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Mr. Justice Leonidas Parparinos, Supreme Court of Cyprus

ACA-Europe questionnaire

Due Process

Part A

Efficiency of Court Proceedings (at the expense of Procedural Guarantees)

1. Simplified proceedings

The Constitution of Cyprus introduces judicial review of administrative action as a separate jurisdiction, distinguishable from all other judicial processes[1]. Under *Article 146 of the Constitution,* the competence and jurisdiction is vested in the Administrative Court, as a court of first instance to judicially review acts or omissions of an administrative or executive nature on a number of grounds and in the Supreme Court as the appellate court of last instance, empowered to hear appeals solely on points of law (*Administrative Court's Act 2015, 131/2015 Act*). Most importantly, within Cyprus' legal framework, leave of the court is not required for an administrative/executive act to be contested to the Administrative Court or for a first instance judgment to be appealed to the Supreme Court.

It is commonly acknowledged that, if one seeks recourse in judicial review proceedings and generally, in legal proceedings, the court which decides the case will follow a whole set of procedural rules. Rules of procedure safeguard procedural fairness and facilitate in the proper administration of justice[2]. They provide the necessary framework needed for the judiciary to exercise its powers and jurisdiction. Compliance with the rules guarantees that fair procedural standards are observed and applied, absence of which would jeopardise the administration of justice as the procedure would lie entirely at the discretion of each individual judge deciding a case[3].

Simplified or accelerated procedures, in which these rules are relaxed, have not been introduced in Cyprus' administrative jurisdiction, in either court, that is the court of first instance- Administrative Court and the appellate court- Supreme Court. Each court has its own set of procedural rules to follow. Judges will hear a case, mutatis of the procedural, pre-trial and trial requirements laid down in their respective Procedure Rules.

First and foremost, it must be stated that the Supreme Court of Cyprus has the power to make its own Rules of Procedure. *Articles 135, 163 and 164 of the Constitution* together with *section 17 of the Administration of Justice Act of 1964, 33/1964 Act*, regulate the practice and procedure of the Court[4]. The power of the Supreme Court to regulate its own procedures and practice is very wide; inter alia, it

[1] Constitutionalism-Human Rights-Separation of Powers, Georghios M. Pikis, 2006, Page 113

[2] Mavroyenis v. House of Representatives, Electoral Application 1/95, 22/1/1996 (majority ruling), Panayiotis Georghiou (Catering) Ltd v. Republic (1996) 3 C.L.R. 323

[3] Panayiotis Georghiou (Catering) Ltd v. Republic (1996) 3 C.L.R. 323

[4] Panayiotis Georghiou (Catering) Ltd v. Republic (1996) 3 C.L.R. 323, Application Gennaro Perella, Civil Appeal 9169, 14/4/1995 (plenary)

may regulate the prescription of forms and fees, regulation of costs, time limits to be complied with, practice and procedure to be followed. Most importantly, the Supreme Court may regulate matters for the summary determination of any appeal or any proceedings before it on the grounds that it is frivolous or vexatious or instituted for the purpose of delaying the course of justice. *Article 134.2 of the Constitution* stipulates that the Supreme Court may strike out any case that appears to be prima facie frivolous, after hearing the parties' arguments and may dismiss it without a public hearing if it is satisfied that it is in fact frivolous. In practice, however, the Supreme Court does not dismiss an appeal without a public hearing.

Having said that, *Article 35 of the Constitution*, imposes a direct and positive obligation to all state powers, not only to pay close attention to human rights in the exercise of their powers, but also to secure the **"efficient application"** of those rights, **throughout the field of their activity**. The Constitution of the Republic of Cyprus, guarantees the protection of all basic human rights protected by the European Convention on Human Rights, and, in some instances, grants even higher protection, such as in the case of the right to property. The case law of the Supreme Court emphasises that respect for human rights must be uppermost in the mind of all state powers. Therefore, when the Supreme Court makes its Rules of Procedure, human rights guarantees are efficiently applied, as safeguarded by the Constitution.

The right to a fair trial is enshrined in *Article 30 of the Constitution* which is identical to *Article 6.1 of the ECHR*. It includes a number of subsidiary principles; to name but a few, (i) reasonable time to initiate administrative proceedings, (ii) effective access to a court, (iii) the right to a fair hearing, (iv) equality of arms, (v) the right to a trial within a reasonable time and (vi) public and duly reasoned judgments[5]. Fair trial standards are applicable at all stages of administrative proceedings, divided into three stages for the purposes of this questionnaire:

(A) Initiating the case
(B) Processing the case
(C) Deciding the case

(A) Initiating the case

The right to a fair trial concerns not only the conduct of the proceedings in court, but also includes the right to initiate proceedings[6]. The first procedural step a party must conform with is the limitation period for instituting judicial review proceedings. The Constitution introduces a strict time limit of 75-day period[7], within which acts or omissions of the Administration can be challenged by way of judicial review. *Section 13 of Administrative Court's Act 2015, 131/2015 Act,* introduces a second strict time limit of 42-day period, for the first instance judgment to be appealed to the Supreme Court. However, the Constitution also provides for one's right for the unimpeded access to the court for the assertion or vindication of his rights (*Article 30.1*) and the

