

# Making an Even Number Odd: Deadlock-Avoiding in a Reunified Cyprus Supreme Court

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## Abstract

Substantive talks to re-unify the island of Cyprus re-commenced in September 2008. Sadly, the gulf between the two communities remains wide. The rejected ‘Annan Plan’ proposed a (federal) Supreme Court that would have included three non-Cypriot (deadlock-breaking) judges. This should not be preferred. However, to dispel any fears concerning the likely consequences of their absence, it is the purpose of this article to outline how any reunified Cyprus Supreme Court can rely on absolute political equality (alone), whilst still remaining functional and free from potential deadlock. The various procedures devised confirm that an even number can be made into an odd.

## I. INTRODUCTION

THE reunification of Cyprus still eludes. The most recently completed process<sup>1</sup> culminated in a referendum, on 24 April 2004, in which the Turkish Cypriots voted (convincingly) in favour of the so-called ‘Annan Plan’, while the Greek Cypriots voted (even more convincingly) against<sup>2</sup>. In the end, if the island *is* ever to be reunified, both sides will have to make significant compromises. Yet, as this author has recently demonstrated in a recently published book covering many of the most highly disputed matters, variation from the rejected Plan often need not affect / disadvantage either side<sup>3</sup>.

Cyprus – like Sri Lanka, Georgia and Moldova (to cite a few other similarly troubled societies) – is a country where any constitutional settlement would be only the start of what would be a long and difficult road to reconciliation. Success cannot and ‘should not’ be guaranteed; occasionally states *do* fail; the responsibility to avoid this happening must lie with the local population. One avoidable reflection of this, in the rejected Plan, was the inclusion of foreign (non-Cypriot) judges on the Supreme Court. Its progeny is clear and understood: the ad hoc tribunal system in international law. Still, attempts to ‘internationalise’ local problems should be avoided. In respect of the Supreme Court of the United Cyprus Republic, this was not done.

## II. ANNAN PLAN (FINAL VERSION): PROVISIONS

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<sup>1</sup> Commenced (under UN auspices) on 14 January 2002.

<sup>2</sup> The Turkish Cypriots voted 64.91% ‘yes’, 35.09% ‘no’; the Greek Cypriots, 75.83% ‘no’, 24.17% ‘yes’.

<sup>3</sup> Tim Potier, *A Functional Cyprus Settlement: the Constitutional Dimension* (Verlag Franz Philipp Rutzen, Mainz und Ruhpolding, 2007).

The Supreme Court shall uphold the Constitution of the United Cyprus Republic (“the supreme law of the land”<sup>4</sup>) and ensure its full respect<sup>5</sup> by other federal organs and the constituent states<sup>6</sup>.

The Supreme Court shall be composed of 15 judges<sup>7</sup>. Six judges shall hail from each constituent state, plus three judges who are not citizens of the United Cyprus Republic<sup>8</sup>. The judges from the constituent states shall be citizens of the United Cyprus Republic<sup>9</sup>. The three judges who are not to be citizens of the United Cyprus Republic shall not be subjects or citizens of “the Hellenic Republic or the Republic of Turkey or of the United Kingdom of Great Britain and Northern Ireland”<sup>10</sup>. Despite the inclusion of the non-Cypriot judges, political equality, guaranteeing effective participation for both communities, being a central requirement in any settlement on the island, is maintained<sup>11</sup>.

The Court shall have its own Registry<sup>12</sup>. There shall be a Registrar, who shall not be a citizen of the United Cyprus Republic, and two Deputy Registrars who shall not hail from the same constituent state<sup>13</sup>.

The Supreme Court shall assume its functions upon entry into force of the Foundation Agreement<sup>14</sup>, and evolve in its operation during a transitional period<sup>15</sup>. It shall come to sit

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<sup>4</sup> Article 3(1) of the Constitution (Annex I, at Part II) provides: “(1) This Constitution, having been democratically adopted by the Greek Cypriots and the Turkish Cypriots through their separately expressed common will, is the supreme law of the land and is binding on all federal authorities and the constituent states. Any act by the federal government or either constituent state in contravention of this Constitution shall be null and void”. See also: Main Articles, Article 2(3) (third and final sentence). “... [T]hrough their separately expressed common will...”: that is, via the “separate simultaneous referenda” (see: Annex IX, Article 1(1)).

<sup>5</sup> Main Articles, Article 6(1).

<sup>6</sup> Annex I, Part II, Article 3(3).

<sup>7</sup> “The judges of the Supreme Court shall be appointed from amongst lawyers of high professional and moral standing” (Federal Law on Administration of Justice (Annex III, Attachment 26, Law 1), Part II, Section 3(4)). They “... shall not hold any other public office in the Federal Government or in either constituent state” (*Ibid*, Section 3(5)).

<sup>8</sup> Federal Law on Administration of Justice (Annex III, Attachment 26, Law 1), Part II, Section 3(1). Article 6(2) of the Main Articles states: “(2) It shall comprise an equal number of judges from each constituent state, and three non-Cypriot judges until otherwise provided by law”. The first sentence of Article 36(1) of the UCR Constitution (at Part V) provides: “(1) The Supreme Court of Cyprus shall count an equal number of judges from each constituent state among its members...” Concerning the phrase “... until otherwise provided by law”, in Article 6(2) (of the Main Articles), Section 3(8) of the Administration of Justice Law provides: “(8) In terms of Section 2 of Article 6 of the Foundation Agreement, the composition of the Court, as provided in subsection (1) above, may be altered by a Federal Law”.

<sup>9</sup> *Ibid*, Section 3(2).

<sup>10</sup> *Ibid*, Section 3(3).

<sup>11</sup> Enunciated, most directly, in paragraph (iii) of the Preamble to the Main Articles: “Acknowledging each other’s distinct identity and integrity and that our relationship is not one of majority and minority but of political equality where neither side may claim authority or jurisdiction over the other”. See also: Main Articles, Article 2(1)(a); Annex I, Part I, Article 1(4).

<sup>12</sup> Federal Law on Administration of Justice (Annex III, Attachment 26, Law 1), Part IV, Section 24(1).

<sup>13</sup> *Ibid*, Section 24(2). “(3) The Registrar and Deputy Registrars shall be persons of good moral character and conduct and shall have such legal qualifications and experience of practice as the Court may consider appropriate for their offices” (Section 24(3)).

<sup>14</sup> Main Articles, Article 7(4).

(either) as a Constitutional Court or as a Court of Primary Federal Jurisdiction<sup>16</sup>. However, only those who shall serve as members of the Constitutional Court shall assume their functions immediately upon entry into force of the Foundation Agreement<sup>17</sup>. That is, the three non-Cypriot judges and three judges hailing from each constituent state<sup>18</sup>. The remaining six judges shall serve on the Court of Primary Federal Jurisdiction<sup>19</sup> and, under the rejected Plan, were to have been "... appointed by the Presidential Council in the course of the month of July 2004..."<sup>20</sup> Until then, the 'other' (Constitutional Court) judges of the Supreme Court were to have exercised the functions attributed to the Court of Primary Federal Jurisdiction<sup>21</sup>.

The nine initial judges and the registrars of the Supreme Court are to be those Cypriots and non-Cypriots informed by the Secretary-General (of the United Nations) prior to the entry into force of the Foundation Agreement of their prospective appointment<sup>22</sup>.

The Court may divide itself into Chambers. Should it so decide<sup>23</sup>, there shall be a "grand chamber of the Court" comprising all 15 members of the Court<sup>24</sup>. The Chambers of the Constitutional Court shall be: the Grand Constitutional Chamber (comprising all members of the Constitutional Court) and the first, second and third constitutional chambers. Each of these (latter) three Chambers shall comprise three judges, one from each constituent state, and one judge who is not a citizen of the United Cyprus Republic<sup>25</sup>. The Chambers of the Court of Primary Federal Jurisdiction shall be: the Grand Chamber of Primary Federal Jurisdiction (comprising all members of the Court of Primary Federal Jurisdiction) and the first, second

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<sup>15</sup> See: Main Articles, Article 7(1).

<sup>16</sup> First sentence of Article 36(7) of the UCR Constitution (at Part V).

<sup>17</sup> Annex I, Part VII, Article 45(2).

<sup>18</sup> Federal Law on Administration of Justice, Part II, Section 3(6). The three Registrars were, also, to have assumed their functions "... immediately upon entry into force of the Foundation Agreement..." (Annex I, Part VII, Article 45(3))

<sup>19</sup> Administration of Justice Law, Section 3(7) (first sentence).

<sup>20</sup> See: Annex I, Part VII, Article 45(4); and Federal Law on Administration of Justice, Part II, Section 3(7).

<sup>21</sup> Annex I, Part VII, Article 45(4) (second and final sentence). Article 36(7) of the Constitution (at Part V) provides: "(7) The Supreme Court of Cyprus shall sit as a Constitutional Court or as a Court of Primary Federal Jurisdiction. Judges shall be appointed to serve either on the Constitutional Court or the Court of Primary Federal Jurisdiction. The law shall regulate the number of judges serving in each court, the attribution of competence to each court, the division of the two courts into chambers, and any right of appeal within either court or from the Court of Primary Federal Jurisdiction to the Constitutional Court".

<sup>22</sup> Further to the eighth and final measure contained in Appendix F ("Measures to be taken during April 2004"), "... the parties..." (that is, the leader of the Greek Cypriot community and the leader of the Turkish Cypriot community) shall ("... agree on and take the following measures, in close cooperation with the Secretary-General or his representative, and shall accept any indispensable suggestions of the Secretary-General or his representative where foreseen in this list"): "Provide to the Secretary-General no later than two days after successful referenda the names of the... Cypriot members of the Supreme Court, and otherwise accept any indispensable suggestions of the Secretary-General or his representative". The Foundation Agreement could not have entered into force during this period ("... no later than two days after successful referenda...").

<sup>23</sup> Federal Law on Administration of Justice, Part III, Section 20(1).

<sup>24</sup> *Ibid*, Section 20(2).

<sup>25</sup> *Ibid*, Section 20(3).

and third primary chambers (each comprising two judges, one hailing from each constituent state). The President of the Court may, “at his discretion”, assign one of the non-Cypriot judges to sit in a particular case of the Grand Chamber of Primary Federal Jurisdiction<sup>26</sup>.

The Supreme Court shall strive to reach its decisions by consensus and issue joint judgments of the Court<sup>27</sup>. In the event that a consensus cannot be reached, the Cypriot judges may, by a majority, take the decision of the Court<sup>28</sup>. Further to Section 23(3) of the federal law:

“(3) In the event of there being no decision by consensus and no majority among the Cypriot Judges, those Judges who are not citizens of the United Cyprus Republic, acting together and speaking with one voice, shall participate in the decision of the Court”<sup>29</sup>.

### III. NON-CYPRIOT JUDGES

For any society to succeed, it must have (/ at least feel that it has) ownership of its Constitution and system; the absence of this leads to disharmony, disagreement and, invariably, conflict. Perhaps, although it is painful for some to admit it, the path to and outcome of the establishment of the 1960 Republic is an all-too obvious testament to this fact<sup>30</sup>.

A society’s ownership of its Constitution and system does not guarantee success. It may be that the society itself is so divided, beyond the mere confines of its law, that nothing can make it function. However, at least with ‘ownership’ (even though this may never truly operate in a vacuum) comes responsibility, including for any failure. It is this that the international community should allow, when / where it occurs, and compel those responsible to (first) find a solution. This is one area where the ‘Annan Plan’ fails. Fearing (ultimate) deadlock in the Supreme Court (for example), the non-Cypriot judges are installed and, as and when necessary, would be called upon to intervene. This cannot be a solution, for not only would their condition negate that responsibility, but their appointment and every occasion they would be required to decide would be reduced to / become a cause of / for rumour,

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<sup>26</sup> *Ibid*, Section 20(4).

