



Strasbourg, 24 November 2021

CDL-REF(2021)091

Opinion No. 1060/2021

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

CYPRUS

BILL

**ENTITLED THE LAW OF 2021
ON THE SIXTEENTH AMENDMENT
TO THE CONSTITUTION ***

* Unofficial translation

Preamble. WHEREAS the Constitution of the Republic provides for a Supreme Constitutional Court and a Supreme Court in the Republic,

Summary AND WHEREAS, under the provisions of the Administration of Justice
Title. (Miscellaneous Provisions) Act, 1964 to 2015, enacted under the Law of
Necessity, the constitutional jurisdiction of the Supreme Constitutional
Court and the High Court has been transferred to the Supreme Court
established under the said Act,

33 of 1964

35 of 1975

72 of 1977

59 of 1981

3 of 1987

158 of 1988

109 of 1991

132(I) of 2015.

AND WHEREAS the exclusive jurisdiction of the High Court, as provided for in the Administration of Justice (Miscellaneous Provisions) Act 1964 to 2015, has over time hampered the work of this Court and not only does it not contribute to the speedy administration of justice, but has led to serious problems of delays,

WHEREAS it is necessary to take measures for the smooth and uninterrupted functioning of the Supreme Court and the speedy administration of justice in general, and of the appellate jurisdiction in particular, by separating the jurisdiction of the Supreme Court,

WHEREAS, the facts which have made it impossible for the Supreme Constitutional Court and the Supreme Court to function in accordance with the provisions of the Constitution still exist, and consequently, legislation deviating from the constitutional provisions for these Courts is still justified by the Law of Necessity,

AND WHEREAS, more than half a century after the merger of the two supreme judicial bodies of the Constitution into the present Supreme Court, the reopening of the Supreme Constitutional Court and the Supreme Court needs to be supported at the same time by regulations that not only ensure the effective administration of justice and prevent the collapse of the judicial system, but also meet the requirements of a modern judicial state from its judiciary,

AND WHEREAS, therefore, it is necessary that its appellate jurisdiction be operated separately, under the Supreme Court, by a Court of Appeal,

WHEREAS it is also necessary to provide for a third level of jurisdiction in certain cases, in order to ensure uniformly the correct application of the law, the consistency and development of case law and thus legal certainty,

AND WHEREAS, in addition, the necessary checks and balances at the highest level of the judicial structure between the two Courts, which the merger had undone, must be ensured,

AND WHEREAS the above purposes equally justify the invocation of the Law of Necessity, since they aim at the preservation and proper functioning of justice, a basic and essential function of the State,

WHEREAS Articles 136, 144, 146 and 155 of the Constitution are not included among the fundamental Articles of the Constitution which cannot in any way be amended or repealed,

AND WHEREAS, due to the ongoing Turkish occupation and the peculiar conditions prevailing in the Republic of Cyprus, Turkish Cypriots do not participate in the election and functioning of the House of Representatives,

AND WHEREAS, the Law of Necessity justifies preserving the power of the House of Representatives to amend non-fundamental provisions of the Constitution,

For all these reasons, the House of Representatives shall vote as follows:

Summary
Title.

- 95 of 1989
- 108(I) of 1996
- 115(I) of 1996
- 104(I) of 2002
- 127(I) of 2006
- 51(I) of 2010
- 68(I) of 2013
- 130(I) of 2015
- 69(I) of 2016.
- 93(I) of 2016
- 100(I) of 2019
- 128(I) of 2019
- 160(I) of 2019
- 161(I) of 2019
- 135(I) of 2020

1. This Act shall be referred to as the Sixteenth Amendment to the Constitution Act of 2021.

2. Article 136 of the Constitution is amended by deleting the period at the end of the text and adding immediately after it the phrase "as well as on such matters as the law may specifically provide."

Amendment of
Article 136 of the
Constitution.

Amendment of
Article 144 of the
Constitution.

3. Paragraph 1 of Article 144 of the Constitution is amended as follows:

(a) by substituting in the second sentence thereof, for the words "may refer it" (fifth line), the words "may refer it as the law may prescribe"

(β) by inserting immediately after the second sentence thereof the following new sentence:

"that court is the Supreme Court, it shall refer the matter the Supreme Constitutional Court and suspend the progress of the proceedings before it until the Supreme Constitutional Court has given its decision».

Amendment of
Article 146 of the
Constitution.

4. Article 146 of the Constitution is amended as follows:

(a) by inserting, in paragraph (1), immediately after the word "Magistrate" (first line) the sign for the comma, and by substituting for the words "shall have exclusive jurisdiction to decide any appeal" (first and second lines) the words "in cases where an appeal is referred to it by the Court of Appeal as specifically provided by law, and the Court of Appeal, in any other case, shall have jurisdiction to decide an appeal";

(b) by adding at the end of paragraph 1 the following new sentence:

"In addition, the Supreme Constitutional Court has jurisdiction to decide in certain cases, as specifically provided by law, on decisions issued by the Court of Appeal in appeals against decisions of an Administrative Court."

(c) by inserting, in paragraph 5, immediately after the word "appeal" (second line), the words "issued under the jurisdiction conferred on the Supreme Constitutional Court or the Court of Appeal under paragraph 1,".

Amendment of
Article 155 of the
Constitution.

5. Article 155 of the Constitution is amended as follows:

(a) by replacing paragraph 1 thereof with the following new paragraph 1:

«1. Subject to the jurisdiction of the Supreme Constitutional Court under Article 146, the Supreme Court shall be the highest court of third instance in the Republic and shall, in accordance with the provisions of the Constitution and the rules of procedure made thereunder, have jurisdiction to hear and determine, in certain cases specifically provided by law, judgments rendered by the Court of Appeal, and appeals referred to it by the Court of Appeal, as specifically provided by law, from a judgment of any other court.

(b) by inserting immediately after paragraph (1) the following new paragraph 1A:

«1A. Subject to the provisions of this Article, a law may provide for the establishment, jurisdiction and powers of the Court of Appeal.»

(c) by deleting paragraph 4 thereof.

Start of the
the entry into
force of this Law.

6.-(1) Subject to the provisions of subsection (2), this Act shall enter into force on the date of its publication in the Official Gazette of the Republic.

(2) The provisions of Articles 3, 4 and paragraphs (a) and (c) of Article 45 of this Law shall enter into force on the date of publication in the Official Gazette of the Notifications issued pursuant to the provisions of subsections (2) and (3) of Article 19 of the Administration of Justice (Miscellaneous Provisions) Law.