant seat.

[11] *President of the Republic v. House of Representatives* [1986] 3 CLR 1439.

[12] *Nicolaou and Others v. Nicolaou and Other* (1992) 1 CLR 1338.

[13] For a concise account of the acute dual crisis that hit Cyprus in 2013, see: *ex multi*, Phoebus Athanassiou and Angelos Vouldis, *The European Sovereign Debt Crisis: Breaking the Vicious Circle Between Sovereigns and Banks*. Routledge, 2022. See also: Stéphanie Laulhé Shaelou and Phoebus Athanassiou, "Cyprus Report," in Gyula Bàndi et al., European Banking Union (FIDE XXVII Congress Proceedings, Vol. 1, Wolters Kluwer, 2016), pp. 269–297.

[14] Αλέξανδρου Φυλακτού, Επαρχιακό Δικαστήριο Πάφου και Κυπριακής Δημοκρατίας, μέσω Γενικού Λογιστή Υπόθ. 397/2012397/2012 και 480/2012.

[15] For a consideration of emergency measures with respect to cuts in salaries and pensions in the public sector during the financial crisis in Cyprus, see: Constantinos Kombos and Stéphanie Laulhé Shaelou, "The Cypriot Constitution under the Impact of EU law: An Asymmetrical Formation," in *National constitutions in European and global governance: Democracy, rights and the rule of law*, edited by Anneli Albi and Samo Bardutzky. Asser Press, 2019 (Kombos and Laulhé Shaelou

(d) It is important to understand the terminology in the context of the existential application of the doctrine of necessity to the RoC, ongoing for the past 50 years and pre-dating EU membership. It appears that the dividing line between an "emergency" and a "necessity" triggering the application of the doctrine of necessity is fluid, suggesting that these two concepts largely overlap in terms of their substantive content. Article 183 exemplifies a "state of emergency" by reference to a "war or other public danger threatening the life of the Republic or any part thereof," whereas, in its jurisprudence, the Court has referred to "an imperative and inevitable necessity or exceptional circumstances" (a formulation that is broad enough to encompass wars or another, serious public dangers, within the meaning of the Cypriot Constitution). What, however, seems clear is that, in practical terms, reliance on Article 183 of the Cypriot Constitution is no alternative for recourse to the doctrine of necessity as a means of addressing constitutionally unforeseen situations: this is because the activation of Article 183 is conditional on bi-communal cooperation, which broke down (irreversibly it seems) in 1963 and has not been restored since, rendering reliance on Article 183, in a situation of emergency/necessity, a practical impossibility, and leaving the doctrine of necessity as the only viable alternative.

Question 2

See our response to Q1 and the references there to Article 183 of the Constitution of the RoC, which identifies a "state of emergency" as the legal basis for the suspension of specific Constitutional provisions and for the adoption, by the Council of Ministers, of temporary "ordinances," possessed of the force of law, in derogation from the regular law-making process.

Question 3

See our response to Q1 and, in particular, the analysis in paragraph (b) on the triggering events for (i) the Proclamation of an Emergency, pursuant to Article 183 of the Cypriot Constitution, and (ii) the application of the doctrine of necessity, subject to the conditions laid down in the jurisprudence of the Cypriot Supreme Court (in this regard, also see our response to Q4).

(2019)), pp. 1396–7.

Question 4

(a) Regarding a state of emergency, within the meaning of Article 183 of the Constitution, its declaration is conditional on a Proclamation of Emergency by the Council of Ministers. Such proclamation shall specify the Articles of the Constitution that are to be suspended for the duration of the state of emergency (right to liberty, right to free movement within Cyprus, inviolability of the home, secrecy of correspondence, compensation for expropriation, right to strike, etc.),[16] and shall be laid before the House of Representatives for its confirmation. Following its promulgation by the President of the Republic (who has a right of veto),[17] it shall be published in the official Gazette of the Republic. Once the above conditions are fulfilled, the Council of Ministers may, if satisfied that immediate action is required, adopt ordinances, possessed of the force of law, that are strictly connected with the state of emergency. Such ordinances shall cease to produce legal effects at the expiration of the state of emergency (unless revoked earlier). Proclamations of Emergency shall cease to operate at the end of a two-month period from the date of their confirmation by the House of Representatives unless the House, at the request of the Council of Ministers, decides to prolong their duration (subject to a Presidential veto).

