Separation of Powers: The Sphere and Authority of Each One of the Three Powers of the State

I. Separation of Powers – The Principle and its Application Under the Constitution

The Constitution of Cyprus is founded on the principle of separation of powers. The sphere, competence and jurisdiction of each one of the three powers of the State and matters incidental thereto are earmarked in separate Parts of the Constitution.

Each one of the three powers of the State, the Legislature, the Executive and the Judiciary, is invested with power to act over the entire field of action covered by the corresponding domain of authority except to the extent that provision to the contrary is made in the Constitution.

Article 61 assigns the legislative power of the Republic in all matters (other than matters expressly reserved for the Communal Chambers) to the House of Representatives.
Article 54 entrusts executive power to the Council of Ministers in all matters other than those specified below assigned to other organs of the Executive:

a) Executive power reserved for the President or Vice-President of the Republic under Articles 47, 48 and 49, and

b) Executive power expressly reserved for the Communal Chambers.

Articles 136 and 152 trust the judicial power of the State to the Supreme Constitutional Court on the one hand and the High Court and courts subordinate thereto, established by law, on the other.

Article 35 heeds the separation between the spheres of authority of the three powers of the State enjoining each one of them to ensure within the limits of their respective competence the efficient application of human rights, the subject of Part II of the Constitution. The three powers of the State are often portrayed as branches of the same trunk, the State.

1. The Legislature

In juridical terms, the legislative power embraces law-making, i.e. the establishment of rules regulating the affairs of man (in all walks of life) and rules for the governance of the country. Such rules must have a normative character and be of general application, conferring rights, imposing duties, defining obligations or establishing the parameters of public administration. Such rules must be impersonal in character, the hallmark of legislative acts. Personalized legislation smacks of administrative or executive action, the province of the Executive.

Aristotle represents law as the neutral authority to which everyone seeking justice may apply.

In President of the Republic v. House of Representatives (1992) 3 C.L.R. 109 (P) (majority judgment)\textsuperscript{215} legislation prohibiting the use of an area approved by the Executive for the dumping of refuse was declared unconstitutional. Its provisions lacked the attributes of law. Disposal of refuse and matters associated therewith belonged to the domain of the Administration. What the Legislature sought to effect was to override action of the Executive in a matter lying solely within the latter’s sphere of authority. The measure adopted was an act of public administration enacted in breach of the principle of separation of powers.

\textsuperscript{215} Majority judgment delivered by Pikis J, minority judgment delivered by A Loizou J.