[5] See also Bulut v. Austria, February 22, 1996, R.J.D. 1996-III, No. 5, para. 47, Borgers v. Belgium, October 30, 1991, Series A, No. 214-B, para.24, Krcmar v. Chech Republic, March 3, 2000, para. 43
[6] Golder v. the United Kingdom, February 21, 1975, ECHR, para. 36
[7] Article 146.3 of the Constitution

establishment by law of courts subordinate to the superior court in sufficient numbers for the undelayed administration of justice and the efficient application of human rights (*Article 158*). Nevertheless, the constitution and statute, respectively, recognise that the process cannot go on indefinitely. Limitation periods imposed by statute law (and not by the Constitution) flamed a constitutional issue that attracted the attention of the Court, that is whether they are reconcilable with freedom of access to the court safeguarded by *Article 30.1*. The answer to the question, as it emerges from the case law, may be summed up in the following proposition:

"The limitation of the time within which an entrenched right may be exercised is permissible so long as it is not restrictive to the point of violating the nucleus of the right. Freedom of access to the court assures amenity to ponder over one's rights and reflect upon them and latitude to prepare for their assertion."[8]

Likewise, where the access to a court is restricted by law or in practice, the ECtHR examines whether the restriction affects the substance of the right and, in particular whether it pursues a legitimate aim and whether there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved[9].

(B) Processing the case- Rules of Procedure

Time limits exist for the taking of most procedural steps. Similarly, format requirements are also regulated. A concise outline of the respective Procedure Rules follows for a better illustration:

Procedure before the Administrative Court- first instance: In order to identify the matters in dispute the parties must use the process of pleadings. Pleadings and procedure are governed by the *Administrative Court (No.1) Procedure Rules of 2015, Administrative Court (No. 2) Procedure Rules of 2017 and Supreme Constitutional Court Procedure Rules of 1962. Rule 4 and 5 of the 2015 Procedure Rules*, regulate time limits and the form pleadings must take. According to settled precedent law, points of law not pleaded clearly, remain unjustified and unsusceptible to judicial scrutiny[10]. In the case of ***Anthousi v. Republic***[11] the Court ruled that any laxity in this area would result in the ousting of the provisions of the Rules of Procedure and their role in the determination of disputed issues in the administrative trial. Once pleadings have been submitted, written addresses would need to be filed in turn, within specified time limits[12] and form[13], for advocacy/oral clarifications to be made thereafter[14]. Under *Rule 9*, each party has a given time to make its oral clarifications and in exceptional circumstances the Court may extend it

[8] Constitutionalism-Human Rights-Separation of Powers, Georghios M. Pikis, 2006, Page 63
[9] Ashingdane v. the United Kingdom, May 28, 1985, Series A, No. 93, para. 57
[10] Pavlides v. AHK, Case No. 227/2007, 20/3/2008, Stavros Zaharia v. Republic (2011) 3A C.L.R. 293
[11] (1995) 4C C.L.R. 1709
[12] Rule 7 of Administrative Court (No.1) Procedure Rules of 2015
[13] Rule 8 of Administrative Court (No.1) Procedure Rules of 2015 – written statements must be in the form of skeleton arguments, include solely the points of law supporting the annulment of the administrative decision or its uphold. Must also, conform to specifications as to structure and case law is submitted to the competent Registry in a different bundle.
[14] Rule 9 of Administrative Court (No.1) Procedure Rules of 2015

if it regards it just under the circumstances. The administrative file is submitted to court at this latter stage.

The principle of equality of arms, that is closely connected to the right to adversarial proceedings, entails that the parties must have the same access to the records and other documents pertaining to the case, at least insofar as these may play a part in the formation of the court's opinion[15]. Judicial review proceedings manifest features of both adversarial and inquisitorial systems. At the pre-trial stage (written statements stage) the aggrieved person can have access to his administrative file and other evidence that affect his legal rights[16]. All parties are entitled to see and challenge all the evidence relied upon before the court and to introduce evidence of their own in rebuttal. EU law also acknowledges the importance of such right under *Article 41(2) of the Charter of Fundamental Rights of the European Union*. It is settled law that inspection and disclosure of evidence is allowed when the documents are relevant[17]. Relevance might be direct or indirect, one that helps the party requesting disclosure in the advancement of his case or in undermining the opposing party's case or even one that might lead to one of the two said consequences taking effect. Furthermore, all relevant facts and documents that surround the case must be disclosed, so that the court can scrutinise the legality of the act[18]. As stressed in the cases of ***Kyriaki Georgiou v. Republic***[19] and in ***FBME BANK LTD v. Central Bank of Cyprus***[20], it is not for administration to decide what is necessary to be disclosed in court but ought to disclose fully all documents that led to the administrative decision taken and leave it to the court to evaluate the importance of each document[21].