(b) Regarding the application of the doctrine of necessity, it follows from the jurisprudence of the Supreme Court that the following pre-requisites must be satisfied for the doctrine to be validly invoked: (i) an imperative and inevitable necessity or exceptional circumstances must apply; (ii) there should be no other remedy available; (iii) the measure taken must be proportionate to the necessity, and (iv) the measure in question must be of a temporary character, limited to the duration of the exceptional circumstances.[18] Significantly, the author of the "measures" to which the Supreme Court referred in *Mustafa Ibrahim* is not the Supreme Court itself but, rather, another branch of Government: as a commentator has astutely observed, referring to the *Mustafa Ibrahim* judgment, "the Court's role was confined to upholding a measure promulgated by another institution of government, in this case, the Parliament of Cyprus."[19] It is implicit in the above (and there is plentiful judicial precedent to back this) that measures adopted by the Executive branch of Government would also be covered by the legal doctrine

[16] Significantly, Article 33(1) of the Constitution stipulates that fundamental rights and liberties cannot be limited beyond the Constitutional provisions relating to the Proclamation of a state of emergency.

[17] In truth, the body in which the power to issue a Proclamation of Emergency under Article 183 is vested is the Council of Ministers, which, under the Constitution, is to consist of 7 Greek Cypriot and 3 Turkish Cypriot members. Similarly, the decision of the Council of Ministers is subject to the veto power of the President, who is to be a Greek Cypriot, and/or the Vice President, who is to be a Turkish Cypriot.

[18] *Attorney General of Cyprus v. Mustafa Ibrahim* [1964] Cyprus L.R. 195, 265.

[19] Hogg (1989), p. 262.

of necessity, as applied in the RoC. Indeed, one of the criticisms levelled against the doctrine of necessity is that it "provides the foundation for the court's granting (of) *wide discretion to the executive* [emphasis is ours]."[20]

(c) Ordinances enacted on the basis of the doctrine of necessity follow the procedure prescribed in the Cypriot Constitution for enacting regular laws or, where relevant, for laws amending the Constitution (except for the non-involvement in them of Turkish Cypriot elected representatives).

(d) The Supreme Court's approach to the doctrine of necessity suggests that the Court perceives that doctrine as an *autonomous source of law* rather than as a mere defence, based on public good considerations in situations of emergency.[21] Academics, including some who do not challenge, as a matter of principle, the doctrine of necessity, have been critical of its *concrete application* by the Court, suggesting that of the four requirements for its activation the last three have been largely ignored by the Court in its jurisprudence or merely paid lip service to (including in *Mustafa Ibrahim* itself).[22]

Question 5

(a) There is some legal backing at the level of the European Court of Human Rights (hereinafter ECtHR) for the application in the RoC of the doctrine of necessity. In *Aziz v. Cyprus*[23] the ECtHR implicitly approved the existence of the doctrine of necessity by accepting the need for legal mechanisms through which to address "the anomalous situation that began in 1963."

[20] Nicos Trimikliniotis, "The Proliferation of Cypriot States of Exception: The Erosion of Fundamental Rights as Collateral Damage of the Cyprus Problem," *The Cyprus Review*, vol. 30, issue 2, 2018, p. 43, at 44. See *contra* Emilianides (2024), p. 44, who argues that "the appropriate organ may take such steps within the nature of its competence as are required to meet the necessity."

[21] In this regard, also see: Criton Tornaritis, *Peculiarities of the Constitution of Cyprus and their impact on the smooth functioning of the State* (in Greek), Nicosia, 1980, Annex I, at 38.