<sup>27</sup> *Ibid*, Section 23(1); and, Annex I, Part V, Article 36(8) (first sentence).

<sup>28</sup> *Ibid*, Section 23(2).

<sup>29</sup> Reflecting the need to reach a ‘majority’, as prescribed in Section 23(2) and (3), the second sentence of Article 36(8) of the UCR Constitution provides: “(8)... However, all decision of the Supreme Court may be taken by simple majority as specified by law”. The non-Cypriot judges, “acting together and speaking with one voice”, in effect, realising that majority in an otherwise (among the Cypriot judges) deadlocked Court.

<sup>30</sup> For example, the leaders of the Greek and Turkish Cypriot communities did not attend the Zürich Conference (6-11 February 1959; prior to the London Conference, 11-16 February 1959), where agreement was reached on a future Cyprus Republic between the governments of Greece and Turkey; nor were the Cypriot people consulted prior to the establishment of the Republic of Cyprus on 16 August 1960.

speculation, mistrust, division and failure. What an unedifying spectacle for one of the most honoured professions.

The non-Cypriot component on the Supreme Court should be removed. The Court should be composed (only) of an equal number of persons hailing from each constituent state. Such does, of course, raise fears about the consequences of deadlock should consensus fail and the judges from each constituent state split 50:50. It is the purpose of this article to explain how this can be avoided.

#### IV. 'AN AMENDED COURT'

Rather than 15 judges (including 3 non-Cypriot judges), the Supreme Court should be composed of 24 judges, 12 hailing from each constituent state. The entire Court should be in place upon entry into force of the Foundation Agreement. There should be no transitional Court<sup>31</sup>.

It shall continue to sit, either, as a Constitutional Court or as a Court of Primary Federal Jurisdiction. An equal number of Cypriot judges (with the non-Cypriot judges now absent) would, also, continue to serve on the two courts<sup>32</sup>, except that the numbers should be doubled from 6 (each) to 12. Judges would (still) be appointed to serve either on the Constitutional Court or the Court of Primary Federal Jurisdiction<sup>33</sup>.

The Court *should* be divided into Chambers<sup>34</sup>. The Grand Constitutional Chamber (comprising all members of the Constitutional Court) and the Grand Chamber of Primary Federal Jurisdiction (comprising all members of the Court of Primary Federal Jurisdiction) would remain. However, rather than three additional chambers each, the Constitutional Court

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<sup>31</sup> This is reflected in Article 45 of the UCR Constitution (at Part VII): "(1) Upon entry into force of the Foundation Agreement, the judges... of the Supreme Court shall be those Cypriots and non-Cypriots informed by the Secretary-General prior to the entry into force of the Foundation Agreement of their prospective appointment pursuant to the Comprehensive Settlement. (2) The judges of the Supreme Court, who shall serve as members of the Constitutional Court, shall assume their functions immediately upon entry into force of the Foundation Agreement and shall remain in office for 36 calendar months, unless the federal Parliament decides with special majority to extend their terms... (4) The judges who shall serve on the Court of Primary Federal Jurisdiction shall be appointed by the Presidential Council in the course of the month of July 2004. Until then, the other judges of the Supreme Court shall exercise the functions attributed to the Court of Primary Federal Jurisdiction".

<sup>32</sup> That is, the Constitutional Court and Court of Primary Federal Jurisdiction.

<sup>33</sup> The second sentence of Article 36(7) of the UCR Constitution provides (at Part V): "... Judges shall be appointed to serve either on the Constitutional Court or the Court of Primary Federal Jurisdiction..." See also: Section 3(6) and (7) of the Federal Law on Administration of Justice (at Part II).

<sup>34</sup> Section 20(1) of the Federal Law on Administration of Justice (at Part III) states: "(1) The Court may divide itself into Chambers in accordance with Section 7 of Article 36 of the Constitution and, should it so decide, it shall, subject to the power of the Court otherwise to organise its work, sit in the Chambers indicated in subsection (2), each of which Chambers shall deal with such matters and cases as the Court may by Rules or Practice Directions direct". The federal law does not indicate by what means 'it should so decide'. "... [S]it in the Chambers indicated in subsection (2)..." is incorrect. "[S]ubsection (2)" merely confirms the existence of a "... grand chamber of the Court..." The Chambers of the Supreme Court are "indicated" in subsections (2), (3) and (4). The relevant part of "Section 7 of Article 36" merely provides: "(7)... The law shall regulate... the division of the two courts into chambers..."

and Court of Primary Federal Jurisdiction should be further served by two. The first and second constitutional chambers and the first and second primary chambers would each comprise six judges (three hailing from each constituent state). The “original members” of the Court should be separated into their (respective) Chamber by lot. Any (subsequent /) newly appointed judge, following the death, retirement, dismissal or permanent incapacity of an existing judge would serve in the Chamber of the judge who has been replaced<sup>35</sup>. However, in the spirit of the partial periodic renewal of the Court, every three years, the membership in the Chambers would be re-cast, again by lot (and affect all new cases during any forthcoming three-year ‘term’)<sup>36</sup>. Such would avoid any Chamber / appointment becoming politicised.

The jurisdiction exerciseable by the Court<sup>37</sup> is provisionally assigned (/ distributed) between the Chambers under Annex I of the Federal Law<sup>38</sup>. The jurisdiction of the Grand Constitutional Chamber<sup>39</sup> and the Grand Chamber of Primary Federal Jurisdiction<sup>40</sup> would

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<sup>35</sup> Such newly-appointed judge should, also, take the place of any judge who had been sitting in any ongoing case (/ prior to any suspension, whilst any misconduct is being considered by the Judiciary Board). The ‘filling of a vacancy’ during consideration of a case is addressed, only, in Annex III (titled: “The Default Provision and Deadlock-Resolution Procedural Rules”), Rule 21 of the Federal Law. It states: “(1) In the event of the death of any of the Judges or of their being prevented by ill-health or otherwise from taking part in the proceedings, the Presidential Council or Transitional Federal Government, as the case may be, shall fill any vacancy so caused by an appointment made in accordance with Law and in the case of a temporary absence or incapacity the arrangements provided in section 17 [actually Section 12] of the Law shall apply. (2) The proceedings shall continue notwithstanding that such a vacancy as aforesaid shall not be filled, and, if it shall be filled, the proceedings prior to such vacancy shall not be reopened or recapitulated”.

<sup>36</sup> See: Part II, Section 8(3).

<sup>37</sup> “[L]isted as Chapters of the Schedule”: opening part of Annex I (titled: “The Provisional Assignment of Jurisdiction to Chambers Rules”) of the Federal Law.

<sup>38</sup> Section 20(1) and (6) (at Part III) state: “(1) The Court may divide itself into Chambers in accordance with Section 7 of Article 36 of the Constitution and, should it so decide, it shall, subject to the power of the Court otherwise to organise its work, sit in the Chambers indicated in subsection (2) [incorrect reference], each of which Chambers shall deal with such matters and cases as the Court may by Rules or Practice Directions direct... (6) Pending the making of Rules under paragraphs (1) and (3) [reference only to paragraph (1) should be made here] above, the jurisdictions listed in the Chapters set out in Schedule shall be allocated to Chambers subject to the approval of the Court. Such allocations in the “Provisional Allocation of Jurisdictions to Chambers Rules” shall be deemed to have been made under the preceding paragraphs of this section and may at any time be varied, repealed or substituted by Rules or Practice Directions made thereunder”.

<sup>39</sup> Described in Annex I (of the federal law) as: “Chapter 1. Disputes between the constituent states or between any of them and the Federal Government. 2. Exclusive jurisdiction regarding validity of Laws and precedents of Constitutional Laws. 3. Appeals regarding interpretation or an alleged violation of the Foundation Agreement, the Constitution, a Constitutional Law, or a treaty binding the United Cyprus Republic. 5. Jurisdiction to take an ad interim decision in respect of a deadlock arising in any of the institutions of the Federal Government. 7. Review of decisions of the Aliens Appeals Court in citizenship matters. 8. Review of decisions of the Aliens Appeals Court in aliens matters. 9. Carryover of the previous Federal budget. 10. Disputes resulting from application of the Agreement on European Union Affairs. 11. Territorial Arrangements – demarcation of boundaries and access roads. 15. Impeachment and immunities. 21. References to the Court of Justice of the European Community as regards all questions falling within the scope of the chapters enumerated above”. Chapter 3 is incorrectly described here (in fact everywhere), under the Third Constitutional Chamber (see footnote 45), as well as in the Schedule and Article 36(4) of the UCR Constitution. The title of Chapter 3, in the Schedule, is: “Appeals regarding interpretation of or an alleged violation of the Foundation Agreement, the Constitution, Federal Laws (including federal administrative decisions) and Treaties binding upon

remain unaltered. The jurisdiction of the (two) ‘first and second’ primary chambers would remain unaltered, as the jurisdiction of the three primary chambers, in the current law, is identical<sup>41</sup>. The same, however, is not the case with the three (current) constitutional chambers. To effect three into two, the jurisdiction resting with the third constitutional chamber would be separated between the first<sup>42</sup> and second<sup>43</sup> constitutional chamber. Chapter 21 rests (identically) with both the first and second constitutional chamber ‘already’; Chapters 16 and 20<sup>44</sup> would be transferred to the first constitutional chamber; and, the stated

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the United Cyprus Republic”. Paragraph (1) of Chapter 3 states: “The Court shall be the appeals court in all disputes on matters which involve the interpretation or any alleged violation of the Foundation Agreement, the Constitution of the United Cyprus Republic, Federal Laws, (including federal administrative decisions) and treaties binding upon the United Cyprus Republic, including the European Convention on Human Rights and its applicable Protocols”. Article 36(4) of the UCR Constitution (at Part V) provides: “(4) The Supreme Court shall be the appeals court in all other disputes on matters which involve the interpretation or an alleged violation of the Foundation Agreement, this Constitution, federal laws (including federal administrative decisions), or treaties binding upon the United Cyprus Republic”. An Observation to Article 36(4) adds: “Observation: this includes the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols in force for Cyprus”. Chapter 3, as described under the Grand Constitutional Chamber, is correct to include “[a]ppeals regarding... a Constitutional Law...” – the necessary inclusion of “a Constitutional Law” is incorrectly missing elsewhere. However, under the Grand Constitutional Chamber, Chapter 3 is ‘still’ incorrectly described as it fails, in light of paragraph (1) of Chapter 3, to include (after “a Constitutional Law”) “Federal Laws[,] (including federal administrative decisions)”.

<sup>40</sup> Described in Annex I as: “Chapter 19. Admiralty jurisdiction – International Navigation, Territorial Waters and Continental Shelf. Appeals from a lower Chambers [sic]. 21. References to the Court of Justice of the European Community when sitting as an appellate or review tribunal. [new paragraph] This Chamber has jurisdiction to hear appeals from any decision of a Chamber exercising primary criminal jurisdiction. [new paragraph] This Chamber has jurisdiction to hear appeals on interlocutory matters decided by two or three judges”.

<sup>41</sup> Described (respectively) in Annex I as: “4. Primary jurisdiction over violations of Federal Laws where provided by Federal legislation. 19. Admiralty jurisdiction – International Navigation, Territorial Waters and Continental Shelf. 22. Jurisdiction to issue orders. [new paragraph] Directions, interlocutory proceedings and orders”.

<sup>42</sup> The jurisdiction assigned to the First Constitutional Chamber under the current law is described in Annex I as: “Chapter 2. Exclusive jurisdiction regarding validity of Laws and precedents of Constitutional Laws. 3. Appeals regarding interpretation or an alleged violation of the Foundation Agreement, the Constitution, a Constitutional Law, or a treaty binding the United Cyprus Republic. 17. Treaties concluded prior to entry into force of the Foundation Agreement. 21. References to the Court of Justice of the European Community as regards all questions falling within the scope of the chapters enumerated above”.