Once at the hearing stage, the conduct of the trial is largely in the hands of the Judge who may order the submission of evidence, call witnesses and set trial issues[22]; features of the inquisitorial system. This 'peculiarity' of the administrative trial and the inquisitorial system in general, prohibits the submission of evidence and facts which were not before the public body and are hence not part of the administrative file, only but in very exceptional circumstances[23] and when the matter relates to asylum cases before the Administrative Court[24]. For the submittal of evidence which do not make the administrative file leave of the court is required,

[15] Ernst and others, 15 July, 2003, paras. 60-61, Theory and Practice of the European Convention on Human Rights, Pieter van Dijk and others, 4th edition, 2006, Page 580, see also Dombo Beheer v. the Netherlands, No. 14448/88, 9 September 1992, para. 33

[16] Republic v. D. Avlonitis & Sons Ltd (2000) 3 C.L.R. 137

[17] The National Bank of Greece, S.A v. Paraskevas Mitsides (1962) C.L.R. 40, KEAN SOFT DRINKS and others v. Republic, Case No. 1247/05, Date 25/9/2007

[18] C.D. Hay Properties Ltd v. Republic (1992) 3 C.L.R. 238, FBME BANK LTD v. Central Bank of Cyprus and others, Case No. 1024/2014, Date 18/12/2015

[19] Case No. 629/2009, Date 28/9/2010

[20] Case No. 1024/14, 18/12/2015

[21] See also C.D. Hay Properties Ltd v. Republic (1992) 3 C.L.R. 238

[22] Cyprus Administrative Law Manual, Nicos Charalambous, 3rd edition, 2016, Page 39

[23] Iacovides v. Public Service Commission (1997) 3 C.L.R. 28

[24] Section 11(3) of 131(I)/2015 Act

conditional to the fact that evidence is relevant to the issues of the case[25] as to aid the court in administering justice[26]. It is for this reason that the administrative file or files that disclose and make the case are unswervingly accepted as evidence[27].

Procedure before the Supreme Court- last instance: Pleadings are governed by the *Appeals (Judicial Review Jurisdiction) Procedure Rules of the Supreme Court of 1964. Rule 3* explicitly states that the provisions of *Order 35 of Civil Procedure Rules* are applicable, mutatis mutandis, in judicial review appeals. All appeals must be brought by written notice of appeal filed, within the appropriate period[28] and the notice must state whether the whole or part of the judgment is complained of, and in the latter case must specify such part. Also, the notice must state all the grounds of appeal and set forth fully the reasons relied upon for the grounds stated, on separate paragraphs followed by the justification for each ground[29]. It is settled precedent law that issues not raised during the proceedings at first instance cannot be raised on appeal, with the exception of public order grounds that may be raised by the court on its own motion[30]. Any notice of appeal may be amended at any time as the Supreme Court may think fit in the interests of justice[31]. The notice of appeal must, be served together with an office copy of the judgment upon all parties directly affected by the appeal[32]. The respondent can make a cross-appeal, by giving written notice of his intention, specifying in what respects he contends that the decision should be varied, to any parties or person who may be affected by his contention, and to the Registrar of the Supreme Court. Such notice must set forth fully the respondent's grounds and reasons therefor for seeking to have the decision varied on appeal[33].

Pre-trial procedure and hearing are governed by *Appeals (Pre-trial procedure, Written Skeleton arguments, Advocacy time limits and Summary procedure for striking out manifestly unfounded appeals) Procedure Rules of 1996*. During the pre-trial procedure, all written skeleton arguments are filed within the time frames specified by the Procedure Rules, unless the Court directs otherwise. Time frames may be abridged (or extended) if the court thinks fit. Most importantly, non-compliance with the time limits of the Court, does not grant authority to the competent Registry to erase a case from its records and ultimately result in its dismissal. Only the Court is empowered to dismiss/strike out a case[34]. Under *Rule 5 of the Procedure Rules of 1996*, the Supreme Court has the power to enter a case for hearing without undertaking a pre-trial procedure, whenever the court considers it

[25] Petrolina Ltd and others v. Cyprus Port Authority, Case No. 223/2000, Date 4/4/2002, Zarvos v. Republic (1989) 3(B) C.L.R. 106, Kyriakides v. Republic, 1 RSCC 66

[26] Tasni Enviro Ltd and Telmen Ltd v. Republic, Case No. 862/2005, Date 26/6/2008

[27] Constantinou v. Water Board Council (No. 1) (1992) 4 C.L.R. 3330

[28] Order 35, r.3 of Civil Procedure Rules

[29] Order 35, r.4 of Civil Procedure Rules

[30] Avraamidou v. CYBC (2008) 3 C.L.R. 88, Republic v. Koukkouri and others (1993) 3 C.L.R. 598, Raju Banik v. Refugees Review Authority (2012) 3 C.L.R. 50, Georghios Economides v. Republic (1998) 3 C.L.R. 47, 52, Lavar Shipping Ltd v. Republic (2013) 3 C.L.R. 260, Triantafyllides and others v. Republic (1993) 3 C.L.R. 429, 439, Kyprianou v. Republic (1993) 3 C.L.R. 510, 516