[22] Critics of the doctrine who (also) challenge it on *grounds of principle* include Özersay Kudret, "The Excuse of State Necessity and its Implications on the Cyprus Conflict," *Perceptions: Journal of International Affairs*, vol. 9, no. 4, 2004, pp. 31–70, 31; and Zaim Necatigil, *The Cyprus Question and the Turkish Position in International Law*. OUP, 1993, pp. 64–65. Critics of the doctrine who question, instead, its *concrete application* include Nasia Hadjigeorgiou and Nikolas Kyriakou, "Entrenching hegemony in Cyprus: The doctrine of necessity and the principle of bicommunality," *Constitutionalism under Extreme Conditions: Law, Emergency, Exception,* edited by Yaniv Roznai and Richard Albert, Springer, 2020; and Christos Papastylianos, "The Cypriot Doctrine of Necessity and the Amendment of the Cypriot Constitution: The Revision of the Unamendable Amendment Rules of the Cypriot Constitution Through a Juridical Coup d'État," *ICL Journal*, vol. 17, no. 3, 2023, pp. 313–336.

[23] *Aziz v. Cyprus* (2005) 41 EHRR, 11, para. 26. The case arose from Cypriot legislation that permitted the applicant, a Turkish Cypriot, to vote in national elections although, in practice, he could not (as a Turkish Cypriot, he was only entitled to register on a list of Turkish Cypriot voters and to vote for a Turkish Communal chamber, which have not existed since 1963). The applicant claimed that the exclusion, on practical grounds, of his right to vote was a violation of human rights.

However, the ECtHR also ruled (as it already had in its earlier judgment in *Selim v. Cyprus*)[24] that the "doctrine of necessity" must be exercised in a manner that does not violate the nucleus of fundamental rights or the principle of equality, compelling the RoC to introduce amendments to its national law, consistent with the applicant's arguments.[25] In so doing, the ECtHR also affirmed the validity and continuing relevance of the necessity and proportionality legs of the doctrine of necessity, as per the Court's line of jurisprudence since *Mustafa Ibrahim*.[26]

(b) It is not without interest that at least one of the amendments to the Cypriot Constitution (lowering of the age for voting – see our response to Section 1, Q1, paragraph (b), and fn. 11 thereto), presented under the guise of the doctrine of necessity, was declared constitutional by the Supreme Court, as a legitimate attempt to adapt the Constitution to the obligations arising from the European Convention of Human Rights (of which the RoC is a signatory).

Question 6

(a) To the knowledge of the Authors no such precedents existed at the time of answering this Questionnaire.

(b) Certain aspects of the discussion around the austerity measures adopted in the RoC in response to the economic meltdown caused by the dual budgetary and banking sector crises in the RoC in the 2012–2013 period (see Q1(c) above), could also be of relevance to this question, even if not providing an exact answer to it. The Cypriot authorities had engaged in talks with international lenders in July 2012, to agree on an Economic and Financial Adjustment Programme. However, this was not agreed until after February 2013, when conditions had deteriorated significantly, notably for the two largest Cypriot banks, the Cyprus Popular Bank (Laiki) and the Bank of Cyprus (BoC). On 15 March 2013 the Eurogroup agreed on an "upfront one-off stability levy applicable to resident and non-resident depositors," covering insured and uninsured deposits alike. On 25 March, following widespread opposition to the proposed bank levy and the Cypriot Parliament's unanimous rejection, on 19 March 2013, of draft legislation implementing it, the Eurogroup revisited its earlier decision, declaring the inviolability of insured deposits, but making the granting

[24] Application no. 47293/99, Judgment of 16 July 2002.

[25] See: Law on the exercise of the right to elect and be elected by the members of the Turkish Community who have their normal residence in the government-controlled areas (Temporary Provisions) Law 2(I)/2006, 21 January 2006.

