

Nº 1 18 MARCH 2015

Accountancy Cyprus

www.icpac.org.cy

Times call for
**coordinated collective
responsibility**



CEAK

The Journal of the Institute
of Certified Public Accountants
of Cyprus

DISTRICT POST OFFICE
CY-1901 NICOSIA, CYPRUS

POSTAGE PAID
LICENCE no. 33

SEALED UNDER
PERMIT no. 133

ΠΕΡΙΟΔΙΚΟ

ΤΑΧΥΔΡΟΜΙΚΟ
ΤΕΛΟΣ ΠΛΗΡΩΜΕΝΟ
ΑΔΕΙΑ ΑΡ. 239

ΚΛΕΙΣΤΟ ΕΝΤΥΠΟ
ΑΔΕΙΑ ΑΡ. 133

The Role of the Secretariat of the Council of Ministers of the Republic of Cyprus from 1960 until today

Duties and Responsibilities



By Theodosios
A. Tsiolas
Secretary to the
Council of Ministers

In examining thoroughly the occasional references to the institution and the operation of the Secretariat of the Council of Ministers of the Republic of Cyprus which are published in the national press, one can identify that the information available in these references is incomplete or partial and that no single source of information is available which describes in its totality the wider framework of the Secretariat. This identified weakness acted as an incentive for writing this article, which aims to describe the complete framework, to the extent that this is possible, of the role and mission of the Secretariat of the Council of Ministers.

Historically, the Council of Ministers Secretariat is first mentioned at the time of the establishment of the Republic of Cyprus and, in particular, is referred to in the Constitution of the Republic. The essential role of the Council of Ministers Secretariat is defined in specific articles of the Constitution and is no other than the service of the executive power, the function of which is also determined by the Constitution of the Republic, in parallel with the remaining two other functions, the legislative and the judicial.

Consequently, the Council of Ministers Secretariat serves, primarily, the Council of Ministers, which is the collective body of the state, comprising the Ministers who are its members and chaired by the President of the Republic¹. In accordance with Article 54 of the Constitution, the executive power is assigned to the Council of Ministers: the Article further stipulates that "subject to the executive power expressly reserved, under Articles 47, 48 and 49, to the President and the Vice- President of the Republic, acting either separately or jointly, the Council of Ministers shall exercise executive power in all matters other than those which, under the express provisions of this Constitution, are within the competence of a Communal Chamber". The same Article states that the executive power exercised by the Council of Ministers includes: the overall management and governing of the Republic; the management of general policy; foreign affairs as set out in Article 50; defense and security, including questions thereof as set out in Article

50; the co-ordination and supervision of all public services; the supervision and disposition of property belonging to the Republic in accordance with the provisions of the Constitution and the law; the consideration of Bills to be introduced to the House of Representatives by a Minister; making of any order or regulation for the carrying into effect of any law as provided by such law and consideration of the Budget of the Republic to be introduced to the House of Representatives. The convening of meetings of the Council of Ministers is, according to Article 55 of the Constitution, the responsibility of the President of the Republic, who "on his own motion or on being asked by the Vice- President¹ of the Republic in due time for a specific subject", in accordance with Article 56 of the Constitution, establishes the agenda for any meeting of the Council and even "at his discretion", decides which agenda is to be communicated to all concerned parties prior to such meeting being held.

The President and the Vice- President¹ of the Republic are not members of the Council of Ministers, despite the fact that they preside over it, and, consequently, the Decisions of the Council are taken by the Members of the Council, namely the Ministers of the eleven Ministries. However, if the Decision relates to foreign affairs or to the defense and security of the Republic, as these are explained in Article 50 of the Constitution, the President or the Vice- President¹ 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 upon which the Decision was forwarded to their respective offices.