<sup>43</sup> The jurisdiction assigned to the Second Constitutional Chamber under the current law is described in Annex I as: “Chapter 6. Power to issue injunctions on entry to or residence in a constituent state. 7. Review of decision[s] of the Aliens Appeals Court in citizenship matters. 8. Review of decisions of the Aliens Appeals Court in aliens matters. 12. Establishment of the Property Court. 13. Removal of members of the Property Board. 15. [should read 14.] Period of operation of the Property Board. 19. [should read 18.] State-owned property. 21. References to the Court of Justice of the European Community as regards all questions falling within the scope of the chapters enumerated above”.

<sup>44</sup> Described in Annex I as: “[Chapter] 16. Electoral Court. 20. Jurisdiction conferred by Constitutional Law, Co-operation Agreements and Federal Laws”.

competence of the third constitutional chamber in respect of Chapter 3<sup>45</sup> would be transferred to the second constitutional chamber.

Each chamber of the Supreme Court should be divided into sections and groups.

The two constitutional chambers and two primary chambers should each be divided into two sections (A and B). Any such section would comprise three judges (two hailing from one constituent state, one the other). Similarly, the Grand Constitutional Chamber and the Grand Chamber of Primary Federal Jurisdiction should each be divided into two sections (A and B). Any such section would comprise six judges (four hailing from one constituent state, two the other). The “original members” of the Court should be, further, separated into their (respective) sections (two for each) by lot. Any (subsequent /) newly appointed judge, following the death, retirement, dismissal or permanent incapacity of an existing judge would serve in the sections of the judge who has been replaced. The re-casting of chambers, every three years, would affect the membership of all sections, to be drawn by lot, also (again, affecting all new cases during the forthcoming three-year term).

Judges should, also, be divided into groups of two. Such pairs (including the two the President of the Supreme Court would be a member of) should be determined on the basis of, first (and taking precedence), the total time served on the Court and, second, to guarantee separation, by age<sup>46</sup>. Each pair should consist of one judge hailing from each constituent state. Consequently, determination of the ‘judge’ for each group should be effected by constituent state. The two constitutional chambers and two primary chambers should each consist of three groups (A to C). The Grand Constitutional Chamber and the Grand Chamber of Primary Federal Jurisdiction should each consist of six groups (A to F). The ‘most senior’ group (for that Chamber) should be ‘Pair A’, the ‘least senior’ either ‘Pair C’ or ‘Pair F’ (depending). In most cases, a judge would have a different pair for each of the two groups to which he/she was a member. The re-casting of chambers would, for any new period, quite likely affect the (relevant) group a judge was a member of.

There should continue to be a grand chamber of the Court comprising (now) all (24) members of the Court<sup>47</sup>. The grand chamber of the Court, the plenary formation and manifestation of the Supreme Court, would not hear cases, but make Rules of Court for

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<sup>45</sup> Described (for the Third Constitutional Chamber, compare with its description for the Grand Constitutional Chamber) in Annex I as: “[Chapter] 3. Appeals regarding interpretation of an alleged violation of a Federal Law (including Federal administrative decisions)”.

<sup>46</sup> This is broadly consonant with Section 6(1) of the federal law (at Part II): “(1) The President of the Supreme Court shall be considered the most senior judge of the Court. Among the other judges, seniority shall be determined firstly by time served in office and by age in case of equal time served. [new paragraph] Provided that the seniority of the first judges of the Court shall be determined by reference to their age, subject to seniority being accorded to the President of the Court in terms of this subsection”.

<sup>47</sup> Federal Law on Administration of Justice, Part III, Section 20(2).



regulating its practice and procedure<sup>48</sup>. The quorum for making such Rules should be 18 (judges), a decision for any such Rule requiring separate majorities from the participating judges hailing from each constituent state. The latter condition, quorum having been satisfied, would avoid the possibility of any outcome depending, alone, on ‘those’ that were in attendance.

The current federal law provides for the election of a President of the Supreme Court. The President<sup>49</sup> shall be elected by the judges of the Court (“from among their number”) for a renewable period of three years<sup>50</sup>. Although this is not provided in the federal law, such election should be the first act of the Court after the entry into force of the Foundation Agreement. However, the President should be further assisted by a First Deputy President and two Deputy Presidents, also elected (the next acts; if not done, also, at the same meeting) by the judges of the Court. Within the ‘Presidency’ of the Court, two judges should hail from each constituent state: the President should not hail from the same constituent state as the First Deputy President, the President should only be allowed to serve a maximum two (three year) terms (that is, six years; therefore, renewable only once) and successive Presidents (by person, not term) should not hail from the same constituent state. The President and First Deputy President should be judges who will or do serve on the Constitutional Court; the two Deputy Presidents should be judges who will or do serve on the Court of Primary Federal Jurisdiction. The election of the ‘Presidency of the Court’ should be undertaken by the “grand Chamber of the Court”. During any “temporary absence or incapacity” of the President, the Deputy President hailing from the same constituent state as the President shall be Acting President<sup>51</sup>.

## V. ‘COMPROMISE PROCEDURE’

Potential failure in the Court is ‘averted’ by the intervention of the non-Cypriot judges<sup>52</sup>, following failure to secure (even) a majority. Some aspects of the jurisdiction of the Court shall (as seen and explained below) require a ‘singular’ determination / view / opinion

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<sup>48</sup> Section 34(1) of the federal law (at Part V) provides: “(1) The Court shall decide on the organisation of its work and make Rules of Court for regulating the practice and procedure of the Court in the exercise of the jurisdiction conferred upon it by the Constitution and by this Law”.

<sup>49</sup> To repeat: “(1) The President of the Supreme Court shall be considered the most senior judge of the Court...” (*Ibid*, Part II, Section 6(1), first sentence)

<sup>50</sup> *Ibid*, Section 5.

<sup>51</sup> The federal law currently provides that in the case of the President’s “temporary absence or incapacity”, “... the other judges shall elect an Acting President to act in his place...” (*Ibid*, Section 12(1)(b))

<sup>52</sup> No answer, however, is given (in the federal law) to the question what happens if the President of the Court (“at his discretion”) has not assigned one of the non-Cypriot judges to sit in a case of the Grand Chamber of Primary Federal Jurisdiction and the chamber has divided 50:50. Further, it would appear that the three primary chambers may not have a non-Cypriot judge assigned to any given case. Yet, what if the two judges (in the relevant chamber) are divided? Again, no answer is given.

(positive or negative). However, other aspects (of the Court's jurisdiction) may be amenable to individual / considered fashioning or design, whether in the macro or micro. In this regard, therefore, the decided judgment may be(/come) the product of some form of compromise, although compromise (here) need not have one meaning / face only. Such procedure shall apply to four Chapters and part of two others.

The Court shall have exclusive jurisdiction (Chapter 1) over disputes between the constituent states, between one or both constituent states and the federal government and between organs of the federal Government<sup>53</sup>. Such recourse may be made by any of the Presidents of the federal Government and of the constituent states (and, during the transitional period, also by the Co-Presidents of the federal Government<sup>54</sup>); either chamber of the federal Parliament; either or both of the constituent states' legislatures; or any other organ or authority of the federal Government and of the constituent states, if involved in such dispute<sup>55</sup>.

The Court shall be the appeals court (Chapter 3, part) in all disputes on matters which involve the interpretation of the Foundation Agreement, the Constitution of the United Cyprus Republic, federal laws (including federal administrative decisions) and treaties binding upon the United Cyprus Republic, including the European Convention on Human Rights and its Additional Protocols in force for Cyprus<sup>56</sup>.

The Court shall ('also') have exclusive jurisdiction (Chapter 5) to take an ad interim decision, should there arise a deadlock in one of the institutions of the federal Government preventing the taking of a decision without which the federal government or its institutions could not properly function, or the absence of which would result in a substantial default on the obligations of the United Cyprus Republic as a member of the European Union. A member of the Presidential Council, the President or (a) Vice-President of either Chamber of Parliament, or the Attorney-General or Deputy Attorney-General may apply to the Court to make such ad interim decision (the Court "always exercising appropriate restraint")<sup>57</sup>. Any

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<sup>53</sup> Annex I (UCR Constitution), Part V, Article 36(2); Federal Law on Administration of Justice, Schedule, Chapter 1, paragraph (1).

<sup>54</sup> The executive organ, under the Annan Plan, is the Presidential Council. However, during a brief transitional period, until the (first elected) federal Parliament has elected the Presidential Council, "the office of the Head of State shall be vested in the Co-Presidency" (Annex I, Part VII, Article 40(1)). Further to Article 40(2) of the UCR Constitution: "(2) The Co-Presidents shall be the persons whose names are communicated to the Secretary-General of the United Nations no later than two days after successful referenda or, in the absence of such communication, the head of government of the relevant constituent state".

<sup>55</sup> Chapter 1 (of the Schedule), paragraph (2).

<sup>56</sup> Annex I, Part V, Article 36(4) (including Note (22)); Federal Law on Administration of Justice, Schedule, Chapter 3, paragraph (1).

<sup>57</sup> Chapter 5, paragraph 1.

decision of the Court shall remain in force until such time as a decision on the matter is taken by the institution in question<sup>58</sup>.

The financial year shall begin on 1 January and end on 31 December of each year<sup>59</sup>. If the federal Parliament is unable to approve a Budget before the beginning of the fiscal year, the Budget of the previous year, adjusted by inflation minus 1%, shall be carried on to the next fiscal year, unless the Supreme Court of Cyprus, “in the exercise of its deadlock-resolving power”, decides otherwise<sup>60</sup>. The Supreme Court, under Chapter 9 (and, also, Article 36(6) of the UCR Constitution), is empowered to make “ad interim provision” other than the carryover stipulated<sup>61</sup>.

The Court shall, in defined circumstances, have the power to decide on the precise demarcation on the ground of the boundaries of the constituent states (Chapter 11, paragraph (1)). The boundaries of the constituent states are depicted in maps attached to the Constitution<sup>62</sup>. These are described in detail in Attachment 1 of Annex VI (Annex VI is titled: “Territorial Arrangements”)<sup>63</sup>. Any inconsistency between the maps and the geographical coordinates listed in the tables contained in Attachment 1 (of Annex VI) shall be decided by the Boundary Committee<sup>64</sup>. However, where the Committee is unable to reach consensus, the inconsistency shall be settled by the Supreme Court<sup>65</sup>.

Public property, other than federal property or municipal property, is the property of the constituent state in which it is located<sup>66</sup>. The Co-Presidents and the heads of government of the constituent states shall agree (Chapter 18) on the list of federal property no later than three months after entry into force of the Foundation Agreement. Should they fail to agree, the Supreme Court shall decide on this list based on representations by all interested parties<sup>67</sup>.

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<sup>58</sup> Annex I, Part V, Article 36(6); and Chapter 5, paragraph 2.

<sup>59</sup> Federal Law on the Budget (Annex III, Attachment 8), Part IX, Section 45.

<sup>60</sup> *Ibid*, Part I, Section 8, first paragraph.

<sup>61</sup> Again, as *per* Article 36(6) (of the UCR Constitution, second sentence), “... [i]n so acting, the Supreme Court shall exercise appropriate restraint”. According to the second paragraph of Section 8 of the Federal Law on the Budget, if, at any time, the federal Parliament approves the Budget for the fiscal year in question – whether the Supreme Court has made any ad interim provision or not – “... such approved Budget shall be deemed to be in force as from the 1 of January of that year, but without prejudice to anything previously done by virtue of this section...”

<sup>62</sup> Annex I, Attachment 1.

