



Seminar organized by the Supreme Administrative Court of
the Czech Republic and ACA-Europe

Limits of judicial guarantee

Brno, 9 September 2019

Answers to questionnaire: Cyprus



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ACA-Europe Seminar on Measures to Facilitate and Restrict Access to Administrative Courts

September 9, 2019

Nejvyšší správní soud Brno
(Supreme Administrative Court Brno)

Questionnaire

Introduction:

The role of the administrative judiciary determines the conditions under which administrative courts work. These include the limits on the right of access to these courts, as well as the rules on such cases potentially progressing further within the judicial hierarchy. It is an area defined by an ongoing tension between two principles: the right to a fair trial that would speak in favour of opening the gates of judicial review, with the efficiency of judicial review pulling in exactly the other direction, namely of limiting access to administrative courts, in particular the higher ones.

The seminar to be held in Brno, the Czech Republic, on September 9, 2019 at the Supreme Administrative Court, follows the path opened by the seminars in Dublin and Berlin. It shares the objective of contributing to mutual understanding of the scope of judicial review of administrative cases. Consequently, it broadens and deepens the topic of access to the courts. The seminar therefore deals with the issue before the administrative judiciary as a whole, including the administrative courts of lower instances. It covers both formal and material measures which either facilitate or restrict access to the courts.

The seminar attempts to merge the principles of fair trial and efficiency. Based on shared knowledge of member states, it aims to describe the areas where the administrative judiciary should remain open to litigants and to analyse those where it may constrain its current role or, on the contrary, may exceed it. In other words, it examines the proportionality of restrictions on access to the administrative courts.

I. The structure of the administrative judiciary

- a. Please describe briefly the structure of the administrative judiciary, i. e. how many instances your administrative judiciary (including all specialized jurisdictions, e. g. financial or social security) consists of and the relations of superiority and subordination between them, unless this information is available and up to date at the ACA-Europe webpage, Tour of Europe file.

Currently, the Court System of the Republic of Cyprus entails a two-tier structure. The Supreme Court and the lower, first instance courts. The Supreme Court is the highest court in the Republic.

*The first instance judicial review jurisdiction is vested in the Administrative Court, as a court of first instance, and in the Supreme Court as the appellate court of last instance. The Administrative Court commenced its operation in January 2016 and assumed the originating jurisdiction assigned to the Supreme Court by **Article 146 of the Constitution**.*

*Also, the establishment of an International Protection Administrative Court is underway. In fact, the **International Protection Administrative Court Act of 2018** has been enacted to fully harmonise national law with the **Directive 2013/33/EU**. Currently, the selection process of the most suitable judges to be appointed is about to be completed. The new Court is expected to operate within 2019.*

*An appeal may be brought before the Supreme Court against a decision of the Administrative Court. The Supreme Court is the competent court of last instance under the **Administrative Court's Law of 2015, L. 131/2015** and **Article 146 of the Constitution**.*

Lastly, the Supreme Court is undergoing reforms with the establishment of a three-tier structure. The establishment of a second-tier Court of Appeal is underway to carry on, inter alia, the competence and jurisdiction on judicial review appeals and allow the Supreme Court to focus on its role as the highest constitutional court in the land.

- b. How many administrative courts and judges are in each of the instances? Please give numbers relevant at the end of the year 2018.

(Note: if your administrative judiciary consists of two instances, use columns I. and II.; if it consists of more than three instances, please adjust the table. The same applies to all the tables used in this questionnaire.)

Instance	I.	II.	III.
Name	Administrative Court	Supreme Court	
Number of courts	1	1	
Number of judges	7 ¹	13	

¹ Expected to rise to 10 with the establishment of the International Protection Administrative Court

- c. How many judges are in all jurisdictions (i. e. administrative, civil and penal) altogether? Please give numbers relevant at the end of the year 2018.

122 judges².

Specifically:

Judges (District Courts, Assize Courts and all Courts of specialised jurisdiction including the Administrative Court): 109

Justices of the Supreme Court: 13 (the President and 12 Justices)

Note: *In all the subsequent sections please give answers for each of the instances of the administrative judiciary, even if it is not specifically mentioned in the question.*

II. Fees and access to the court

- a. Is access to the administrative court subject to a judicial (filing) fee? Please indicate the general principle (for exceptions see questions e., f. and g.). Answer yes/no.

Instance	I.	II.	III.
Judicial fee	yes	yes	

- b. If you answered *yes*, what is the amount of this fee (in euro)?

The fee for lodging a recourse for judicial review to the Administrative Court is €138. Additional fees are payable for interlocutory applications.