[26] See also: Stéphanie Laulhé Shaelou, *The EU and Cyprus: Principles and strategies of full integration*, vol. 3 (Studies in EU External Relations), Brill/Martinus Nijhoff Publishers, Leiden, 2010 (Laulhé Shaelou 2010), p. 254.

of financial support to Cyprus dependent on the prior resolution and recapitalisation of the two Cypriot banks without use of public funds. To implement the second Eurogroup decision, the Central Bank of Cyprus, in its capacity as bank resolution authority, issued several resolution decrees, based on powers conferred upon it under Cyprus's Resolution of Credit and Other Financial Institutions Law of 22 March 2013. These decrees mandated, inter alia, deposit haircuts (for uninsured deposits in Laiki), deposit freezes (for uninsured deposits in BoC), as well as the sale of some of the two banks' business. As a result, Cyprus reached an agreement on a comprehensive Economic and Financial Adjustment Programme with its European partners and the International Monetary Fund (IMF) in March 2013, and exited its Programme within three years from its start (31 March 2016), having received some EUR 7.3 billion (out of a total envelope of EUR 10 billion).[27]

Section 2: The constitutional framework governing emergency law in the Member States

Question 1

See our response to Section 1, Q4, and, in particular, the analysis in paragraph (a). The Cypriot Constitution was the product of high-level agreements between Greece and Turkey in Zurich, which were subsequently endorsed by the Greek and Turkish Cypriot leaders in London. The Constitution was written from scratch, and it represented a compromise, premised on the assumption (long since proven wrong and/or untenable) that the two communities on the island would cooperate for the governance of the RoC and for its smooth operation as a functioning, democratic State, bound by the rule of law.

Question 2

See our response to Section 1, Q4, and, in particular, the analysis in paragraph (a) thereof.

[27] Of these funds, EUR 6.3 billion were disbursed by the ESM, and EUR 1 billion by the IMF. Cyprus had fully repaid its IMF loan of EUR 1 billion by February 2020. See: Stéphanie Laulhé Shaelou and Phoebus Athanassiou, "Cyprus's EU membership, twenty years on: A statement of motives and an assessment of benefits," *European Foreign Affairs Review*, vol. 29, no. 3, 2024 p. 231; see also: n. 13 above.

Question 3

As per its Constitution, the RoC is a bi-communal but unitary state, with single (but shared) government institutions.[28] Following the events of 1963 and 1974, State Institutions have been staffed by Greek Cypriots, in derogation from the letter of the Constitution but in line with the spirit of Article 179 thereof, which, according to the Court in *Mustafa Ibrahim*, is the implicit basis for the doctrine of necessity.

Question 4

(a) Article 169(3) of the Constitution grants to ratified Treaties superior force against any conflicting municipal law (also see paragraph (c), *infra*). This rule was supplemented by the adoption of Law No. 35(III)/2003, with which the House of Representatives approved the ratification of the EU Accession Treaty. Article 4 of the Law states that, "[t]he rights and obligations deriving from the Treaty [of Accession] are directly applicable in the Republic and take precedence over any contrary legal or regulatory provision." The formula used there guaranteed the primacy of EU law against all conflicting *national legal acts* but left unresolved the delicate question of the hierarchy between EU law provisions and *national Constitutional provisions*.

(b) One year after the RoC's accession to the EU, a judgment of the Supreme Court found that the Framework Decision for the European Arrest Warrant (EAW) did not prevail over Article 11 of the Constitution, which precluded the extradition of Cypriot citizens.[29] This judgment prompted a Constitutional amendment in 2006 (hence, two years *after* the RoC's accession to the EU) in order to provide for the supremacy of EU over national Constitutional law. This was achieved by supplementing Article 1 of the Constitution (on the RoC's Constitutional regime), by a new Article 1A, which states that, "[N]o provision of the Constitution shall be deemed to annul laws enacted, acts done or measures taken by the Republic which become necessary by reason of its obligations as a member state of the European Union."[30] Given the insertion, in the Constitution, of new Article 1A,

[28] Article 1 of the Constitution states that, "[T]he State of Cyprus is an independent and sovereign Republic with a presidential regime, the President being Greek and the Vice-President being Turk elected by the Greek and the Turkish Communities of Cyprus respectively as hereinafter in this Constitution provided."

[29] *Attorney General v. Kostas Konstantinou*, Civil Appeal No. 294/2005.