<sup>63</sup> Attachment 1 of Annex VI is titled: “Detailed Description of the Course of the Boundary Between the Constituent States”.

<sup>64</sup> Further to Article 1(2) of Annex VI: “(2) There shall be a Boundary Committee comprising three representatives of each constituent state and at least one non-Cypriot. The Committee shall be appointed upon entry into force of the Foundation Agreement, and shall demarcate the boundary on the ground”.

<sup>65</sup> Annex VI, Article 1(3) (final sentence).

<sup>66</sup> Annex I, Part VII, Article 51(1).

<sup>67</sup> Article 51(2) of the UCR Constitution concludes: “(2)... Such properties shall be considered as federal properties from the date of entry into force of the Foundation Agreement unless otherwise decided”.

A dispute between, interpretation of, decision, provision, demarcation and location need not result in the determination (only) of one of two possible outcomes. Rather, the outcome can be without such constraint. *An* outcome, though, whatever its form, shall remain necessary, but this will be ‘eased’ by the opportunity to secure a compromise, which can be as ‘singular’ or not as is conceived.

The ‘Compromise Procedure’ would operate as follows:

Such type of case before the Grand Constitutional Chamber / Grand Chamber of Primary Federal Jurisdiction, first / second constitutional chamber, first / second primary chamber would be heard by all the judges of the relevant chamber. The case would also be heard by two judges from the other (‘partner’) chamber of the Court. Thus, for example, if a case was being heard by the second constitutional chamber, the two judges would be members of the first constitutional chamber. These (two, one hailing from each constituent state) would be drawn by lot (see below). Alternatively, if a case was being heard by the Grand Constitutional Chamber, the two judges would be members of the Grand Chamber of Primary Federal Jurisdiction. Immediately after the drawing of these two judges, and again by lot, a judge (/ further judge, for a case being heard by one of the Grand Chambers) may / may not be drawn (see below) from the other Court (here, from these examples, the Court of Primary Federal Jurisdiction), the identity of the drawn / earlier drawn judge, though, remaining ‘sealed’.

The drawing of the two judges (from the ‘partner’ chamber) would be governed by a different procedure to that of the judge from the other Court / further judge (for cases heard by one of the Grand Chambers). With the former, for any sequence, two judges would be drawn no more than twice (or five times, ‘in the case’ of the Grand Chambers). With the latter, for any sequence, the judge / further judge would be drawn no more than six times. Again with the latter, for cases heard by one of the Grand Chambers, in the event that the drawn / earlier drawn judge is one of the two judges, a new judge will be drawn (being revealed) and again (also being revealed) if that judge is the other of the two judges. Where this occurs (but only when this occurs), any sequence may extend beyond six (separate) draws. Of course, each sequence for each chamber (other than for an appeal from a Chamber to the Grand Chamber under Chapter 3, see below) would be separate from the sequences of any other chamber.

As provided for in the Foundation Agreement, the Court (here the six / twelve judges of the relevant chamber) would strive to reach its decision by consensus and issue a joint judgment. Likewise, failing such consensus, a decision may be taken by simple majority. It is ‘only’ where the chamber were evenly divided (of course, minus the non-Cypriot judges) that the procedure would be radically different.

Following the failure to reach a decision by simple majority, each of the (six / twelve) judges of the chamber would issue a separate judgment. The two judges from the ‘partner’

chamber (having heard the case also) would consider these judgments and attempt, between themselves, to arrive at a compromise judgment. This compromise judgment may (/ also) include / represent their own opinion on the case. In the event that the two, themselves, are unable to agree on a compromise judgment, they will each be required (separately) to select (from the most preferred to the least preferred) their preferred judgment from the (six / twelve) individual judgments issued by the judges of the ‘relevant chamber’. At the exact same time, the six / twelve judges from the chamber shall each be required to select their most preferred judgment issued by one of the (three / six) judges hailing from the other constituent state (see below). The most preferred judgment (of each of the two judges from the ‘other’ chamber) should be given a rank of ‘1’, through to the least preferred a rank of ‘6’ / ‘12’. The (two) judges would exchange their selection and, together, add up the total ‘score’. The judgment with the lowest score would be considered the given judgment for that case.

Consider the following example:

The judges of the ‘relevant chamber’ hailing from the Greek Cypriot State have (respectively) issued judgments A, B and C (/ G, H and I, also); the judges hailing from the Turkish Cypriot State judgments D, E and F (/ J, K and L, also).

The (two) judges ranked these judgments in the following order:

<u>Greek Cypriot State judge</u>		<u>Turkish Cypriot State judge</u>	
(1) B	(1) B	(1) E	(1) E
(2) A	(2) A	(2) F	(2) F
(3) C	(3) C	(3) D	(3) D
(4) F(4) H		(4) B	(4) J
(5) D	(5) G	(5) A	(5) L
(6) E	(6) I	(6) C	(6) K
	(7) F		(7) B
	(8) D		(8) A
	(9) E		(9) C
	(10) L		(10) I
	(11) J		(11) H
	(12) K		(12) G

The scores for each of the (six / twelve) judgments would be: (i) (six) (A) 7; (B) 5; (C) 9; (D) 8; (E) 7; (F) 6; and, (ii) (twelve) (A) 10; (B) 8; (C) 12; (D) 11; (E) 10; (F) 9; (G) 17; (H) 15; (I) 16; (J) 15; (K) 18; (L) 15.

The judgment with the lowest score, from these examples, would, in both instances, be judgment (B), which would be the given judgment for that case.

Of course, two or more judgments may tie.

Consider the following example:

<u>Greek Cypriot State judge</u>		<u>Turkish Cypriot State judge</u>	
(1) B	(1) B	(1) E	(1) E
(2) C	(2) C	(2) F	(2) F
(3) A	(3) G	(3) A	(3) A

(4) F(4) H

(5) D

(6) E

(5) A

(6) I

(7) E

(8) D

(9) F

(10) L

(11) J

(12) K

(4) D (4) J

(5) B

(6) C

(5) L

(6) K

(7) D

(8) B

(9) C

(10) I

(11) H

(12) G

The scores here would be: (i) (six) (A) 6; (B) 6; (C) 8; (D) 9; (E) 7; (F) 6; and, (ii) (twelve) (A) 8; (B) 9; (C) 11; (D) 15; (E) 8; (F) 11; (G) 15; (H) 15; (I) 16; (J) 15; (K) 18; (L) 15.

In these examples, (six) three judgments (A, B and F) would tie with a score of '6' and (twelve) two judgments (A and E) would tie with a score of '8'.

In such an event, and from the above examples, the most preferred judgment (from among, only, the tied judgments) by a judge from the other constituent state should be examined in order to determine the given judgment.

Here: (i) (six) (Judgment A) got a score of '3', (Judgment B) '5', and (Judgment F) '4'; and, (ii) (twelve) (Judgment A) got a score of '3', and (Judgment E) got a score of '7'. Out of this, in both instances (again), the given judgment for the case would be judgment (A).

However, even by adding this (next) stage, the tie may still remain knotted.

Consider this example:

Greek Cypriot State judge

(1) B

(2) A

(3) C

(4) F(4) H

(5) D

(6) E

(1) B

(2) A

(3) C

(5) G

(6) I

(7) F

(8) D

(9) E

(10) L

(11) J

(12) K

Turkish Cypriot State judge

(1) E

(2) F

(3) D

(4) A (4) J

(5) B

(6) C

(1) E

(2) F

(3) D

(5) L

(6) K

(7) A

(8) B

(9) C

(10) I

(11) H

(12) G

Here, three judgments, in both instances, (A, B and F) would tie with a score of '6' / '9', but application of 'the most preferred judgment (from among, only, the tied judgments) by a judge from the other constituent state' would yield the following outcome: (Judgment A) with a score of '4' / '7'; (Judgment B) '5' / '8'; and (Judgment F) '4' / '7'.

Judgment (B), with a score of '5' / '8', would withdraw, but judgments (A) and (F) would remain tied.

In these examples: (i) (six) judgments (C), (D) and (E) have (respectively) the following scores: 9, 8 and 7; and, (ii) (twelve) judgments (C), (D), (E), (G), (H), (I), (J), (K) and (L) have (again respectively) 12, 11, 10, 17, 15, 16, 15, 18 and 15. The next stage would be to

determine which of the tied judgments was preferred more by the justice (from the other chamber) hailing from the constituent state whose state did not issue the least preferred judgment. Here, the least preferred judgment is (six) (C) / (twelve) (K), issued by a judge hailing from the (six) Greek Cypriot State / (twelve) Turkish Cypriot State. Therefore, the tied judgment (A) or (F) preferred more by the other judge would be judgment (six) (F) / (twelve) (A) – (i) (six) (F), from that justice (Turkish Cypriot State), being ranked second, (A) fourth; and (ii) (twelve) (A), from that justice (Greek Cypriot State), being ranked second, (F) seventh.

However, what happens if there is no least preferred judgment.

Consider these two examples:

<u>Greek Cypriot State judge</u>		<u>Turkish Cypriot State judge</u>	
(1) B	(1) B	(1) E	(1) E
(2) A	(2) A	(2) F	(2) F
(3) C	(3) C	(3) D	(3) D
(4) F(4) H		(4) A	(4) J
(5) E	(5) I	(5) B	(5) L
(6) D	(6) G	(6) C	(6) K
	(7) F		(7) A
	(8) E		(8) B
	(9) D		(9) C
	(10) L		(10) I
	(11) J		(11) H
	(12) K		(12) G

The scores here would be: (i) (six) (A) 6; (B) 6; (C) 9; (D) 9; (E) 6; (F) 6; and (ii) (twelve) (A) 9; (B) 9; (C) 12; (D) 12; (E) 9; (F) 9; (G) 18; (H) 15; (I) 15; (J) 15; (K) 18; (L) 15.

Now there is a ‘four-way’ tie, in both instances, between judgments (A), (B), (E) and (F).

To repeat the above-stated procedure:

(i) ‘the most preferred judgment (from among, only, the tied judgments) by a judge from the other constituent state’ would yield the following outcome: (Judgment A) with a score of ‘4’ / ‘7’; (Judgment B) ‘5’ / ‘8’; (Judgment E) ‘5’ / ‘8’; and (Judgment F) ‘4’ / ‘7’.

In both examples, judgments (B) and (E) would withdraw, but judgments (A) and (F) would remain tied.

(ii) ‘which of the tied judgments was preferred more by the justice (from the other chamber) hailing from the constituent state whose state did not issue the least preferred judgment’?

In these examples, there is no ‘least preferred judgment’, as: (i) (six) judgments (C) and (D) have both ‘tied’ with a score of ‘9’; and (ii) (twelve) judgments (G) and (K) have both tied with a score of ‘18’.

What next?

(iii) which of the (still) tied judgments ((A) or (F)) was most preferred by the six / twelve judges from the chamber (each of these having selected their most preferred judgment issued by one of the – three / six – judges hailing from the other constituent state)?

If (six) one / (twelve) two of the (Greek Cypriot State) judges ((six) A to C or (twelve) A to C and G to I) ‘most preferred’ judgment (F), but (six) two / (twelve) four of the (Turkish Cypriot State) judges ((six) D to F or (twelve) D to F and J to L) ‘most preferred’ judgment (A), then, in both instances, the given judgment for the case would be judgment (A). However, even this stage may yield a tie if the number were the same: whether (six) 0, 1, 2, or 3 or (twelve) 0, 1, 2, 3, 4, 5, or 6. If such occurred, the court would proceed to the final, determining stage:

(iv) the identity of the ‘drawn / earlier drawn’ judge from the other Court (/ further judge, for a case being heard by one of the Grand Chambers) would be revealed. This judge would be provided with a copy of the transcript of the proceedings and the remaining tied judgments. Having read and considered all relevant (for this judge) documents, the judge shall be required to indicate the preferred (remaining tied) judgment; from the current example, of course, either judgment (A) or (F). This preferred judgment would be rendered the given judgment for the case.