[31] Flecha Contracting Ltd v. M.C. Michael Development Ltd (2001) 1 C.L.R. 495

[32] Order 35, r.5 of Civil Procedure Rules

[33] Order 35, r.10 of Civil Procedure Rules

[34] SEK Association v. Republic (1992) 3 C.L.R. 1

to be just. However, the need for an expedient trial on the appeal is no reason for not following the pre-trial stage. Only where there are well founded reasons for circumventing the procedure, will the Court regard it just to do so. A party to the proceedings may apply for such circumvention to the competent Registry[35]. Under *Rule 10 of the 1996 Procedure Rules*, during the pre-trial procedure the Supreme Court may:

(i) strike out the appeal if it appears to be prima facie frivolous or vexatious or manifestly unfounded or instituted for the purpose of delaying the course of justice. The power for the summary determination of an appeal is to be exercised with restrain but without inhibition where the case is found to be such[36]. Before the court strikes out an appeal the appellant has the right to be heard either orally or in writing,

(ii) examine whether the appeal accords to the procedural rules and makes appropriate orders if otherwise. This reflects the power of the Supreme Court to ascertain that the procedural guarantees are followed and make orders accordingly,

(iii) examine whether the parties have comforted to any orders made, and

(iv) order the filing of written skeleton arguments relating to the grounds of appeal and cross-appeal (if any). Written skeleton arguments include concisely the argumentation of the parties, refer to the main case law, determine the essential facts of the case and must be filed within specific time limits as provided by the Rules of Procedure. Extension of time for the submittal of written skeleton arguments may be granted by the Supreme Court if it thinks it just for the interests of justice[37]. It will be granted if it will not affect the administration of justice and the procedural or essential rights of the other party[38]. "Extension of time relates to the course of the trial and the fact that it needs to be concluded within a reasonable time, as safeguarded by Article 30.2 of the Constitution"[39].

Once this stage has been concluded then the appeal is fixed for hearing[40]. Again, the parties have fixed time frames within which to make their oral clarifications and the court may extend them accordingly if it is just under the circumstances.

It is therefore, adduced from the above that in both instances the Rules of Procedure make provisions for the parties to present their case both orally and in writing. In the case of **Georghiades v. Registrar of Tax Department**[41] the appellant alleged that

[35] Supermarkets Association and others v. Republic (1997) 3 C.L.R. 142

[36] See also Pitsillos v. Attorney-General (1998) 3 C.L.R. 324, Justice Party v. Republic (1985) 3 C.L.R. 1621, Miliotis v. Republic (1998) 3 C.L.R. 324, Eleni Chrysostomou and others v. Constantinidou and others (1998) 3 C.L.R. 316

[37] Rule 12 of Appeals (Pre-trial procedure, Written Skeleton arguments, Advocacy time limits and Summary procedure for striking out manifestly unfounded appeals) Procedure Rules of 1996

[38] Strovolos Municipality v. Yiasemidou and others (1997) 3 C.L.R. 104, 109, Republic v. Christodoulou and others (1997) 3 C.L.R. 241, 244, Mavromoustakou v. Cydadiet (2001) 3B C.L.R. 850

[39] ibid

[40] Rule 13 of Appeals (Pre-trial procedure, Written Skeleton arguments, Advocacy time limits and Summary procedure for striking out manifestly unfounded appeals) Procedure Rules of 1996

[41] (2000) 3 C.L.R. 106

that his right to a fair trial was breached by the first instance court, however, the Supreme Court held that that his allegations were unfounded since he exercised both his right to file written statements and his right to an oral hearing in order to adequately present his case. Only in the last instance Court may the court forfeit the pre-trial stage (which includes the submission of written skeleton arguments) and proceed to hear the appeal. Nevertheless, throughout the procedure the Court guardians the process in accordance with the procedural standards of fairness that have to be observed and *Article 35 of the Constitution*, which imposes a direct and positive obligation on the judiciary, to secure the **"efficient application"** of human rights, throughout the field of their activity. The Rules of Procedure are sufficiently concerned with the promotion and observance of basic and generally accepted procedural principles as well as with the efficient application of all human rights protected by the Constitution and ECHR.

Fair trial standards and the rules of natural justice

Article 30 of the Constitution enshrines **judicial protection.** *Article 30.2* specifies that in the determination of one's civil rights and obligations or against any criminal charge faced, a person has the right to a fair and public hearing within a reasonable time by an independent, impartial and competent court, established by law, identical to *Article 6.1 of ECHR*. *Article 6.1 of the ECHR* applies to administrative proceedings provided the outcome is decisive for the individual's private rights and obligations[42].