Within this operational framework of the executive power and for the purpose of meeting its targets, as described briefly in the aforementioned Articles of the Constitution, the Constitution provides in Article 60 that "there shall be a joint Secretariat of the Council of Ministers headed by two Secretaries, one belonging to the Greek Community and the other belonging to the Turkish Community". Furthermore, the same Article determines the powers of the Secretary and his

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, so long as the position of Vice President is vacant, the executive power is carried out solemnly by the President of the Republic.

duties to the Council of Ministers Secretariat. The Secretary is the head of the Office of the Council of Ministers and, in accordance with any instructions as may be given by the Council of Ministers, attends its meetings and keeps minutes thereof and conveys the Decisions of the Council to the appropriate administrative organ, authority or person.

The competent authority for the Council of Ministers Secretariat is the Council of Ministers and the Secretary acts according to Council's directions to complete all work involved in its mission. Hence, the reference in Article 2 (d) of the Public Service Law, provides that "competent authority means the Council of Ministers for the Accountant General of the Republic, the General Managers of the Ministries, the General Director of Planning Office and the Secretary to the Council of Ministers and also for the Secretariat's personnel, but for these employees usually acting through the Secretary to the Council of Ministers".

The Head of the Office of the Council of Ministers Secretariat is a public officer, appointed by the Council of Ministers, and holds the title of Secretary to the Council of Ministers. The first Secretaries to the Council of Ministers were the Greek Cypriot Takis E. Markantonis and the Turkish Cypriot Ali Vehid, who served in this position from 01.01.1960 until 28.02.1970 and from 01.01.1960 until 30.06.1964 respectively. Following the withdrawal of Turkish Cypriots from the Government in 1964, the Secretariat is currently headed by a public officer from the Greek Cypriot community. It is worth noting that, in the past, there have been instances where the Secretary was appointed by the Public Service Commission (PSC) and enjoyed the same status as a Permanent Secretary of a Ministry and that, additionally, there also existed the post of Assistant Secretary to the Council of Ministers. However, these posts were abolished in the Budget of 1994. Since then, the Secretary's duties are assigned by the Council of Ministers to a serving public officer. The last Secretary appointed by the Public Service Commission was Mr. George Achillides, who retired on 30.4.1995.

Furthermore, it is noted that, according to the Protocol of the Republic of Cyprus Law of 1996, the position of the Council of Ministers Secretary ranks above that of the Accountant General of the Republic and immediately below those of the Permanent Secretary of the House of Representatives and the Permanent Secretaries of the Ministries and the Directorate General for European Programmes, Coordination and Development.

It has nowadays become clear that no other person, except the President and the Ministers, should be present at the meetings of the Council of Ministers when issues are discussed and Decisions are taken. However, case law of the Supreme Court has established that beyond the Secretary to the Council of Ministers only the presence of a secretary for the purpose of keeping the minutes is permitted. Therefore, the presence of any person other than the President and the Ministers, the Secretary to the Council of Ministers and the secretary affects the lawful composition of the Council and the validity of any Decisions taken by the Council since, in accordance with the provisions of the General Principles of Administrative Law Act 1999, a condition for any administrative act to be valid is the lawful composition of the body taking the decision.

It is worth mentioning that this issue has been brought up by the Council of Ministers and is one upon which the opinion of the Attorney General has been sought. The Attorney General expressed the opinion that during the meetings of the Council no person other than the President and the Ministers should be present in instances where the Council of Ministers acts as an administrative body, the Decisions of which are subject to judicial review. As further noted by the Attorney General, the specific Decisions are executable administrative acts whereby the will of the Council of the Ministers is expressed and these acts are intended to produce legal effect on individuals. In these cases, immediate implementation through official channels is required.

In this case, it should particularly be noted that the lawful composition of the Council of Ministers during its meetings is crucial and is a necessary precondition for the recognition of Decisions taken by the Council as valid administrative acts.

However, the participation of other persons in the meetings of the Council of Ministers is not forbidden in any case where the Council convenes pursuant to Article 54 of the Constitution or, as stated by the Attorney General of the Republic, "in managing national issues or other topics of general importance, especially when these are beyond judicial review". Additionally, according to the Attorney General, "the same shall apply in issues/decisions characterized as government acts as these are derived from the case law."