Via this procedure, a judgment for such cases could be arrived at, neither at the expense of the judges from one of the constituent states, nor having demanded the intervention of non-Cypriot judges. The determination(/s) / view(/s) or opinion(/s) of the ‘two judges’ and ‘judge from the other Court / further judge’ may have not been required. Consensus may have been reached from the outset or a majority secured (/ a compromise judgment arrived at / preferred judgment identified). On the other hand, compromise should come before individual preference; a final and individual preference only as last resort. It should not, despite the above examples, be assumed that the preferred judgment(/s) would always (in effect) be anticipated / separated into blocks of two. The least preferred may have to be ‘penalised’.

More limited sequences for both draws reinforces the minimising (to the maximum) of anticipated outcomes. Of course, the ‘judge from the other Court / further judge’ (‘remaining sealed’) may not have been called upon to decide in the (by Chamber / Grand Chamber, under this procedure) previous case: hence ‘earlier drawn’.

A case requiring interpretation of the “Foundation Agreement, the Constitution, [a Constitutional Law,] Federal Laws (including federal administrative decisions) and Treaties binding upon the United Cyprus Republic”, as *per* Chapter 3, may be appealed against. Paragraph (2) provides:

“(2) Any party to judicial proceedings involving a dispute in respect of any of the matters referred to in paragraph (1) of this Chapter may appeal any judgment given in such



proceedings at first instance, where such judgment is that of a Chamber, other than Grand Chamber, of the Court, or that of a court of a constituent state.

“Provided that where the involvement of such matters only becomes apparent for the first time in appellate proceedings, whether in the courts of a constituent state or in a Chamber of the Court, other than the Grand Chamber, an appeal shall lie and shall be heard by the Grand Chamber”.

Any appeal (regarding interpretation) from a Chamber under Chapter 3<sup>68</sup>, when heard by the Grand Chamber, would not be considered by the whole Court (that is, all 12 judges), but only the 4 (remaining) judges who did not sit in the case in the Chamber. Before commencement of proceedings, a ‘judge’ from the other Court will be drawn (by lot, but not revealed) if the Chamber had relied on the (drawn / earlier drawn) judge from the other Court. The applicable sequence would be that of the Chamber (not the Grand Chamber); the appeal being annexed to the Chamber, the Grand Chamber not being seized of the case in the customary manner.

The 4 judges would attempt to reach a consensus, followed by a majority decision. If this failed, the drawn / earlier drawn judge from the other Court would be revealed and required (having read and considered all relevant documents of the Chamber and the ‘Grand Chamber’) to make the decision.

## VI. ‘SECTION MINORITY PROCEDURE’

Each Chamber of the Court shall contain two sections. Any case shall, of course, be heard by all the judges of the relevant Chamber. However, under two defined procedures – ‘Section Minority’ and ‘Section Majority’ (for the latter, see below) – it may be left for the justices of the designated section to decide, in the event of the Chamber failing to reach a consensus or a majority (‘first majority’). The significance of this is that each section would possess a majority of judges hailing from one of the constituent states.

The ‘Section Minority Procedure’, when invoked, requires the decision to be made by the section containing a majority of judges from the ‘other’ constituent state, to the constituent state that is ‘more concerned / will be more affected’ by the judgment. The procedure should apply to five chapters.

The Court shall have jurisdiction to review<sup>69</sup> decisions of the Immigration, Asylum and Citizenship Appeal Tribunal<sup>70</sup> rendered on appeal against decisions of the Citizenship Board<sup>71</sup>

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<sup>68</sup> Of course, reflected in the proviso to paragraph (2), the matter may be heard by the Grand Chamber (leapfrogging the Chamber) directly from appellate proceedings of a constituent state court.

<sup>69</sup> By way of judicial review (Federal Law on Aliens and Immigration (Annex III, Attachment 5, Law 1), Part XI, Section 152(6)).

<sup>70</sup> Described, in paragraph (1) of both Chapters 7 and 8 of the Schedule to the Federal Law on Administration of Justice, as the “Aliens Appeal Court”.

or Aliens Board<sup>72</sup> upon the application of an aggrieved person (Chapters 7 and 8<sup>73</sup> respectively)<sup>74</sup>.

Here, the ‘other’ (constituent state) should be the one other than the constituent state with which the ‘applicant’ would acquire internal constituent state citizenship status, in the event that the application were successful (in respect of ‘first instance’ decisions of the Citizenship Board) or the constituent state other than where the ‘applicant’ resides / has most recently resided (in respect of ‘first instance’ decisions of the Aliens Board).

The Court may remove any member of the (Cyprus) Property Board (Chapter 13) upon the application of the federal Government or of either of the constituent states in case of misconduct or grave breach of the said member’s duties<sup>75</sup>.

Here, the ‘other’ (constituent state) shall be the one other than the constituent state from which the member of the Property Board hails.

The federal Parliament may refer<sup>76</sup> to the Supreme Court allegations of impeachment (Chapter 15) regarding the members of the Presidential Council and of organs of the independent institutions<sup>77</sup>, and independent officers<sup>78</sup>, for grave violations of their duties or

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<sup>71</sup> Established by Section 11(1) of the Federal Law to Provide for the Citizenship of the United Cyprus Republic and for Matters Connected Therewith or Incidental Thereto (Annex III, Attachment 4, at Part V).

<sup>72</sup> Established by Section 135(1) of the Federal Law on Aliens and Immigration (at Part X).

<sup>73</sup> Jurisdiction lies with the Second Constitutional Chamber. However, further to paragraphs (2) of Chapters 7 and 8, proceedings may be referred to the Grand Constitutional Chamber. Paragraph (2) of Chapter 7 provides: “(2) In exceptional cases, involving serious issues of general importance, proceedings in terms of paragraph 1 may, upon the request of any of the Attorneys-General of the United Cyprus Republic or of the constituent states, be referred to the Grand Constitutional Chamber, and such independent officers shall be heard by the Court”. Paragraph (2) of Chapter 8 is identical other than in the third clause, which provides: “... the matter may...”

<sup>74</sup> The “Appeal Tribunal” shall have jurisdiction to hear appeals against decisions, acts or omissions of the Aliens Board when implementing the Federal Laws on Aliens and Immigration (Annex III, Attachment 5, Law 1), on International Protection (*Ibid*, Law 2), on the Freedom of Movement of EU Citizens and the Members of their Families (*Ibid*, Law 3), and of any Regulations issued under these; and decisions, acts or omissions of the Citizenship Board when implementing the “Federal Law on United Cyprus Republic Citizenship” (Annex III, Attachment 4). The “Appeal Tribunal” shall also have jurisdiction to hear actions brought before it for human rights violations by the Aliens Board, the Citizenship Board or immigration officers when implementing the three federal laws comprising Attachment 5 (of Annex III). Federal Law on Aliens and Immigration, Part XI, Section 152(1).

<sup>75</sup> See also: Annex VII, Attachment 2, Article 2(10) (second sentence). The final sentence of Chapter 13 states: “... The decision of the Court is not subject to appeal, if taken by more than three judges”. Cases under Chapter 13 would (normally) be heard by the Second Constitutional Chamber (having only three judges). The composition of the Chambers of the Supreme Court are, however, only ‘indicative’.

<sup>76</sup> Following a preliminary investigation by a Special Committee, and approval of the Committee’s report by special majority of the Senate (Federal Law on Administration of Justice, Schedule, Chapter 15, paragraph (2)). See also: Federal Law on Impeachment, Annex III, Attachment 28, Section 5.

<sup>77</sup> Article 32(4) of the UCR Constitution (at Part V) begins: “(4) The organs of the Central Bank shall be the Governor and the Deputy-Governor, the Board of Directors and the Monetary Policy Committee...” The members of the Board of Directors and Monetary Policy Committee (besides the Governor and Deputy Governor: see, Article 32(4)(b) and (c)) shall ‘also’ be liable to impeachment.

serious crimes<sup>79</sup>. Upon such allegations being made, the Court shall have jurisdiction to lift the immunity of any such (high) federal officials of the United Cyprus Republic<sup>80</sup>.

Here, the ‘other’ (constituent state) shall be the one other than the constituent state from which the person subject to the “allegations of impeachment” hails.

Any individual or political party who has a legitimate interest to challenge an alleged violation of the Federal Law on the Election of Members of Parliament (Senate and the Chamber of Deputies)<sup>81</sup> may file a complaint with the Electoral Precinct Commission or the Federal Election Commission<sup>82</sup>. The Electoral Precinct Commission<sup>83</sup> shall have first instance competence in all matters related to the decisions and workings of the polling station and the presiding officer<sup>84</sup>. Decisions of the Electoral Precinct Commission may be appealed to the Federal Election Commission<sup>85</sup>. The Federal Election Commission shall have first instance competence in all matters related to the election of candidates and any other matter which is “not of the express competence of the Electoral Precinct Commissions”<sup>86</sup>. The Supreme Court shall sit as an Electoral Court (Chapter 16). All decisions of the Federal Election Commission may be appealed to the Electoral Court, no later than fifteen days from the communication of the Federal Election Commission decision to the person concerned or his advocate<sup>87</sup>.

The Electoral Court shall have jurisdiction, inter alia, to entertain petitions regarding the improper conduct of elections by officials, the legal qualifications of the successful candidates, the commission of electoral offences or the deeming of votes to be void<sup>88</sup>. The election as a whole, or the election of any candidate, may be declared to be void. Equally, the petitioner may be entitled to a declaration that a candidate was duly elected and ought to have been returned or for a recounting of the votes<sup>89</sup>.

The Supreme Court shall, also, sit as an Electoral Court in respect of local elections<sup>90</sup> and elections to the European Parliament<sup>91</sup>.

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<sup>78</sup> That is, besides (the members of/) the organs of the Central Bank, the Attorney-General and the Deputy Attorney-General and the Auditor-General and the Deputy Auditor-General (Annex I, Part V, Article 33(1)).

<sup>79</sup> Annex I, Part V, Article 24(4).

<sup>80</sup> Federal Law on Administration of Justice, Schedule, Chapter 15, paragraph (1). See also: Federal Law on Federal Government Immunities and Exemptions, Annex III, Attachment 21, Section 4.

<sup>81</sup> Annex III, Attachment 20, Law 2.

<sup>82</sup> *Ibid*, Part IX, Section 69(1).

<sup>83</sup> There are two Electoral Precinct Commissions (/ precincts), one for each constituent state.

<sup>84</sup> *Ibid*, Section 70(1).

<sup>85</sup> *Ibid*, Section 71(1).

<sup>86</sup> *Ibid*, Section 71(2).

<sup>87</sup> *Ibid*, Section 72(1).

<sup>88</sup> Federal Law on Administration of Justice, Schedule, Chapter 16, paragraph (1).

<sup>89</sup> Federal Law on the Election of Members of Parliament (Senate and Chamber of Deputies) (Annex III, Attachment 20, Law 2), Part IX, Section 72(2).

<sup>90</sup> Federal Law on Administration of Justice, Schedule, Chapter 16, paragraph (2).

<sup>91</sup> *Ibid*, paragraph (4).

‘Here’, the ‘other’ (constituent state) shall be the one other than the constituent state where the (challenged) conduct has occurred.

For the aggrieved applicant, member / person accused or conduct concerned, the decision may, finally, rest with that ‘other’ (personified by the relevant section). Such will guarantee that a decision can be reached and will give (but no more than that) the judges hailing from the constituent state ‘less concerned / (will be) less affected’ (by the judgment) the opportunity to make the decisive impact<sup>92</sup>.