The key principle governing *Article 30 of the Constitution* and *Article 6 of ECHR* is fairness. The "fairness" required by *Article 6.1 of the ECHR* is not "substantive" but "procedural", which translates in practical terms into adversarial proceedings in which submissions are heard from the parties and they are placed on an equal footing before the court[43]. Also, the requirement of fairness applies to proceedings in their entirety and not confined to hearings inter partes[44]. It is intended above all to secure the interests of the parties and those of the proper administration of justice[45]. The right is seen as holding so prominent a place in democratic society[46] that the ECtHR has stated that there is no justification for interpreting *Article 6.1* restrictively[47].

The rules of natural justice perform a similar function. Natural justice denotes that fair procedural standards must be observed. It is enshrined in *Article 30.2 of the Constitution*, which is, as aforementioned, identical to *Article 6.1 of ECHR*. The principle, part of the common law world, reflects that an adjudicator must be disinterested and unbiased (procedural impartiality) - *Nemo judex in causa sua,* allow

[42] Ringeisen v. Austria, July 16, 1971, para. 94, Ferrazzini v. Italy, July 12, 2001, para. 27, see also Konig, 28 June, 1978, para. 89

[43] Star Cate Epilekta Gevmata amnd others v. Greece (dec), No. 54111/07, July 6, 2010

[44] Stran Greek Refineries and Stratis Andreadis v. Greece, December 9, 1994, Series A, No. 301-B, para. 49, Ankerl v. Switzerland, October 23, 1996, Reports of judgments and Decisions 1996-V, para. 52, Centro Europa 7 S.r.l. and Di Stefano v. Italy [GC], No.38433/09, ECHR 2012, para. 197

[45] Nideröst-Huber v. Switzerland, February 18, 1997, Reports of Judgments and Decisions 1997-VII, para. 30

[46] Airey v. Ireland, October 9, 1979, Series A, No. 32, para. 24, Stanev v. Bulgaria [GC], No. 36760/06, ECHR 2012, para. 231

[47] Moreira de Azevedo v. Portugal, October 23, 1990, Series A, No. 189, para. 66, A Practitioner's Guide to the European Convention on Human Rights, Karen Reid, 2nd edition, 2004, page 58

any person who will be affected the right to be heard[48] and that the parties must be given adequate notice and opportunity to be heard - *audi alteram partem*, and be represented, either as a litigant in person or via an attorney. Those elements of judicial procedure are now regarded as the hallmark of a civilised society. The term, *audi alteram partem*, has an impressive ancestry; that no man is to be judged unheard was a precept known to the Greeks, inscribed in ancient times upon images in places where justice was administered[49]. *Audi alteram partem* rule portrays a basic requirement of the process of administrative decision-making as well. What the rule guarantees is an adequate opportunity to appear and be heard. In the case of ***Republic v. Zena Poulli (2001) 3 B C.L.R. 1060*** the Supreme Court held that where no service of process to the interested parties is made, the decision of the court is void and ordered the retrial of the case. The *ratio decidendi* of the judgment as per Mr. Justice Pikis (as he then was) is as follows: "No procedural rule is needed for the Court to fulfil its uppermost duty to justice and set aside a void decision. Once the fact of no service in the process came to its knowledge, the Court will act immediately after of course hearing all involved. A different approach would conflict the rules of natural justice, (…) 'It is, in my judgment, quite plain that where there has been no service of process any order made in the litigation in which process should have been served must necessarily be void, unless service has been in some way validly dispensed with.'" The case of ***Poulli*** was followed in the recent judgment of ***Chrysanthos Venizelos v. Republic***[50] where the Supreme Court applied its inherent jurisdiction to hold void an order / decision in the interests of justice, where there had been no service of process.

Fair trial standards and reasonable time

It is fair to say that just as a fair procedure cannot be wholly indifferent to the determination of truth, so it cannot be wholly indifferent to delay[51], since elicitation of rights and obligations is at issue. That time is a dimension of justice is widely accepted and reflected in the legal aphorism repeatedly stressed by the Supreme Court that justice delayed is justice denied[52] and that the timely administration of justice constituted an element of justice itself[53]. This aphorism accurately reflects the consequences of delay in the administration of justice. The dispensation of justice within a reasonable time is incorporated in *Article 30.2 of the Constitution* as a necessary element of a fair trial. Cases should be tried as quickly as possible as safeguarded by *Article 30.2 of the Constitution* and *Article 6.1 of ECHR*[54]. Rules of Procedure ensure that justice is not denied by delay and the court ensures that no party makes abuse of the process by maintaining procedural safeguards for the interest of the proper administration of justice which are also essential for obtaining correct judgments.