*By virtue of **Article 163.2(c) of the Constitution**, the Supreme Court is empowered to issue Rules of Procedure in order to prescribe forms and fees for all proceedings before it. A fee of €194 is payable upon lodging an appeal of revisional jurisdiction. Additional fees are payable for interlocutory applications.*

*Court fees are payable in the form of stamps, as provided by the **Court Fees Order of 1953** (as amended).*

- c. Is the amount of the fee in each of the instances flat or can it differ? If the amount can differ, under what conditions and how (e. g. when the petitioner is required to correct or eliminate faults in the petition, the fee rises)?

The amount of the aforementioned fees is flat. The fees are reduced only if the applicant is a litigant-in-person. In that case the fee for lodging a recourse for judicial review at

² The number is expected to rise once the aforementioned reforms, reference to which was made in the answer to question I.a., take effect.

the Administrative Court is €96 and for an appeal of revisional jurisdiction at the Supreme Court, the fee of €159 is payable.

Additional fees are payable for interlocutory applications, i.e. for an application to amend the pleadings. Currently, the amount of €24 is payable for an interlocutory application filed in the Administrative Court and in the Supreme Court.

- d. In what phase of the proceedings does the petitioner have to pay the fee (e. g. with the petition, after the proceedings commence, after the decision of the court is delivered)? What are the consequences of not fulfilling the duty to pay the fee?

*The aforementioned fees must be paid upon lodging the recourse or appeal. By virtue of **Rule 6 of the Court Fees Order of 1953**, the competent Registry will only file the recourse / appeal if it is duly stamped.*

- e. Are any petitioners (e. g. a public authority) or areas of disputes exempt by law from the duty to pay the fee?

*The State (public authorities) is represented by the Office of the Attorney-General and is exempt from paying any fees. Furthermore, by virtue of **Rule 9 of the Court Fees Order of 1953**, no fees prescribed to be taken by any Court shall be taken where the party chargeable therewith shall produce and file with such Court, a statement signed by or on behalf of the Attorney-General, the District Officer, or the Head of a Department that he sues or defends, as the case may be, as representing the Government, and stating the Law under which he is entitled to sue or defend.*

Semi-governmental organisations, on the other hand, are represented by lawyers and advocates of their choice and are subject to the prescribed fees.

The same applies to both instances.

Eligible legal aid applicants are provided free legal services, i.e. in administrative proceedings before the Administrative Court for international protection and refugee applicants. The applicant's attorney, however, is subject to the prescribed fees, which he/she may claim by the State as part of his legal costs and expenses.

- f. Are non-governmental organizations exempt from the duty to pay the fee?

Non-governmental organisations are subject to the prescribed fees of each instance and are hence, not exempt from payment.

- g. Can a petitioner be exempt from the duty to pay the fee by decision of the court? What are the conditions for the exemption?

*By virtue of **Rule 6 of the Court Fees Order of 1953**, this is only possible in the case where the Court has power to authorise the having or taking of such proceedings without payment of a fee, and the leave of the Court in that behalf has been obtained.*

- h. Under what conditions is the fee returned to the petitioner (e. g. in case of the withdrawal of the petition)? Is the fee returned in full or partially?

Once a recourse or a revisional appeal has been filed, regardless of whether it is withdrawn at a later date, the fees are not recoverable, neither in full nor in part.

- i. May a petitioner be required to pay a deposit before the proceedings commence? If you answered *yes*, please explain under what conditions.

No such requirement is in place.

- j. Are frivolous petitions penalized? Please explain how and under what conditions.

No, frivolous recourses (first instance) or revisional appeals (last instance) are not penalised in terms of fees. Nor is there a fine for abusive, unjustified, frivolous or vexatious recourses or revisional appeals. Vexatious, abusive etc recourses or revisional appeals, on the other hand, may be “penalised” in terms of costs.

- k. Finally, is there any analysis (based on empirical studies or just your personal assessment) of the correlation between the amount of the fees payable within your system of administrative justice and the degree of any incentive or dissuasive effect those fees have on petitioners (in general or particular groups thereof) bringing or not bringing an action?

*Several factors need to be taken into account in answering this question and hence the level of fees cannot be looked at in isolation. First, **Article 30.1 of the Constitution** acknowledges the right of unimpeded access to court for the assertion or vindication of one’s rights. Furthermore, no leave of the Court is required for lodging a recourse to the Administrative Court or for a revisional appeal to the Supreme Court. On the other hand, no *actio popularis* is acknowledged in Cyprus. This means that a number of ‘criteria’ must co-exist for an administrative decision to be amenable to judicial review (existing, direct and legitimate interest / standing of the applicant, the decision must be justiciable etc.). Lastly, court fees must be paid as prescribed. Considering that the prescribed fees are reasonable and not excessive, they do not stand in the way of the right of access to justice.*

Hence, the level of the prescribed fees cannot be isolated as the determinative factor for providing an incentive or a dissuasion to judicial review.