## VII. ‘SECTION MAJORITY PROCEDURE’

The section(/s) facility may, also, be employed under a further Chapter, and part of one other. However, under this procedure, the members of the section(/s) that may come to rule on the case shall be the one(/s) where judges hailing from the applicant constituent state are in the majority.

A constituent state may apply to the Supreme Court for an injunction (Chapter 6) barring a person who does not hold its internal constituent state citizenship status from entering or residing in that constituent state. The Court shall grant the injunction if the relevant person has been, or is, actively engaged in acts of violence or incitement to violence and the presence of the person in the constituent state would be a danger to public safety or public order<sup>93</sup>.

The Court may issue an injunction restricting civilian traffic (remaining part of Chapter 11, see above) “on direct connecting roads between the main part of a constituent state and a non-contiguous part, as well as on direct connecting roads through a non-contiguous part of a constituent state”<sup>94</sup>. An application for such an injunction may be made by the Attorney-General of a constituent state where the relevant road lies (hence: “between”), or by both Attorneys-General, if the road lies in both constituent states (“between... as well as”).

In the event of neither consensus nor majority being reached, a ‘second majority’ may (again) determine the outcome. Naturally, this would place the applicant constituent state, from the outset, in a potential advantage. However, this ought not to occasion concern in light of the narrow and (no doubt) pressing circumstances.

It should be noted that (Chapter 11) where an application is made by “both Attorneys-General”, both sections should preside, with any decision (requiring a ‘second majority’), for each Attorney-General, being made separately by the section with the ‘majority’ for that Attorney-General.

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<sup>92</sup> Although it should not be assumed that these judges would hold (always) either a uniform or ‘the expected’ position.

<sup>93</sup> See also: Constitutional Law on Internal Constituent State Citizenship Status and Constituent State Residency Rights (Annex II, Attachment 3), Section 6.

<sup>94</sup> See also: Annex VI, Article 2(1).

## VIII. 'GROUP PROCEDURE'

As already demonstrated by those Chapters 'subject' to the 'Section Minority' and 'Section Majority Procedure[s]', some decisions require a 'simple', limited and defined (be it positive or negative<sup>95</sup>) conclusion. However, on occasions there may be no constituent state that is 'more concerned / (will be) more affected' and, therefore, no justification (respectively) for externalisation / internalisation. This condition touches two Chapters of the Schedule, and part of one other.

The Supreme Court shall have exclusive jurisdiction to determine (Chapter 2), at the request of any authority of the federal Government or any authority of the constituent states, the validity of any federal or constituent state law under the UCR Constitution and/or to determine any question that may arise from the precedence of Constitutional Laws<sup>96</sup>. Upon request of constituent state courts or other federal or constituent state authorities it may do so in the form of a binding opinion<sup>97</sup>. A party to judicial proceedings, further, before any court, whether of the United Cyprus Republic or of a constituent state, and whether at first instance or on appeal, may, at any stage of such proceedings, raise – "(a) any question relating to the validity of any Federal Law or of any constituent state law; (b) any question that may arise from the precedence of Constitutional Laws, including constituent state agreements in terms of Section 2 of Article 16 of the Constitution<sup>98</sup>; and (c) any question relating to compatibility of a Law, act or measure by the Federal Government or a constituent state government, with a law, act or measure of the European Union applicable to the United Cyprus Republic, which law, act or measure is material for the determination of any matter at issue in such proceedings"<sup>99</sup>. Where relevant, the Court<sup>100</sup> shall transmit its decision to any court by which

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<sup>95</sup> Whether "in whole or in part", also, in the context of judicial review. Note its effects in Chapter 4 (below).

<sup>96</sup> Annex I, Part V, Article 36(3) (first sentence); Federal Law on Administration of Justice, Schedule, Chapter 2, paragraphs (1) and (2).

<sup>97</sup> Annex I, Part V, Article 36(3) (second sentence); Federal Law on Administration of Justice, Schedule, Chapter 2, paragraph (3).

<sup>98</sup> Article 16(2) of the UCR Constitution (at Part IV) provides: "(2) The constituent states may conclude agreements with each other or with the federal government. Such agreements may create common organisations and institutions on matters within the competence of the parties. Such agreements shall have the same legal standing as Constitutional Laws, provided they have been approved by the federal Parliament and both constituent state legislatures". The reference to Article 16(2) in paragraph (4)(b) of Chapter 2 is necessitated by the matter of "precedence". Cooperation Agreements concluded between the constituent states alone would only have the "... same legal standing as Constitutional Laws, provided they have been approved by the federal Parliament and both constituent state legislatures".

<sup>99</sup> Federal Law on Administration of Justice, Schedule, Chapter 2, paragraph (4).

<sup>100</sup> Paragraphs (7) and (8) of Chapter 2 provide: "(7) Where the matter or question involves a serious issue of general importance, it shall be heard by Grand [sic.] Constitutional Chamber. (8) In cases other than those referred to in paragraph (7), subject to the Court's power to organise its work, such matters or questions shall be determined by the First Constitutional Chamber".

such matters and questions have been reserved and any decision of the Court shall be binding on such court and on any of the parties to the proceedings<sup>101</sup>.

Any person aggrieved by any decision or act declared by the Court to be null and void<sup>102</sup>, or aggrieved by any omission declared by the judgment of the Court as being an omission, shall be entitled, if his claim is not met to his satisfaction by the organ, authority or person concerned, to institute legal proceedings for the recovery of damages, or for the grant of another remedy, and shall recover just and equitable damages to be assessed by the Court, or shall be granted such other just and equitable remedy as the Court is empowered to grant<sup>103</sup>.

The Court shall be the appeals court (Chapter 3, part) in all disputes on matters which involve any alleged violation of the Foundation Agreement, the Constitution of the United Cyprus Republic, federal laws (including federal administrative decisions) and treaties binding upon the United Cyprus Republic, including the European Convention on Human Rights and its Additional Protocols in force for Cyprus<sup>104</sup>.

During the first two years after entry into force of the Foundation Agreement (Chapter 17)<sup>105</sup>, a constituent state may object to a particular treaty having been listed in Annex V of the Foundation Agreement<sup>106</sup>, or any reservation or declaration related to such treaty, on grounds of incompatibility with the Foundation Agreement<sup>107</sup>. Such objection shall be addressed to the Council of Ministers<sup>108</sup> or the Presidential Council<sup>109</sup>. Upon receipt of such

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<sup>101</sup> *Ibid*, paragraph (6) (second sentence).

<sup>102</sup> Article 2(3) of the Main Articles of the Foundation Agreement states: “(3) The federal government and the constituent states shall fully respect and not infringe upon the powers and functions of each other. There shall be no hierarchy between federal and constituent state laws. Any act in contravention of the Constitution shall be null and void”.

<sup>103</sup> Federal Law on Administration of Justice, Schedule, Chapter 2, paragraph (9).

<sup>104</sup> Annex I, Part V, Article 36(4) (including Note (22)); Federal Law on Administration of Justice, Schedule, Chapter 3, paragraph (1). Paragraphs (2) and (3) of Chapter 3 provide: “(2) Any party to judicial proceedings involving a dispute in respect of any of the matters referred to in paragraph (1) of this Chapter may appeal any judgment given in such proceedings at first instance, where such judgment is that of a Chamber, other than Grand Chamber, of the Court, or that of a court of a constituent state. [new paragraph] Provided that, where the involvement of such matters only becomes apparent for the first time in appellate proceedings, whether in the courts of a constituent state or in a Chamber of the Court, other than the Grand Chamber, an appeal shall lie and shall be heard by the Grand Chamber. (3) The Federal Attorney-General and the Attorneys-General of either of the constituent states may intervene as *amicus curiae* in any appeal under paragraph (2)”.

<sup>105</sup> Subject to the duty of the Court to decide on objections with which it has been seized before the expiry of the two-year period (Chapter 17, paragraph (2)).

<sup>106</sup> Annex V: “List of International Treaties and Instruments Binding on the United Cyprus Republic”.

<sup>107</sup> The term “Foundation Agreement” includes obligations arising out of membership of the European Union (Observation to Article 48(1) of the UCR Constitution).

<sup>108</sup> Further to Article 41(1) and (2) of the UCR Constitution (at Part VII): “(1) Until such time as the newly elected federal Parliament shall have elected a Presidential Council, the Council of Ministers shall act as the Government of the United Cyprus Republic. (2) Upon entry into force of the Foundation Agreement, the members of the Council of Ministers shall be those persons whose names were communicated to the Secretary-General of the United Nations no later than two days after successful referenda”.

objection, the Council of Ministers or the Presidential Council shall within two weeks decide on the compatibility of the treaty with the Foundation Agreement. If they cannot reach a decision within that time, they shall immediately refer the matter to the Supreme Court which shall decide without delay<sup>110</sup>.

Matters bearing upon validity, precedence, violation and compatibility may not yield multiple outcomes ('also'), but neither the one ('constituent state') nor the other should be given an 'opportunity' to determine. In such an event, if the relevant Chamber is unable to reach a consensus, the justices should divide into their pairs (/ groups) with the aim of arriving at a consensus position within their respective group. Only groups that have reached consensus shall have their position considered: the majority position providing the outcome. In the event of a tie between either position, the most senior group to have reached consensus shall decide. Only in those instances where no group (of the Chamber) has managed to reach consensus shall the outcome be determined by the judge drawn by lot ('at the commencement of proceedings') from the 'partner' Chamber or (for the Grand Chambers) the other Court.

The judge drawn by lot shall not be revealed until the moment arrives (in the given case) where the position of that judge is required in order for an outcome to be secured. Once again, that judge may be an earlier drawn judge if the previous case heard under this procedure (by / type of Chamber) had not required the 'intervention' of the 'partner / other' judge. As with the 'Compromise Procedure', drawing by lot should be governed by sequences (here, again, separate from any other sequence), a draw being conducted either four times or ten times (for the Grand Chambers) for each sequence.

'Similar' (to the final possible stage of the 'Compromise Procedure'), the (drawn) judge would be provided with a copy of the transcript of the proceedings; and, having read and considered all relevant documents, required to issue a decision.

This would be the only procedure of the Court where a failure to reach consensus would not be followed by an attempt to establish a majority (opinion). Any individualised position (*by opinion*) would only prejudice the possibility of arriving at consensus within a group or render any arrived at consensus (within a group) liable to the accusation that it was the product of some kind of pressure.

Seniority should decide in the event of a tie. Employment of the 'partner / other' judge, in the context of this procedure, ought again, as with the 'Compromise Procedure' and the judge from the other Court / further judge, be highly residual. 'Likewise', no sequence should risk 'concluding' with a 'predetermined' outcome.

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<sup>109</sup> Annex I, Part VII, Article 48(1). Paragraph (1) of Chapter 17 incorrectly refers to "... the Co-Presidents or the Council of Ministers..." It should read: "... the Presidential Council or the Council of Ministers..."

<sup>110</sup> Annex I, Part VII, Article 48(2); Federal Law on Administration of Justice, Schedule, Chapter 17, paragraph (1).

## IX. '50:50 PROCEDURE'

A 'split decision' may, on occasions, provide a determination. This can be reflected in three of the current Chapters, and in part of one other.

Ten years after entry into force of the Foundation Agreement, the Property Board shall be wound up<sup>111</sup>. The Court may (Chapter 14), upon application by the Property Board, or by the executive heads of the constituent states acting by consensus, extend the period of operation of a specific section of the Property Board for one year at a time in order to enable completion of a specific function and may order the retention by that section or sections of specified assets to enable the continuation of work. Notwithstanding any such limited extension of operation of a particular section or sections, the Property Board shall be considered to be wound up unless the Court orders otherwise<sup>112</sup>.