[48] Republic v. Zena Poulli (2001) 3 B C.L.R. 1060, Kazamias v. Republic (1982) 3 C.L.R. 239

[49] Republic v. Zena Poulli (2001) 3 B C.L.R. 1060, Judicial Review of Administrative Action, S.A. de Smith, 4th Edition, 1980, Page 157

[50] Revisional Appeal 67/2010, 1/2/2016

[51] Quality and Economy in Civil procedure. The case for Commuting Correct Judgments for Timely Judgments, A.A.S. Zuckerman, Oxford Journal of Legal Studies, Vol. 14, No. 3 (Autumn, 1994) pp. 353-387

[52] Agapiou v. Panayiotou (1988) 1 C.L.R. 257 (CA)

[53] Paporis v. National Bank of Greece (1986) 1 C.L.R. 578, Victoros v. Christodoulou (1992) 1 C.L.R. 512

[54] Pouyiouka and others v. Thrasyvoulou (1998) 1 C.L.R. 2014

(C) Deciding the case - Fair trial and duly reasoned judgments

Lastly, the proceedings must be concluded by a duly reasoned judgment; yet another cardinal and indispensable element of a fair trial as enshrined *in Article 30.2 of the Constitution* and *Article 6.1 of the ECHR*. A reasoned decision shows the parties that their case has truly been heard.

A duly reasoned judgment presupposes an analysis of the evidence adduced in the light of the issues as arising and defined by the pleadings, concrete findings as to the facts of the case and a clear judicial pronouncement of the court indicating the outcome of the case[55]. The Supreme Court may set aside judgments of the trial court if they lack due reasoning, if the judgment of the court was confined to recording the outcome of the case without reference to the reasons founding it[56]. Likewise, in ***Paphitis & Iordanous Constractors Ltd a.o. v. A.N. Stassis Estates Ltd. (1998)***[57] the judgment of the court was voided and retrial was ordered as it recorded nothing other than the conclusions of the court. The importance of reasoning and the implications of failure to provide it are articulated in the extract cited below from the case of ***Neophytou v. The Police (1981)***[58]:

"The supply of proper reasoning for the deliberations of the Court, (…), is mandatorily warranted by the Constitution, notably Article 30.2, and constitutes at the same time a fundamental attribute of the judicial process. (…). Any laxity in this area would inevitably undermine faith in the premises of justice. The need for proper reasoning is not only warranted by the interests of the litigants but also by the interests of the general public in the proper administration of justice. The impression of arbitrariness is the one element that must constantly be kept outside the sphere of judicial deliberations".

In ***Investment Group of "Lefkonikou" Co-Operative Ltd v. Lofiti***[59], the Court highlighted the structure and style of judgment writing which as enshrined in *Article 30.2 of the Constitution* and precedent law, must be well-reasoned. This entails the correct determination and consideration of trial issues, a summary of substantive evidence, its correlation with the findings and conclusions drawn as well as the with the verdict of the Court[60]. A judgment is read in its entirety. It is the Court's obligation to evaluate all evidence admitted and to draw conclusions on all contested issues, in order for the judgment to include the necessary juridical thought on all disputed issues[61].

The traditional common law approach has the advantage that judges can express themselves precisely as they so wish. They have the liberty to dissent as they see fit, or to concur for different reasons of their own. But, more importantly, judges must

[55] Pioneer Candy Ltd v. Tryfon and Sons (1981) 1 C.L.R. 540, Theodora Ioannidou v. Charilaos Dikeos (1969) 1 C.L.R. 540 (CA)
[56] Glyky v. Municipality of Limassol (1998) 1 C.L.R. 2319
[57] 1 C.L.R. 916 (CA)
[58] 2 C.L.R. 195 (CA)
[59] Civil Appeal 42/2011, 7/7/2017
[60] Kannaourou and others v. Stadioti and others (1990) 1 C.L.R. 35
[61] Christodoulou v. Aristodemou (1996) 1 C.L.R. 552

express their own reasoning in their judgments. The reasoning of judicial decisions can be said to be a species of accountability for judicial action[62].

Furthermore, it is of course the case that one of the fundamental principles on which the courts in Cyprus proceed is that of *stare decisis*. All the lower Courts are bound by the case law of the Supreme Court. Departure from established case-law warrants greater justification. In ***Atanasovski v. the former Yogoslav Republic of Macedonia***[63] the ECtHR held that the existence of well-established jurisprudence imposed a duty on the Supreme Court to make a more substantial statement of reasons justifying its departure from the case-law, failing which the individual's right to a duly reasoned decision would be violated.

Reform Programme

The Supreme Court in its Report issued in 2016 pronounced the engagement of a Reform Committee of Experts for the complete restructuring the Supreme Court in order to make it more efficient and able to meet the current needs of society and economy. It also specifies that currently, the concept of permanent Court Divisions within the Supreme Court have been adopted for a speedier administration of justice. Furthermore, recommendations have been made for the establishment of fast track appeal process, that is a process for separating appeals to be dealt with expeditiously, which would take into account the seriousness of the matters and amount in issue. As the Report stipulates 'it is not possible to continue with the present system in which an appeal concerning property worth millions of Euros receives the same priority as another appeal concerning a very small amount, which would not even have secured leave to appeal, had there been criteria for leave'.