[30] It bears noting that Article 1 is a basic Constitutional provision, within the meaning of Article 182, and Annex III thereto, one that cannot in any way, be amended, whether by way of variation, addition or repeal. Views in Cypriot scholarship are divided in terms of the constitutionality of the insertion of Article 1A in the constitution: some have argued that the insertion of new Article 1A cannot be considered to be a variation, repeal or addition to the text of article 1, since it leaves its

by virtue of the Fifth Constitutional Amendment, it seems likely that any situation of conflict between the implementation of Constitutional provisions and EU law (including those catering for a state of emergency) would be resolved in favour of the latter.

(c) Turning to situations of conflict between the implementation of Constitutional provisions and international law the following remarks are apposite. It should follow from Article 169(3) of the Cypriot Constitution that the RoC is a *monist* jurisdiction: that provision states there that international treaties, conventions and agreements have, as from the moment of their publication in the Official Gazette of the Republic, superior force to *any* municipal law on condition that such treaties, conventions and agreements are applied by the other party thereto (reciprocity for bilateral agreements). It follows from this provision that in case of conflict between international treaties, conventions or agreements, including – we argue – those catering for a state of emergency, on the one hand, and municipal law, on the other hand, the former should prevail, although an alternative reading has been provided with respect to international treaties *per se*, showing the complexity of the Cyprus legal system.[31]

Question 5

(a) In its ruling in *Ambrosia Oils v. Bank of Cyprus*,[32] the Court developed the doctrine of necessity by invoking it as legal justification for legislative measures that purported to impose limitations on the enjoyment of fundamental rights (in that particular case, the right to property). The case in question concerned the constitutionality of Law 24/1979, which suspended the right of creditors to recover debt from debtors displaced from the occupied northern part of Cyprus, following the events of 1974, and to charge interest, during a six-year moratorium period stretching from 1974 to 1982. The Court upheld the constitutionality of the relevant law by invoking the doctrine of necessity, suggesting that the said doctrine can be used both as a shield, to immunise the branches of the government against charges of inaction on account of the impossibility to undertake action in light of a situation covered by the doctrine of necessity, and as a sword, to legitimise positive measures adversely affecting the rights of individuals in pursuit of the general good amidst a state of emergency covered by the doctrine

wording intact (see: Papastylianou, 323–324), while others have taken the view that "there is a clear question about the constitutionality of the Law introducing the Fifth Constitutional Amendment," adding that there has never before or since been any amendment of a basic Constitutional provision (Kombos and Laulhé Shaelou, (2019), p. 1382).

[31] See: *contra* Emilianides (2024), p. 37.

[32] *Ambrosia Oils v. Bank of Cyprus* [1983] 1 CLR 55. For a critical assessment of the Court's ruling in *Ambrosia*, see: Hadjigeorgiou and Kyriakou, 2020.

of necessity. The subsequent ruling of the Supreme Court in *Solomonides*[33] affirmed the Court's earlier stance in *Ambrosia*.

(b) In light of the ECtHR's rulings in *Selim* and *Aziz* it seems likely that one of the factors that the Court will need to pay particular attention to when assessing, in its future jurisprudence, the legality of measures presented under the guise of the doctrine of necessity is the effective protection of fundamental rights.[34]

Question 6

(a) See our response to Section 1, Q5, and, in particular, our account of the precedent set by the ECtHR in *Aziz*, by upholding the applicant's argument that the RoC's failure to enact legislation to guarantee the practical exercise of his right to vote was a violation of human rights, against which the doctrine of necessity provided no adequate defence for the benefit of the RoC.[35]

Section 3: Statutory/executive emergency law in the Member States

Question 1

The only explicit legal framework on emergency situations is that of Article 183 of the Cypriot Constitution, on a "state of emergency," analysed earlier in this Questionnaire. For its part, the judicially endorsed doctrine of necessity is said to emanate from Article 179 thereof, which, according to the Court in *Mustafa Ibrahim*, provides its implicit basis.

Question 2

In the case of the RoC, the only existing framework for addressing emergencies/exceptional circumstances is constitutional, meaning that there is no scope for conflicts between that framework and other, competing legal frameworks (of which none are in existence).