A Property Court shall be established (Chapter 12) with power to conduct final judicial review (only) of decisions of the Claims Panel (of the Property Board)<sup>113</sup>. The Property Court shall continue in operation until such time as the Supreme Court may decide to assume its functions<sup>114</sup>.

Where a question is raised before the Court, it may, if it considers that a decision on such question is necessary to enable it to give judgment, request the Court of Justice (of the European Union) to give a preliminary ruling thereon (Chapter 21)<sup>115</sup>. Where any such

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<sup>111</sup> "(2) The Governing Council may decide, by majority of five to two and subject to the approval of the heads of government of the constituent states acting by consensus, to wind itself up on a date earlier than ten years after commencement of its operations, provided that its work has been completed or appropriate provision has been made for transfer to a competent body of any outstanding functions or matters" (Annex VII, Attachment 2, Article 8(2)).

<sup>112</sup> Annex VII, Attachment 2, Article 8(3); and, Federal Law on Administration of Justice, Schedule, Chapter 14, paragraph (1). Concerning the winding-up of the Property Board, Article 8(5) of Attachment 2 of Annex VII: "(5) Prior to its winding-up, the Property Board shall make arrangements for the completion of any tasks or functions assigned to it under these provisions, including any claims or disputes which are pending or which may arise in future. For this purpose, it may refer or request the Supreme Court to assign specified claims or cases to other competent bodies or courts or to a section of the Property Board, which will continue in operation by order of the Supreme Court. The obligation to ensure or make arrangements for completion of any tasks or functions under these provisions shall also apply to any section of the Property Board which continues in operation for any extended period". See also: Administration of Justice Law, Schedule, Chapter 14, paragraph (2).

<sup>113</sup> Annex VII, Part IV, Article 22(1). Further to Article 22(3) and (4) (judicial review only): "(3) Decisions of the Claims Panel shall not be subject to appeal or challenge in any constituent state court or otherwise, except by way of judicial review by the Property Court in accordance with the law and these provisions. (4) Decisions of the Property Court shall not be subject to further review or appeal to the Supreme Court". Regarding Article 22(4), see also: Federal Law on Administration of Justice, Schedule, Chapter 12, paragraph (3).

<sup>114</sup> Federal Law on Administration of Justice, Schedule, Chapter 12, paragraph (4).

<sup>115</sup> Article 234 of the Treaty (minus the final paragraph, see below) states: "The Court of Justice shall have jurisdiction to give preliminary rulings concerning: (a) the interpretation of this Treaty; (b) the validity and interpretation of acts of the institutions of the Community and of the ECB [European Central Bank]; (c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide. [new paragraph] Where such a question is raised before any court or



question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice<sup>116</sup>.

Upon a recourse under Chapter 1<sup>117</sup> (of the Schedule to the federal law), the Court may order that the operation of the law, or decision, or act, as the case may be, which is the subject matter of the recourse shall be suspended until the determination of the recourse<sup>118</sup>.

The ‘winding-up’ (to section/s) or “otherwise” of the Property Board; the assumption of the functions of the Property Court; request of a preliminary ruling / referral (including by the Supreme Court) to the European Court of Justice; and, order for suspension of the law, decision or act need not be subject to the securing of a majority (at the very least) amongst the judges presiding in the given case. In any of these instances, a ‘split decision’ (that is, 50:50) should be regarded as a positive decision on the matter: for example, to “extend the period of operation of a specific section of the Property Board for one year”.

#### X. ‘LAW / AGREEMENT SPECIFIED PROCEDURE’

For three Chapters, the relevant Constitutional Law / Cooperation Agreement / federal law shall specify, for any instance, the procedure to be applied in the Court.

First, the Court shall have the power (Chapter 10), in terms of Article 12 of the Cooperation Agreement on European Union Relations, to decide any dispute resulting from the application of such Agreement<sup>119</sup>. For instance, proceedings brought under Article 5(6) of the Agreement would be governed by the ‘Compromise Procedure’<sup>120</sup>. Second, (Chapter 19) admiralty jurisdiction<sup>121</sup>. For instance, proceedings brought under Section 3(3)(b) of the Federal Law on Admiralty Jurisdiction would be considered by the Court in accordance with

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tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon. [new paragraph] Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice”. For text of the Treaty, see: [http://europa.eu.int/eur-lex/en/treaties/dat/C\\_2002325EN.003301.html](http://europa.eu.int/eur-lex/en/treaties/dat/C_2002325EN.003301.html)

<sup>116</sup> The final paragraph of Article 234 quoted verbatim. Paragraph (2) of Chapter 21 reflects this final paragraph by stating: “(2) Where any such question is raised before the Court and there is no judicial remedy under national law, the Court shall bring the matter before the Court of Justice”.

<sup>117</sup> Chapter 1 is titled: “Disputes between the constituent states or between one or both constituent states and the Federal Government (Article 36.2)”.

<sup>118</sup> “... [A]nd any such order shall be forthwith published in the Gazette” (Chapter 1, paragraph (5)).

<sup>119</sup> Federal Law on Administration of Justice, Schedule, Chapter 10, paragraph (1). Article 12 of the Cooperation Agreement (Annex IV, Attachment 2) provides: “Any dispute resulting from the application of this Agreement shall be decided by the Supreme Court of Cyprus”.

<sup>120</sup> That is, the failure of the Coordination Group (established under Article 5(1) of the Agreement) to reach a decision and the referral of the matter (to the Court) by any of its members. Note: paragraph (2) of Chapter 10 (of the Schedule) incorrectly describes Article 5(6) as ‘Article 5(5)’ (“... paragraphs 5 and 13 of Article 5...”).

<sup>121</sup> See also: Federal Law on Administration of Justice, Schedule, Chapter 4, paragraph (2)(d).

the ‘Group Procedure’<sup>122</sup>. Third, (Chapter 20) in accordance with the relevant provisions of any Constitutional Law or Cooperation Agreement. For instance, the Court would be required to rule on disputes under Section 5(2) of the Constitutional Law on the Strength and Equipment of the Constituent State Police Forces in accordance (also) with the ‘Group Procedure’<sup>123</sup>. On the other hand, it may not always be possible / practicable to have determined ‘in advance’ (for every conceivable recourse, under the Agreement / Law) the procedure to be employed. Returning, as an example, to Article 12 of the Cooperation Agreement on European Union Relations, ‘a dispute’ may not have its procedure specified<sup>124</sup>. In such an event, the procedure should be determined, in advance of any proceedings, by the Presidency of the Court by majority. Quorum should be two members (of the Presidency). Where any member is absent (from the relevant meeting), the decision should be made by unanimity. Failing these: by the President / Acting President.

#### XI. ‘CHAPTER 4: VARYING PROCEDURES’

The Court shall have primary jurisdiction over violations of federal law<sup>125</sup> where provided by federal legislation (Chapter 4)<sup>126</sup>. The relevant sub-paragraphs / paragraphs of the Chapter shall specify the procedure to be followed.

Primary jurisdiction shall include:

(a) First instance judicial review of decisions, acts or omissions of any federal organ, authority or person exercising any administrative authority contrary to any of the provisions

<sup>122</sup> Section 3(3)(b) of the Federal Law (Annex III, Attachment 11, Law 20) provides that the Court has jurisdiction to hear any proceedings concerning: “(3)(b) any action to enforce a claim for damages loss of life or personal injury arising out of – (i) a collision between ships; or (ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more ships; or (iii) non-compliance, on the part of one or more of two or more ships, with any collision regulations in force for the time being”.

<sup>123</sup> Section 5(2) of the Constitutional Law (Annex II, Attachment 2, Law 1) states: “(2) No weapons shall be purchased by any constituent state for the needs of its police force unless the following procedure is followed: (a) Before purchasing any such weapons, the government of the constituent state concerned shall notify the Presidential Council and the government of the other constituent state of the type and number of weapons to be purchased. (b) The Purchase of the weapons shall be considered as having been authorised if no objections are raised, in writing, by the Presidential Council or by the government of the other constituent state within one month from the notification referred to in paragraph (a) above. (c) If objections are raised as provided in paragraph (b), the member of the Presidential Council and the members of the governments of the constituent states, having responsibility in respect of police matters, shall hold consultations and may, within two months from the date on which the objections were raised, resolve the matter by consensus. If consensus is not achieved within the said time limit, the Presidential Council or the government of a constituent state may refer the matter to the Supreme Court of Cyprus, which shall decide whether the envisaged purchase of weapons complies with the provisions of the Constitution and of this Law”. Section 5(1) provides: “(1) Constituent state police forces may only carry weapons appropriate for normal civilian police duties”. The keyword in Section 5(2) is “complies”.

<sup>124</sup> Article 12 begins: “Any dispute resulting from the application of this Agreement...” It does not, for example, refer (*inter alia*) to Article 5(6).

<sup>125</sup> Including Regulations and Orders under federal laws.

<sup>126</sup> Annex I, Part V, Article 36(5); Federal Law on Administration of Justice, Schedule, Chapter 4, paragraph (1).

of the (UCR) Constitution, any Constitutional Law or federal law, or made in excess or abuse of the power vested<sup>127</sup>. Recourse to the Court may be made by a person whose existing legitimate interest is adversely and directly affected by such decision or act or omission<sup>128</sup>. Upon such a recourse the Court may, by its decision – (i) confirm, either in whole or in part, such decision or act or omission; or (ii) declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever; or (iii) declare that such omission, either in whole or in part, ought not to have been made and that whatever has been omitted should have been performed<sup>129</sup>.

This should be governed by the ‘Group Procedure’.

(b) Civil actions, other than actions under paragraph (9) of Chapter 2 (see above), in respect of violations of a federal law for which damages, injunction, declaratory judgment or any other relief is ordinarily granted by a court exercising jurisdiction, provided that such jurisdiction is conferred upon the Court by the federal law in question<sup>130</sup>.

This should be governed by the ‘Law / Agreement Specified Procedure’.

(c) Criminal jurisdiction over offences against federal laws reserved for the Court by federal jurisdiction<sup>131</sup>.

This should be governed by the ‘Group Procedure’.

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<sup>127</sup> Federal Law on Administration of Justice, Schedule, Chapter 4, paragraphs (2)(a) and (8) (opening paragraph).

<sup>128</sup> *Ibid*, paragraph (8)(a). In this regard, further to Section 31(2) of the federal law (at Part V): “(2) When a recourse, made in terms of Section 5 of Article 36 of the Constitution (primary jurisdiction) and paragraph (8) of Chapter 4 of Schedule [sic.], appears to be *prima facie* frivolous, the Court or a Chamber may, after hearing arguments by or on behalf of the parties concerned, unanimously dismiss such recourse without a public hearing, if satisfied that the recourse is in fact frivolous”.

<sup>129</sup> *Ibid*, paragraph (8)(c). Paragraph (8) concludes (at sub-paragraph (d)) with: “(d) Any decision given under sub-paragraph (c) of this paragraph shall be binding on all courts, organs and authorities of the United Cyprus Republic and shall be given effect to and acted upon by the organ, authority or person concerned”.

<sup>130</sup> *Ibid*, paragraph (2)(b). Note: paragraph 2(b) excepts “actions under section 11 of Chapter 2”. This is incorrect, Chapter 2 concludes at paragraph [/ section] (9). Thus, it should read: ‘... actions under paragraph [/ section] 9 of Chapter 2...’ Concerning a federal law conferring such jurisdiction upon the Court: judgment, for example, may be awarded against an employer for an accident or occupational disease falling upon an employee; the adjudged sum being payable by the insurer to the person/s in whose favour the judgment has been given (Federal Law on Compulsory Insurance of Employers against their Liability in the Case of Accidents towards Employees (Annex III, Attachment 32, Law 3), Sections 2 (definition of “judgment”) and 9(1)).