PART B

Right to a Public Hearing

1. The right to an oral hearing means, in essence, that the person is provided with the opportunity to present his case orally before the court. It constitutes a fundamental right but not an absolute one. The choice between written or oral proceedings is determined by national law. As illustrated in Part A of the questionnaire, within Cyprus' administrative justice there are no administrative cases or court instances where only oral proceedings are allowed. Written, as well as oral representations make up the proceedings as a whole before both court instances. The Rules of Procedure provide for one exception, for the appellate court- Supreme Court, to exercise its discretionary power to circumvent the pre-trial stage of the procedure and proceed to hear oral representations without the submission of written statements. The Supreme Court may make such order only where there are well founded reasons for doing so. In practice however, it is very rare for the Supreme Court to exclude the pre-trial stage from the proceedings.

[62] Constitutionalism-Human Rights-Separation of Powers, Georghios M. Pikis, 2006, Page 80
[63] January 14, 2010, No. 36815/03, para. 38

The ECtHR has held that even in relatively trivial cases, a party cannot generally be denied a public hearing in court procedures aimed at simplifying or expediting cases[64].

2. It is in fact true that, one of the distinctive features of administrative justice is the common use of written proceedings by administrative courts. The right to an oral hearing as fundamental as it is, it is not however, an absolute right in administrative proceedings. An opportunity or right to be 'heard', does not necessarily mean an opportunity or right to be heard orally. The term 'hearing' is generally used in its broad sense to include the making of written representations. In a number of contexts, the courts have held natural justice to have been satisfied by an opportunity to make written representations and be able to present his case adequately in this way.

In administrative jurisdiction, written statements are an indispensable part of the proceedings in both court instances. Written statements are so indispensable that, if a party fails to file his written statement during the pre-trial stage, his failure is not without consequences. If the appellant fails to file his written statement, then the appeal is dismissed by the Court. The respondent's failure results in the appeal being fixed for hearing and the respondent cannot be heard. The same applies to cross-appeals (if any). At the end of each month the competent Registry prepares a list of appeals where the parties have failed to file their written statements and the Supreme Court will act accordingly[65]. It is of course the case, that reinstatement of appeals or cross-appeals is possible if the party can demonstrate reason beyond his control for not filing his written statement[66] and non-reinstatement would deprive him of his right to be heard.

Once written statements are filed, an oral hearing will follow and one is never excluded. Oral representations may become decisive for the fair resolution of the case. Likewise, the ECtHR in ***Fischer v. Austria***[67], held that unless there are exceptional circumstances that justify dispensing with a hearing, the right to a public hearing under *Article 6.1* implies a right to an oral hearing at least at one level of jurisdiction.

Administrative proceedings conducted only in writing would raise a constitutional point of concern since administrative proceedings conducted solely in writing mean that there is no court room hearing to observe. *Articles 134.1 and 154 of the Constitution* stipulate that court sessions of the Supreme Court for all proceedings are public but the court may hear any proceeding in the presence of the parties only, if it considers it to be in the interest of the orderly conduct or national security or public morals.

[64] Scarth v. UK, July 22, 1999

[65] Rule 13 of Appeals (Pre-trial procedure, Written Skeleton arguments, Advocacy time limits and Summary procedure for striking out manifestly unfounded appeals) Procedure Rules of 1996

[66] Rouvanias Ltd and others v. Republic (2000) 3 C.L.R. 191, Christodoulos Christodoulou v. Republic (2001) 3 C.L.R. 1134

[67] 26 April, 1995, Series A, No. 312

Article 30.2 of the Constitution guarantees that hearings of all courts must be held in public, except in exceptional cases for the interest of national security, or constitutional order, or public order, or public safety, or public morals or for the interest of juveniles, or the protection of parties' private life, or for special circumstances under the opinion of the court, or publicity will adversely affect the interests of justice. Likewise, similar provisions are provided in *Article 6.1 of ECHR*. In the case of ***Pretto***[68] the ECtHR set forth the rationale of this requirement as follows: "The public character of proceedings before the judicial bodies referred to in Article 6 para. 1 (…) protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts, superior and inferior, can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 para. 1 (…) namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention."[69] A public hearing assures the open administration of justice, a course in which the public too has a vital interest[70].

Nevertheless, the ECtHR will look at the realities of the procedure, the purpose underlying the guarantee rather than the formalities[71]. In other words, to establish whether a trial complies with the requirement of publicity, the ECtHR will consider the proceedings as a whole.

