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Decisions of the Council of Ministers of the Republic of Cyprus and the power to promulgate them by publication



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The issue concerning the publication of the Decisions of the Council of Ministers has been a subject of public concern from time to time. On occasion, concern and distrust have been expressed, especially regarding those Decisions that were not publicly disclosed. However, it might not be widely known that the publication or not of the Council of Ministers Decisions is expressly determined by the Constitution, through clear references in specific articles.

The Council of Ministers Decisions are related to items included in the agenda of each meeting. Pursuant to Article 56 of the Constitution, the agenda is compiled by the President of the Republic "at his discretion". Furthermore, according to the same article of the Constitution, the agenda "is communicated to all concerned prior to such meeting".

The Council of Ministers is called upon to take a specific Decision on the items included in the agenda, as compiled by the President of the Republic. Therefore, the Council of Ministers, after discussing each item, can decide on the approval or rejection of the proposal put forward. In cases where the Council of Ministers cannot reach a Decision on a specific item, it can postpone its discussion for a subsequent meeting or, even authorize the competent authority (the Minister concerned), to re-examine and resubmit the issue to be included in the agenda of the next sitting of the Council of Ministers. In both cases mentioned above, the Council of Ministers may decide either on the postponement or the complete withdrawal of the item from the agenda.

The Decisions of the Council of Ministers in each of the above cases, shall be transmitted, "forthwith to the office of the President and of the Vice-President of the Republic respectively"¹, in accordance with Article 57(1) of the Constitution. The President or the Vice-President of the Republic or both shall have the right of referral of such Decisions, within four days from the date when a Decision has been forwarded to their respective offices, back to the Council of Ministers for reconsideration. In such a case the Council of Ministers is obliged to review the Decision and if it insists in not changing its original Decision, then the President and the Vice-President of the Republic shall, subject to paragraph 4 of this Article, promulgate by publication such Decision in the Government Gazette.

However, if the Decision relates to foreign affairs or

the defence and security of the Republic, as these are explained in Article 50 of the Constitution, the President or the Vice President of the Republic or both, have, in accordance with subsection (3) of Article 57 of the Constitution, the right to veto the Decision. This right may be exercised within a period of four days from the date the Decision was forwarded to their respective offices.

In cases where a Decision is enforceable and no right of veto or referral has been exercised, such Decision shall be forthwith promulgated by the President and the Vice-President of the Republic by publication in the Government Gazette, unless the Council of Ministers had already decided otherwise in the original Decision.

Within the constitutional framework, as described above, it is apparent that the constitutional legislator has provided that the power of deciding whether a Decision is to be published or not, rests with the Council of Ministers itself.

Therefore, the publication or not of Decisions taken by the Council of Ministers requires, as a necessary constitutional requirement, the prior approval of the Members of the Council.

Consequently, the Council of Ministers is the only Authority responsible for authorising the publication of the Decisions taken. It is noted that not even the President of the Republic is authorized to publish any Decision taken by the Council of Ministers, despite the fact that, in accordance with Article 55 of the Constitution, he has the power to convene the meetings of the Council of Ministers himself, or on being asked by the Vice-President of the Republic in due time, as well as to preside these meetings.

Accordingly, it is clear that the validity of the Decisions taken by the Council of Ministers presumes the prior lawful composition of the Council. It is worth mentioning that during the past, this issue had been discussed within the Council of Ministers, and it was an issue for which the opinion of the Attorney General was sought. The Attorney General expressed the opinion that, during the sessions of the Council where the Council acts as an Administrative Body, its Decisions are subject to judicial review and as such, no other person except the Ministers should be present. Furthermore, according to Article 60 of the Constitution, the Secretary to the Council of Ministers is present during these meetings for the purpose of keeping the minutes.

¹ Following the withdrawal of the Turkish Cypriots from the Government, as well as from other constitutional posts and positions they were holding, the Doctrine of Necessity was enforced in order to correct the constitutional irregularity created. A provision contained in the Doctrine states that as long as the position of Vice President is vacant, the executive power is carried out solemnly by the President of the Republic.

As further noted by the Attorney General, the specific Decisions are enforceable administrative acts whereby the will of the Council is expressed, which is intended to produce legal effect on the individuals subject to administration and involves their immediate implementation through official channels.

However, the participation of other persons in the Council's meetings is not forbidden when the Council convenes pursuant to Article 54 of the Constitution or during the discussion of national issues or other issues of general interest.