<sup>131</sup> *Ibid*, paragraph 2(c). Article 15(2) of the UCR Constitution provides (at Part IV): “(2) The constituent states shall have primary criminal jurisdiction over offences against federal laws, unless such jurisdiction is reserved for the Supreme Court of Cyprus by federal legislation”. Concerning a federal law conferring such jurisdiction upon the Court: criminal responsibility, for example, arising from Section 21 of the Federal Law on Insider Dealing, Market Manipulation (Market Abuse) and Related Issues (Annex III, Attachment 31, Law 1), at Part V. Every criminal case before the Supreme Court (first instance and appeal) shall be heard before the relevant / appropriate Chamber / judges, and not by a single judge (see: Sections 89, 91 (at Part III) and 111 (at Part V), Federal Law on Criminal Procedure (Annex III, Attachment 26, Law 3)). Only (the) necessary pre-trial matters may be considered by a single judge of a Chamber.

(d) Further: (i) the Court may try any offence in accordance with arrangements made, under paragraph (13) of Appendix O to the Treaty of Establishment<sup>132</sup> regarding offences committed in whole or in part within the Sovereign Base Areas where both the complainant and the accused person are citizens of the United Cyprus Republic<sup>133</sup>; and, (ii) offences in respect of which the laws of the United Cyprus Republic are applicable under a Treaty or Convention binding on the United Cyprus Republic, and creates an offence triable by Courts of the United Cyprus Republic<sup>134</sup>.

Again, these should be governed by the ‘Group Procedure’.

Any court direction, civil law remedy or order<sup>135</sup> (being the consequence, rather than the basis for the action), or criminal law punishment or order, should be determined, under the ‘Group Procedure’ – (and possibly, therefore, if necessary) by the most senior group responsible for determining the outcome of the case or (where no group reaches consensus) by the ‘partner / other’ judge.

Any civil law remedy or order (being the basis for the action), and reflecting ‘the other part’ of Chapter 22, shall also be governed by the ‘Group Procedure’. Under Chapter 22:

“The Court, in the exercise of its jurisdiction, may issue orders of habeas corpus, mandamus, certiorari, prohibition and quo warranto against federal organs authorities of officials [sic.]”.

## XII. APPEALS

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<sup>132</sup> With the Government of the United Kingdom of Great Britain and Northern Ireland.

<sup>133</sup> Chapter 4, paragraph (4). Paragraph (13) of Appendix O provides: “Arrangements will also be made to enable certain criminal proceedings in which both the complainant and accused are Cypriots to be tried by the Courts of the Republic”. For text of Appendix O: [http://www.sba.mod.uk/web\\_pages/appdx-o.htm](http://www.sba.mod.uk/web_pages/appdx-o.htm)

<sup>134</sup> Chapter 4, paragraph (5). For example, (Part II of) the Federal Law on Drug Trafficking (Annex III, Attachment 27, Law 2), Section 44(2)(a), in respect of Article 3(1) of the United Nations Convention against the Illicit Trafficking of Drugs and Psychotropic Substances (1988).

<sup>135</sup> The Court may issue interim orders and any other order which is ancillary to any proceedings within its jurisdiction (Section 21, Federal Law on Administration of Justice, at Part III). Rule 14 of Annex II (titled: “General Rules of Practice of the Supreme Court”) provides: “(1) The Court, may, at any stage of the proceedings, either ex proprio motu or on the application of any party, make a provisional order, not disposing of the case on its merits, if the justice of the case so requires. (2) A provisional order made under this rule may, either on the ground of urgency or of other special circumstances, be made without notice and upon such terms as may be deemed appropriate in the circumstances: [new paragraph] Provided that all parties affected by an order made under this rule shall be served forthwith with notice thereof so as to enable them to object to it and upon such an objection the Court, after hearing arguments by or on behalf of the parties concerned, may either discharge, vary or confirm such order under such terms as it may deem fit”. Rule 8(2) of Annex III (titled: “The Default Provision and Deadlock-Resolution Procedural Rules), concerning Chapter 5, provides: “(2) If it appears to the Court that there is in any cause or matter a question of law which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, the Court may make an order accordingly and may direct such question of law to be raised for the opinion of the Court either by special case stated or in such other manner as the Court may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed”.

Any appeal from a Chamber to Grand Chamber under Chapters 3 (“violation of...”, ‘Group Procedure’), 4<sup>136</sup>, 13 and 19, as well as on an order for a preliminary ruling of the European Court of Justice (under Chapter 21(1))<sup>137</sup> and on interlocutory matters<sup>138</sup> shall be heard (by the relevant ‘Grand Chamber’) only by the 6 judges of the Court (from the other Chamber) not to have sat in the case at first instance. Any such appeal must be considered with an original eye.

### XIII. REGISTRY

The Registrar need not be a non-Cypriot. The Registry<sup>139</sup> should be composed of (four persons) a Registrar, First Deputy Registrar and two Deputy Registrars (two hailing from each constituent state). The Registrar and First Deputy Registrar should not hail from the same constituent state. Besides their normal duties<sup>140</sup>, each Registrar should be assigned to at

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<sup>136</sup> Annex I of the Federal Law on Administration of Justice, under Grand Chamber of Primary Federal Jurisdiction, incorrectly states: “This Chamber has jurisdiction to hear appeals from any decision of a Chamber exercising primary criminal jurisdiction”. Chapter 4 (over which all three primary chambers of the Court of Primary Federal Jurisdiction have competence) is titled: “Primary jurisdiction over violations of Federal Laws where provided by Federal legislation”. This primary jurisdiction, however, includes “first instance judicial review” (Chapter 4, paragraph 1(2)(a)) and “[c]ivil actions... conferred upon the Court by the Federal Law in question” (*Ibid*, paragraph 1(2)(b)). These are ‘reflected’ in Section 22 of the federal law and Article 36(5) of the UCR Constitution. Section 22 (at Part III) states: “An appeal shall lie from any decision of the Court exercising its primary jurisdiction under Section 5 of Article 36 of the Constitution in accordance with the provisions of any relevant Law, to a Chamber designated by the Court as being appropriate to hear such appeal”. Article 36(5) (at Part V) states: “(5) The Supreme Court shall have primary jurisdiction over violations of federal law where provided by federal legislation”. Thus, for “first instance judicial review” and “[c]ivil actions”, the right to appeal in respect of these should be reflected, also, in Annex I, which, under Grand Chamber of Primary Federal Jurisdiction, should be amended to read: “[Chapter] 4. Appeals from a Chamber having exercised primary jurisdiction over violations of Federal Laws where provided by Federal legislation”.

<sup>137</sup> Rules 5 and 6 of Annex IV (titled: “The References to the European Court of Justice Rules”) provide: “5. When an order has been made, the Registrar shall send a copy thereof to the Registrar of the European Court; but in the case of an order made by the Constitutional or Primary Chambers, he shall not do so, unless the Court otherwise orders, until the time for appealing against the order has expired or, if an appeal is entered within that time, until the appeal has been determined or otherwise disposed of. 6. An order made by a Constitutional or Primary Chamber shall be deemed to be a final decision, and accordingly an appeal against it shall lie to the relevant Grand Chamber without leave; but the period within which a notice of appeal must be served shall be 14 days”.

<sup>138</sup> This should be noted, in Annex I, under both the Grand Constitutional Chamber and the Grand Chamber of Primary Federal Jurisdiction, rather than just (as currently) under the latter.

<sup>139</sup> Section 24(1) of the federal law (at Part IV) provides: “(1) The Court shall have its own Registry and shall, if it divides itself into Chambers in terms of Section 7 of Article 36 of the Constitution, have registries for each Chamber”.

<sup>140</sup> These are, ‘respectively’, listed in Section 25 (titled: “Duties of the Registrar and the Deputy Registrars”): “(1) Subject to any Rules of Court or to any orders made thereunder by the Court, the Registrar shall issue all summonses, warrants, precepts and writs of execution, shall register all orders and judgments, shall keep records of all proceedings of the Court, shall have the custody and keep an account of all fees and fines payable or paid into Court and of all moneys paid into or out of Court, shall enter an account of all such fees, fines and moneys as and when received, in a book belonging to the Court, to be kept by the Registrar for that purpose, shall from time to time, at such times as shall be required by the Regulations of the Accountant-General, or as may be directed by the Court, submit accounts to be audited and settled by the Auditor-General and shall, subject to any such Regulations or directions, pay into the office of the Accountant-General the amount of fines and fees in his custody. (2) Subject to any Rules of Court or order made thereunder by the Court, the Registrar, and any Deputy

least one chamber of the Court<sup>141</sup>: the Registrar, the Grand Constitutional Chamber; the First Deputy Registrar, the Grand Chamber of Primary Federal Jurisdiction; one of the Deputy Registrars, the first and second constitutional chamber; the other, the first and second primary chamber. The Deputy Registrar assigned to the first and second constitutional chamber should not hail from the same constituent state as the Registrar. Like the judges of the Court, the Registrars should serve for seven year renewable terms, although the same person should not serve more than two successive terms (during any single period<sup>142</sup>) as Registrar. In the event of the temporary absence or incapacity of any Registrar, the other Registrar hailing from the same constituent state shall ‘deputise’ as Acting Registrar<sup>143</sup>. There should be no ‘transitional Registry’<sup>144</sup>.

#### XIV. FINAL WORD

Any legal draftsman should be obliged to consider the worst-case-scenario. Undoubtedly, removing the foreign judges from the Court risks deadlock, but this article has proved that with the employment (into the system) of a little patience and ingenuity the Court could still remain highly functional. Hopefully, the members of the Court would commonly refrain from being partisan, therefore making such type of provisions sit oddly, but this may not always be the case. At such times, mechanisms are required to avert crisis. This is where the means of making an even number into an odd becomes so useful. It has been proved that it can be done and, most crucial of all, at no one’s expense.

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Registrar, shall be Taxing Master for the Chamber to which he belongs, and shall tax all bills of costs in accordance with the scale of fees for the time being in force, subject to review of such taxation by the Court, [new paragraph] Provided that the Court may direct that taxation of costs in any case shall in the first instance take place before the Court itself. (3) The Registrar, or a Deputy Registrar, as the case may be, shall have the duty by himself or by his officers to receive writs and processes of the Court, and to execute the same and to make returns thereto: [new paragraph] Provided that the Registrar shall not be liable to be sued for any act or omission of any messenger, bailiff, or other person in the execution of any process which shall have been done or may have occurred either through disobedience or neglect of orders or instructions given by him, or which may have been done or occurred without his authority”.

<sup>141</sup> Section 24(5) provides: “(5) If the Court is divided into Chambers, the Registrar and each of the Deputy Registrars shall each be assigned one of the Chambers. They shall hold the above offices alternately for such period as the Court may decide”. “[T]he above offices” here can only mean their attachment to any relevant Chamber/s.

<sup>142</sup> Thus, any person may serve more than two terms as Registrar.

<sup>143</sup> With the Grand Constitutional Chamber being assigned to the Registrar and with Chapter 5 cases being heard only before this Chamber, the definition for “Registrar” in Rule 2(2) of Annex III (of the federal law) and Rule 5(2) (from the same Annex) should be deleted. The definition states: ““Registrar” means the Registrar of the Court and includes Deputy Registrars”. Rule 5(2) provides: “(2) Any jurisdiction conferred by these Rules on the Registrar shall be exercisable by him or by a Deputy Registrar”.

<sup>144</sup> Article 45(3) of the UCR Constitution (at Part VII) states: “(3) The Registrar, who shall be a non-Cypriot, and two Deputy Registrars of the Supreme Court shall assume their functions immediately upon entry into force of the Foundation Agreement. They will remain in office for 36 calendar months, when they shall be replaced in accordance with the law”.

## Biographical Note

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