Since in the questionnaire special mention is made to technical issues, it would be worth noting that within Cyprus' legal system, it is established case-law that the court exercising administrative jurisdiction, does not assess nor engage itself with technical issues of the administration[72]. On technical issues, the administration is the sole arbiter of its decision and the court will only intervene if misconception of facts or abuse of power or failure to conduct a due enquiry[73] is found. Judicial review under *Article 146 of the Constitution,* is designed to scrutinise the legality of executive and administrative action or inaction. This kind of scrutiny, does not extend to the evaluation of the correctness[74] of those decisions by the judiciary; otherwise it would be encroaching on their sphere. So long as administrative bodies act within

[68] Pretto and others v. Italy, 8 December 1983, Series A, No.71

[69] Judgment of December 1983, para. 21, see also Diennet v. France, 26 September, 1995, Series A, No. 325-A para. 33, Martinie v. France [GC], No. 58675/00, ECHR 2006-VI para. 39, Gautrin amd others v. France, 20 May 1998, Reports of Judgments and Decisions 1998-III, para. 42, Hurter v. Switzerland, No. 53146/99, 15 December 2005, para. 26, Lorenzetti v. Italy, No. 32075/9, 10 April, 2012, para. 30

[70] Constitutionalism-Human Rights-Separation of Powers, Georghios M. Pikis, 2006, Page 78

[71] Axen v Germany, December 8, 1983, Series A, No. 72, para. 25

[72] Storey v. Republic (2008) 3 C.L.R. 113, Republic v. C. Kassinos Constructions Ltd (1990) 3 (E) C.L.R. 3835, Lambrou v. Republic (2009) 3 C.L.R. 79, Georghiou v. SALA (2002) 3 C.L.R. 475, Eva Ttousouna v. Republic (2013) 3 C.L.R. 151

[73] Republic v. Lefkou Georgiade (1972) 3 C.L.R. 594, 692-693, Nicolas v. Republic and others (1989) 3 C.L.R. 228, 236, Republic v. Matthew (1990) 3 C.L.R. 2452, Westpark v. Republic (1990) 3 C.L.R. 915, 921, Holy Archbishop of Cyprus and others v. Republic (1990) 3 C.L.R. 1175, 1185, Civil Servants Commission v. Andreas Anastasiades (1991) 3 C.L.R. 1, 10, Cyprus Broadcasting Corporation and others v. Sisel Holdings Ltd and others (2013) 3 C.L.R. 326, Podium engineering Ltd v. Republic (2008) 3 C.L.R. 430, Charalambos Christou Chomatenos v. Republic (2009) 3 C.L.R. 120, Logicom Public Ltd v. Tenders Review Authority and others, A.E. 153/2009, 14/1/2014

[74] The Administrative Court has the power to assess the correctness of the decision, in two exceptional cases of asylum and tax discrepancies, in accordance with the provisions of the Administrative Court's Act of 2015

the parameters of the law, and in Good Faith, they are the sole arbiters of their decisions.

The Court will only intervene if after taking into account all the facts of the case, it concludes that the findings of the administrative body are not reasonably sustainable, or they result from an error of fact or law or are in excess of its discretionary powers[75]. In essence, the court reviews the decision in order to ascertain whether:

- there is a clear statutory empowerment of discretion and its extent,
- the public body has exercised its discretionary powers and
- there has been sufficient enquiry of all relevant facts for the discretion to have been exercised correctly, reasonably and under no misconception.

Therefore, the court reviews whether the public body has abused its discretionary powers or acted ultra vires or in an illegal manner[76].

3. Oral proceedings cannot be carried out via videoconferencing. Physical presence is required. For example, absence during the pre-trial stage will result in the dismissal of the appeal or cross-appeal (if any). According to *Rule 11 of the 1996 Procedure Rules,* the Supreme Court may strike out an appeal or cross-appeal if the appellant or respondent, accordingly, is not present unless postponing it would be just for the interests of justice. Having said that, a videoconference system is currently installed and an upgrade has already been recommended[77] though, it is not used for the purposes depicted in the questionnaire. Currently, there has been no discussion on videoconferencing of oral proceedings.

4. There is no such possibility for oral proceedings to be carried anywhere other than a court room. The fact that a hearing may be open to the public in the formal sense may not however be enough where the proceedings are taking place outside normal court facilities. Thus, in ***Riepan v Austria***[78], where the trial took place inside a prison, the ECtHR found that practical obstacles to public attendance arose and that inadequate compensatory measures were taken to ensure that the public had notice that the hearing was taking place together with information about how to obtain access.

Similarly, in Cyprus' legal system, the court must ensure that the rights safeguarded by *Article 30.2 of the Constitution* are heeded and given effect throughout the trial. In ***Michail and others v. Poullou Brothers Ltd***[79] the first instance court proceeded to hear the parties in Chambers and not in open court, which was held to be in breach of the fair trial guarantee to a public hearing.

[75] Republic v. Georghiades (1972) 3 C.L.R. 594, Yuri Kolomoets v. Republic (1999) 4 A C.L.R. 443
[76] Cyprus Administrative Law Manual, Nicos Charalambous, 3rd edition, 2016, Page 304-305
[77] Report of the Supreme Court on the operational needs of the Courts and other related issues, June 2016, Page 46
[78] November 14, 2000, ECHR 2000-XII
[79] (2001) 1 C.L.R. 438 (CA)