Therefore, the publication of the Council of Ministers Decisions presupposes its lawful composition. In accordance with Article 57 of the Constitution, the Council decides in each session which Decisions are to be published in the Official Gazette.

Within the above framework of operation, the Secretariat of the Council of Ministers is responsible for preparing the Agenda and forwarding the items of the Agenda for each meeting of the Council to the President of the Republic and the Members of the Council of Ministers. Before an item is included in the Agenda, a thorough process of checks concerning the legality of the issue is enforced as a precursor to the final stage of the submission of topics to the Council for discussion and necessary decision taking.

In this direction, the Secretariat of the Council of Ministers aims for the establishment and the observance of the proper procedures and processes necessary to manage all issues that arise before each meeting of the Council, issuing, at times and with the approval the Council of Ministers as the competent authority, relevant circulars for the purpose of compliance with relevant provisions and procedures proposed, so as to ensure the proper functioning of the Council of Ministers. Indeed, there have been instances, at least during the present governance of President Nikos Anastasiades, when the Secretariat of the Council of Ministers has addressed several relevant issues that regulate the procedures and methods of management. Illustrative examples of such actions are: differentiation in the method of preparation of the agenda in order to create classified or non-classified parts, regarding which it should be further noted that this has been adopted following the instructions of the President of the Republic; the management of issues related to the handling of personal and sensitive data; clarification of the procedures of document management; the explanation and definition of the essential procedural requirements and, generally, the provision of proper guidance to the Ministries.

Furthermore, and despite the fact that the publication or not of the Decisions of the Council of Ministers is a power vested in the Council of Ministers by Article 57(4) of the Constitution, the Secretariat of the Council of Ministers submits, after careful study of the legislative framework, certain recommendations to the Council, aiming to achieve a better regulatory framework for the wider issue of the publication of the Decisions of the Council of Ministers. Given, therefore, the approval of the Council of Ministers the Secretariat regulates, by following the appropriate procedures, the publication of Decisions taken by the Council of Ministers so that, ultimately, their publication does not conflict with the provisions of any legislation or create constitutional or other legal complications.

Consequently, the role of the Council of Ministers

is not just limited to the publication of Decisions taken by the Council as the Constitution explicitly requires but, of course, includes the parallel protection of both classified information and personal or sensitive data as well as the protection of the interests of defense 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 as guaranteed by the Constitution of the Republic and the relationships of the Republic with other states.

Certainly, all the aforementioned describes the multifaceted and active role of the Secretariat of the Council of Ministers in assisting the mission of the executive authority carried out through the meetings and the Decisions of the Council of Ministers without, however, falling outside constitutional boundaries or going beyond the scope of its operation.

It is in that direction that the Secretariat of the Council of Ministers has successfully achieved, in accordance with the instructions of the President of the Republic, the replacement of handwritten and traditional procedures and is now functioning in a new technological environment, with the adoption of electronic meetings within the Council.

Adoption of new computerised procedures means that almost all relevant materials needed for the Meetings of the Council of Ministers are distributed through the system without the need for the printing of documents, thereby allowing each Member of the Council to have direct access to them, by electronic means, 24 hours a day, seven days a week. Moreover, multiple benefits and savings have accrued following the implementation of this system, such as annual savings of around 2 million sheets of paper, savings on ink and on printer maintenance costs, fewer staff required to handle the documents, time saving and greater ease in handling the oversized archives, etc.

While the aforementioned description offers insight to the reader into the context in which the Secretariat operates and functions, in accordance, of course, with constitutional provisions, the Constitution does not exclude or restrict the assignment to the Council of Ministers Secretariat or to the Secretary to the Council of Ministers of any additional responsibilities beyond those expressly set out in the Constitution.