It should be noted though, that the publication of all Decisions which constitute enforceable administrative acts without any restriction, could possibly conflict with other legislation which may prohibit the publication of their content, specifically where these refer to classified information or the personal data of citizens.

It should also be noted that any of the Decisions classified as Top Secret, Secret, Confidential or Restricted cannot be published in order to safeguard their content, according to the Security of Classified Information, Documentation and Hardware and Related Topics legislation.

Furthermore, according to the Order 1 (6) of Chapter III of the General Orders, all documents containing personal data are considered classified and are being managed in accordance with the provisions of the Processing of Personal Data (Protection of Individuals) Laws of 2001 – 2012 and therefore, for the protection of personal data, their disclosure is prohibited. Moreover, Decisions taken by the Council of Ministers, relating to information and/or data falling under the Processing of Personal Data (Protection of Individuals) Laws of 2001 – 2012 which specifically have reference to personal and/or sensitive data, are not publicized.

Consequently, in every case, it is important that there is careful assessment of the contents of each Decision, in order to protect both classified information and personal or sensitive data of individuals, and in addition to safeguard the interests of defence and security of the Republic, constitutional order, public order, public health, public morals, the reputation and rights of any person or persons, rights and freedoms guaranteed by the Constitution of the Republic and the relations of the Republic with other states. In any such cases, the Council of Ministers may, by resolution, decide the non-disclosure of the Decision.

Without a doubt, the aforementioned legal framework, that regulates the broader issue of disclosure of the Decisions taken by the Council of Ministers, does not allow for the publication of all Decisions taken by the Council. As such, this means that the power given to the Council by Article 57(4) of the Constitution is not unrestrained. The legal barriers placed by the Constitution and other legislation which limit the power of the Council for publication without exception all of the Decisions, de facto protect the reputation and the rights of citizens and also the interest, the security and the *defence of the Republic, from any uncontrolled and irresponsible disclosure.*

Therefore, the criticism against the present government, for

non-disclosure of Council Decisions, is unreasonable and lacks any legal basis, since all the Decisions taken by the Council are published, except for those Decisions that fall into the restrictions mentioned above.

In fact, statistical data shows that the current government in comparison with previous governments has managed to achieve the greatest possible disclosure rates on Decisions taken by the Council. Specifically, an analysis and examination of a sample of historical data maintained by the Council, from 2004 to date, shows that during the past ten years the number of the Decisions published was extremely small, given that in each of the previous years, published Decisions did not exceed 20% of the annual Decisions taken.

In fact, the results indicate the absence of political will to improve the rates of Decisions published, since, basically, the maximum annual percentage increase in the number of published Decisions, is only approximately 2%. Based on these data, in 2004 only 8% of all the Decisions taken that year were published, while in 2013 these rates reached 14%. Of course, a somewhat bigger increase was observed in the years from 2008 to 2012, with the annual average of published Decisions reaching approximately 18% of the total.

In comparison with data of other periods, the corresponding percentage figures referring to the current Government, show a reversal of the above situation, since the percentage of Decisions published represent the 72% of all Decisions taken by the Council. The big percentage difference obviously shows the will of the current government to publish the highest possible number of Decisions taken by the Council of Ministers.

Undoubtedly this is based on the target set by President Nikos Anastasiades, who aims to limit the number of the unpublished Decisions to the absolute minimum, for reasons of transparency and disclosure of policies and issues handled by the Government, to the general public. To this end, the Council, with Decision No. 76.347 dated 23.01.2014, as well as with a second decision dated 26.11.2014, confirmed its position that all Decisions taken will be made public, except for the Decisions carrying classification of any level, or in cases where the Council considers that the publishing of a certain Decision would conflict with the Constitution or legislation or would be detrimental for the defence and security of the Republic of Cyprus. It should be emphasized that this Decision is being fully implemented, following the preparation and circulation of a relevant Circular by the Secretariat of the Council of Ministers.

Concluding this short article, one must state that, in the light of the constitutional framework and all aforementioned analysis, it is clearly apparent that the disclosure of Council Decisions is a power vested only within the Council of Ministers. Nevertheless, this power, should in no way be considered undemocratic or contrary to the principles of transparency and the rule of law when, in fact, today, the current government has put this issue in the right dimensions, by reducing the number of Decisions not published to the minimum, while at the same time safeguarding the rights of its citizens as well as the defence and the security of the Republic. ■