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[33] *Solomonides v. Minister of the Interior as the Custodian of Turkish Cypriot Properties*, (2003) 1B CLR 1275. This ruling is authority for the proposition that the doctrine of necessity can provide the basis for the imposition of limits to the enjoyment, by Turkish Cypriots, of their property rights regarding real estate located in areas under the effective control of the RoC.

[34] See: Laulhé Shaelou (2010), pp. 140 and 201.

[35] For a consideration of the protection on socio-economic rights deriving from EU law, see: Kombos and Laulhé Shaelou (2019), pp. 1392–8.

Question 3

See our response to Section 1, Q4.

Question 4

See our response to Q4, which points to the conclusion that EU-based emergency measures would in no way alter the balance and distribution of powers between the RoC and the EU, given the constitutionally enshrined doctrine of supremacy of EU over national (including constitutional) law guaranteed, since 2006, by Article 1A of the Cypriot Constitution.

Section 4: Judicial review of emergency powers in the Member States

Question 1

(a) Final jurisdiction to adjudicate over challenges against measures taken to address emergency situations is vested in the highest courts as described in points (b) and (c) below. However, all judges, including those serving in lower courts, are both entitled and obliged to assess, if needed, the constitutionality of laws at stake in proceedings over which they preside.
(b) Until the merging of the High Court and the Supreme Constitutional Court into a single Supreme Court, in accordance with the provisions of Law 33/64 on the Administration of Justice, final jurisdiction in these matters was vested in the Supreme Constitutional Court, pursuant to Article 144 of the Constitution. It bears noting that the law whose constitutionality was at stake in the proceedings before the Court in *Mustafa Ibrahim* – the foundational judgment for the judicial recognition, in the RoC, of the doctrine of necessity – was Law 33/64, which, amongst others, merged into a single Supreme Court the former High Court and Supreme Constitutional Court.
(c) Recently, in line with the Recovery and Resilience Programme of Cyprus, the Cypriot justice system has undergone several fundamental reforms including at the higher level.[36] Since 1 July 2023, the court system is composed by the following first instance courts, namely six District Courts, six Assize Courts, the Administrative Court, the Administrative Court of International Protection, the Commercial Court, and the Admiralty Court. Other specialised courts include family courts, rent control tribu-

[36] https://www.gov.cy/mjpo/en/justice-sector/legal-affairs-unit/courts-reform-strengthening-the-justice-system/#:~:text=In%20order%20to%20improve%20judicial,parts%20of%20a%20coherent%20plan

nals, industrial disputes tribunals, and a military court. The second-tier court is the Court of Appeal, which deals with appeals against judgments at first instance in civil, commercial and administrative matters, and the third instance courts are now the Supreme Constitutional Court and the Supreme Court. Some progress has been made towards the reinforcement of the third tier of the judiciary in the RoC, in line with European standards. As of 1 July 2023, the Cyprus judicial system is based again on two distinct highest courts of the RoC, following the Seventeenth Amendment to the Constitution, Law 103(I)/22 combined with the amendment of Law 33/64 on the Administration of Justice by Law 145(I)/22.[37] In terms of jurisdictions at the highest level, the Supreme Constitutional Court rules on claims of unconstitutionality and conflicts of competences among public authorities, and acts as a third instance court in administrative disputes. On the other hand, the Supreme Court as the highest appellate court hears claims at third instance in all civil and commercial matters, as well as cases under the jurisdiction of specialised courts/procedures.[38]

Question 2

No procedural specificities applied at the time of responding to this Questionnaire.

Question 3

(a) The standard of review is the one set out by the Court in *Mustafa Ibrahim* and it involves an assessment, by the Court, that all four legs of the test in *Mustafa Ibrahim* are fulfilled. In its ruling in *Papadopoulos*,[39] a majority of the Supreme Court decided that the judiciary is competent to assess not only the constitutionality of measures adopted in response to a situation of emergency but, also, the very existence of the alleged situation of emergency that inspired their adoption.