This is why additional responsibilities were assigned to the Council of Ministers Secretariat during the first two months of the current gover-

nance, deriving from Council of Ministers Decisions, which, in any case, are consistent with the programme and the goals of the President of the Republic, and the current governance, for greater and more effective involvement of the Secretariat Council of Ministers in the implementation of the government's programme.

Regarding the above, the Council of Ministers decided to authorise the Secretary to the Council of Ministers to submit a quarterly Memo, with information relating to the monitoring of the implementation of Decisions taken by the Council over that period, the obligations of the competent authorities arising from the implementation of these Decisions and any outstanding issues. Subsequently, the Council of Ministers authorised the participation of the Secretary to the Council of Ministers, or of his representative, in the meetings of the Ministerial Committee for the Monitoring of the Memorandum, which is responsible for the implementation of the Memorandum of Understanding and for resolving any problems or delays in the implementation of the measures provided in the Memorandum, as well as to the Memorandum Monitoring Unit which, up to 10.12.2014, had a coordinating role for monitoring the whole implementation of the Memorandum.

Furthermore, the political and legal position that the operational limits of the Secretariat and the Secretary to the Council of Ministers can be extended beyond the constitutional framework, is further supported by referring to another Decision of the Council of Ministers, whereby the Council decided on the secondment of the Secretary to the Council of Ministers to the Presidency for the parallel execution of specific duties. In this capacity, the Secretary to the Council of Ministers is not strictly limited to his constitutional powers but, without negating or limiting his duties as Secretary to the Council, can provide other forms of support, administrative and / or technocratic, to the Presidency of the Republic and, through his own participation in various social activities, enhance and strengthen his active contribution to the achievement of government objectives.

In any case, it is to be noted that this enhanced role also applies in other European countries, where the aim of supporting the work of the Head of State is achieved in a more efficient and institutionalized way. Indeed, many examples show the existence and operation of a cabinet, run by both public servants and by political advisors, within the President's or the Prime Minister's Office. In such cases, the role of the respective Secretariat is multiple and complex and aims to support the overall work of government.

Certainly, in such cases, the Secretariat is usually the facilitating link between the President / Prime Minister and their Ministries.

Stemming from experience of other European countries' Ministerial Secretariats, as has been discussed before, the Council of Ministers, at its Meeting on 3rd March, 2015, decided that operations referring to the monitoring and coordination of the overall work of government will be undertaken, as from 2.04.2015, by the Secretariat of the Council of Ministers, under the supervision of the newly established Presidency Unit and under the political authority of the Under Secretary to the President. In addition, the Council of Ministers decided to assign to the Secretary to the Council of Ministers, as from 02.04.2015, the monitoring, in consultation with the newly established Presidency Unit, of the work of several Ministerial and/or other Committees, as these were defined by Council of Ministers Decisions on matters relating to government policy, and to authorize the participation of the Secretary to the Council of Ministers, or of his representative, in these Committees. Furthermore, the Council of Ministers authorised the Secretary to the Council of Ministers to develop, in collaboration with the Presidency Unit and the Under Secretary to the President, the appropriate and necessary procedures for monitoring the implementation of the overall work of government, including the monitoring of the work of Ministerial and / or other Committees.

It is clear from the examples observed of other countries, that the Secretariats of the Council of Ministers of other European countries have roles and responsibilities different from the existing operational status of the Secretariat of the Council of Ministers of the Republic of Cyprus. However, the adoption and operation of best operating practices modeled upon the role of the Secretariats of the Council of Ministers of other European countries could provide multiple benefits to the aims of every government in the effective and qualitative accomplishment of its mission. As has been well demonstrated in practice, the current operating status and the upgraded role of the Secretariat, after the assignment of additional responsibilities and duties to both the Secretariat and the Secretary to the Council of Ministers, indicate with certainty that they can efficiently and effectively contribute to a positive outcome of the multifaceted efforts of the current government to carry out its mission. ■