I. Constitutional Guarantee of Human Rights

The fundamental rights and liberties of the individual aptly known as human rights are by and large entrenched in the Constitution of the Republic of Cyprus. Their interpretation, range of application and impact on the legal order of the country have attracted a voluminous body of case law.

To begin, legislation antedating the Constitution had to be brought into conformity with human rights. The concept of guaranteed rights and liberties had no antecedent in English law, the law applicable at the time of independence. Safeguarded rights are understood as rights that cannot be taken away, set aside or modified by statutory law. The fundamental principle of English constitutional law is that Parliament is supreme, empowered to legislate on any matter without fetter including the conferment, the abridgment or the taking away of rights. The only principle mitigating the rigour of this rule is that Parliament is presumed not to intend a change of the common law, historically the repository of the freedoms and liberties of the individual in England; a presumption that may be displaced by the clear wording of statutory law to the contrary.

Constitutionalism, the process whereby the legitimacy of statutory law is tested by reference to the higher order of a Constitution, is unknown to English law. Guaranteed rights and the compatibility of legislation with a superior legal order established by the Constitution were new to Cyprus.
law. The principle of institutional separation of powers underlying the Cyprus Constitution was yet another novelty of the nascent legal order. The notions implicit in entrenched rights, the sphere of their application and their implications on the legal order of the country were explored to great lengths by the case law of the Supreme Court. In the process, legislation was tested with a view to determining its compatibility with the Constitution, both pre-emptively by a reference of the President or Vice-President before promulgation of the impugned law and more so sequentially or remedially in the context of judicial proceedings involving the application of the contested legislation. In *The Board for Registration of Architects & Civil Engineers v. Christodoulos Kyriakides* (1966) 3 C.L.R. 640 (FB)83 the Court subscribed to the position that the review of the constitutionality of a statute is governed “by certain well established principles” one of them being that a law enacted by the Legislature is presumed to be constitutional, described as “a precautionary rule”. The presumption carries little weight in the case of laws purporting to limit or abridge human rights as the Court affirmed in *President of the Republic v. House of Representatives* (2000) 3 C.L.R. 238 (P).84 It goes no further than establishing the bona fida intention of the Legislature to regulate a given matter. The practical significance of the presumption of constitutionality is that the Court will not examine, on its own motion, the constitutionality of a law enacted by the House of Representatives. An issue of constitutionality must be specifically raised by either or both parties to judicial proceedings and be succinctly defined before the Court advertts to it; subject always to the proviso that determination of the constitutional issue is material for the outcome of the case.

The presumption of constitutionality has no application to preemptive constitutional control where the very subject matter of the proceedings is the constitutionality of the law to be. The proceedings affect the genesis of the enactment prohibited to be anything other than in full accord with the Constitution (Article 179.2).

The charter of human rights enshrined in the Constitution is modelled on the European Convention on Human Rights85 save that it is wider in scope

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83 Judgment delivered by Josephides J.
84 Judgment delivered by Pikis P. reflecting the reasoning of the majority and concurring judgment delivered by Nicolaou J. reflecting the reasoning of the minority.