(b) As mentioned earlier in this Questionnaire, one of the criticisms levelled against the Court for its practical application of the four-leg test in *Ibrahim Mustafa* is that the Court has largely ignored or merely paid lip service to the last three, focusing instead on the first leg (i.e., ascertaining that an imperative and inevitable necessity or exceptional circumstances apply in a particular situation).

[37] See: Emilianides (2024), pp. 133–5.
[38] See: European Commission, 2024 Rule of Law Report on Cyprus, p. 3 and fn. 7.
[39] *Papadopoulos v. the Republic* 1985 C.L.R. 165.

Question 4

(a) Of the four legs of the *Ibrahim Mustafa* test, the third one is concerned with the principle of proportionality (while the second one is concerned with the related principle of necessity).

(b) As construed in Cyprus, the principle of proportionality requires striking a balance between a measure that pursues a particular objective and the consequences of that measure. Where a public authority is called upon to choose between two or more measures that would satisfy, in equal measure, that objective, that public authority must choose the measure that is the least intrusive or that produces the least number of adverse effects. The principle of proportionality was given a prominent status in Cypriot law through the codification, by Law 158(I)/99, of the general principles of Cypriot Administrative Law (see Article 52 thereof). That said, the principle of proportionality enjoyed, already before the entry into force of Law 158(I)/99, the status of an unwritten principle of law – reflected in the references to it by the Supreme Court in *Mustafa Ibrahim* – as one of the conditions to be met for the doctrine of necessity to be validly invoked in a particular case. It has aptly been observed by two commentators that "the overall effect is that the principle of proportionality is not just a general principle of law with constitutional status, but it also constitutes an integral criterion for the assessment of the foundation of the Cypriot Constitution post-1964, that is, the doctrine of necessity."[40]

(c) The principle of proportionality, as applied by Courts in Cyprus, is aligned with the construction of that same principle by the Court of Justice of the EU, which, in its jurisprudence, has interpreted the principle of proportionality – enshrined in Article 5(4) of the Treaty on European Union – as a boundary to the actions of the EU Institutions and Agencies, and as a complement to the principles of subsidiarity and conferral.[41] The criteria for applying the principle of proportionality are set out in the Protocol (No. 2) on the application of the principles of subsidiarity and proportionality annexed to the treaties and, in case of a violation of the principle, applicants may – provided the conditions are met – challenge the validity of relevant measures before the CJEU.

[40] Kombos and Laulhé Shaelou (2019), p. 1391.

[41] On the principle of proportionality as a general principle of EU law see, generally, Takis Tridimas, *The General Principles of EU Law*, OUP, 2006, Chapter 3.

Section 5: Implementation of EU emergency law in the Member States

Question 1

(a) EU measures governing emergency situations are likely to impose restrictions on fundamental rights and freedoms. In accordance with the Cypriot Constitution, restrictions to fundamental rights and freedoms are only possible following a Proclamation of Emergency made in accordance with Article 183. This is clearly stated in Article 33(1) of the Constitution, according to which the "subject to the provisions of this Constitution relating to a state of emergency, the fundamental rights and liberties guaranteed by this Part shall not be subjected to any other limitations or restrictions than those in this Part provided." Considering that Article 183 cannot be activated, for the reasons explained earlier in the responses to this Questionnaire, a narrow interpretation of the Constitution can only lead to the conclusion that measures, whether mandated by the national authorities of the EU, that purport to restrict the enjoyment of fundamental rights are unconstitutional and could not be validly taken even if their authors were to invoke the doctrine of necessity.

(b) For an illustration of the legal challenges posed in the Cypriot legal order by measures purporting to restrict the enjoyment of fundamental rights and freedoms guaranteed by the Cypriot Constitution, see our analysis in our response to Q2, below, prompted by measures taken in the RoC in response to the COVID-19 pandemic, inter alia on the basis of guidance/directions by the EU Institutions.

Question 2

(a) Article 183 of the Constitution does not specifically mention public health reasons as justification for proclaiming an emergency. That said, it is likely that public health reason could legitimately provide the basis for a "Proclamation of Emergency." Reliance on Article 183 of the Constitution was not an option in the context of the national response to the COVID-19 pandemic, for the reasons explained earlier in our responses to this Questionnaire.

(b) In March 2020, the Cypriot Government relied, instead, on the Quarantine Law of 1932 – a colonial period law that predated the 1960 Constitution – as the enabling legal basis for its response to the public health emergency posed by the COVID-19 pandemic. What made this possible was Article 188(1) of the Constitution, which allows legislation predating the Constitution to continue to apply unless modified or repealed. The Quarantine Law of 1932 empowered the Governor of Cyprus (by implication,

post-independence, the Government of the RoC) to declare an area as an infected area and to adopt all measures necessary to tackle the resulting public health emergency, including measures taken in pursuit of guidance/directions of the EU Institutions and agencies, and the World Health Organisation. The Government sub-delegated[42] special powers to the Ministry of Health, authorising the Minister to issue time-bound *decrees* setting out COVID-19 pandemic-specific restrictions and prohibitions.[43] Thus, the measures adopted in the RoC to tackle the COVID-19 pandemic resulted from the exercise of executive power, qualifying as "acts of government," which, in the RoC, are not subject to judicial review under Article 146 of the Constitution.[44]

(c) The measure that attracted the greatest degree of criticism was a Ministry of Health decree of 15 March 2020 introducing a requirement for Cypriot citizens to present a medical certificate stating they were free of Coronavirus infection in order to enter the country from abroad. That measure, plus a 14-day quarantine requirement (regardless of the presentation of a free-from-infection medical certificate), was contested as its effect was to prevent Cypriot citizens living abroad from being repatriated. This measure was deemed to be in violation of Article 14 of the Cypriot Constitution, which states that "no citizens shall be banished or excluded from the Republic under any circumstances." More broadly, to the extent that this and its subsequent decrees did not merely *specify* but, in fact, *established* restrictions on the enjoyment of fundamental rights and freedoms, their constitutionality was deemed questionable, for the reasons set out above.[45]

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[42] This sub-delegation was not based on the enabling law, but on Law 23/1962 on the Delegation of the Exercise of Powers Derived from Any Law. The Cypriot Government routinely makes use of this law, a practice that Cypriot Courts have declared constitutional.

[43] These encompassed restrictions to free movement, the closure of public markets, prohibitions to attend places of worship and traditional celebrations, the closure of retail businesses and schools, the closure of check-points along the ceasefire line separating the territory of the RoC under the effective control of the government and those areas not falling under its effective control and curfews.

[44] See: *Louca v. The President of the Republic* (1983) 3 CLR 783.

[45] For a critical assessment of the constitutionality of the Cypriot Minister of Health decrees regarding the COVID-19 pandemic, see: Costas Stratilatis, "The COVID-19 Pandemic in Cyprus: A Problematic Legal Regime, and the Potential of Rule of Law in Emergencies," *Democracy after COVID*, edited by Kostas Chrysogomos and Anna Tsiftsoglou, Springer, 2022, pp. 91–109. It bears noting that two students submitted a request for an interim order of suspension of a decree precluding their repatriation to Cyprus. However, the administrative court dismissed the request: as the decrees were acts of government (as opposed to administrative measures) they were not subject to judicial review (*Patsalidi v Republic of Cyprus*, case no. 301/2020, judgment of 16 April 2020, ECLI:CY:DD:2020:18.). See also: Stephanie Laulhé Shaelou and Andrea Manoli, "The Islands of Cyprus and Great Britain in times of COVID-19 pandemic: Variations on the Rule of Law 'in and out' of the EU." 2020, https://ruleoflawmonitoringmechanism.eu/posts/the-islands-of-cyprus-and-great-britain-in-times-of-covid-19-pandemic-variations; and Stephanie Laulhé Shaelou and Andrea Manoli, "A Tale of Two: the COVID-19 pandemic and the Rule of Law in Cyprus." 2020, https://verfassungsblog.de/a-tale-of-two-the-covid-19-pandemic-and-the-rule-of-law-in-cyprus/