III. Costs of proceedings

- a. Can the court adjudicate the compensation of costs of proceedings to the participant? If you answered *yes*, please explain under what conditions?

Legal costs are at the discretion of the court. As a general rule, costs follow the event of the case. Therefore, the unsuccessful applicant / appellant will be ordered to pay all costs of the proceedings, unless serious reasons justify departure from the general rule. Such reasons relate to the causative factor of incurred trial costs or part of them and the Court, both of first instance and last instance must specify and justify the causative factor for departing from the general rule.

In interlocutory applications, the Courts have the power to make the following cost orders: costs follow the event of the application, costs follow the event of litigation, costs reserved, costs in the cause, costs thrown away, no order as to costs.

- b. Can the court adjudicate the compensation of costs of proceedings to the public authority? If you answered *yes*, please explain under what conditions? In particular, are there any cases/situations where by default, the costs incurred by the public authorities are not recoverable, even if the (private) petitioner was not successful (and, following the normal rule that costs follow the event, a costs order should normally be awarded in favour of the public authority)?

Yes, the public authority is entitled to legal costs if successful, just like any other successful party to a proceeding, subject to what was mentioned in the answer to Question III.a..

*Furthermore, despite not being a party to the proceedings, the Attorney-General may be granted permission to act as an *amicus curiae*, under certain circumstances and only when, he ought to be heard and express his arguments on the issues concerned, from the public's point of view. As an *amicus curiae*, the Attorney-General is not entitled to the legal costs incurred by his Office.*

- c. Can the court decide not to adjudicate the compensation of costs of proceedings, although the conditions described in answer to question a. are fulfilled? If you answered *yes*, please explain under what conditions?

As mentioned in the Answer to question III. a., the award of costs falls under the discretion of the Court. The Court will specify and justify his/her decision for departing from the general rule which dictates that costs follow the event. A no order as to costs can reasonably be made if the Court considers that each party must bear its own costs.

*Demonstrative of this and subject to **Rule 35 of the Civil Litigation Rules** applicable by virtue of **Rule 3 of Appeals (Revisional Jurisdiction) Court Rules of 1964**, an appeal from a decision solely on the ground of a wrong direction in regard to costs, or from an order made on taxation or review of taxation, shall not be entertained except with the leave of the Supreme Court or a Judge thereof, which shall not be given unless it is made to appear that the direction or order is contrary to the provisions of any law or Rule, or*

is based on a misconception of fact, or directs any party to pay costs incurred or occasioned, without sufficient reason, by another party.

- d. Are there any specific areas of administrative law where different rules to those discussed in this section apply? What areas are those and how and why do the rules applicable therein differ?

No, there are no different rules for particular areas of administrative law.

- e. How does the court determine the amount of the costs of legal representation as a part of compensation of costs? Is it defined by a tariff (in that case describe the principal method of calculation), or is it based on a price stipulated between an attorney and his client (in that case describe also whether there is any limitation)?

Unless the Court itself makes a particular determination as to costs to be awarded, costs for legal representation are assessed, under Court's order, by the competent Registrar and are of course, subject to being approved by the Court. Either way, the costs are determined subject to the provisions of the below mentioned Rules of Court.

*For judicial review recourses before the Administrative Court (first instance), costs are assessed in accordance with the provisions of Appendix 'A' of the **Administrative Court (Amendment) (No.2) Rules of Court of 2017** which lay down the prescribed levels. The Rules of Court make provisions for the upper and lower limits of legal costs (range) in relation to a number of legal services. For example, for the drafting of a recourse the Rules provide for a range between €170-€272. For an oral hearing preparation, the legal costs may be assessed between the range of €200-€507. For oral representations (advocacy) an award between €303-€510 can be made.*

*For revisional appeals before the Supreme Court (last instance), costs are assessed under the **Civil Procedure Court Rules**, as recently amended by the **Civil Procedure (Amendment) (No.5) Court Rules of 2017** on the scale of €10.000-€50.000. Similar to the provisions of the Administrative Court, the Rules of Court make provisions for the upper and lower limits of legal costs (range) in relation to a number of legal services. For example, for pre-trial appearance before the Court costs of €250-€676 may be awarded. For the preparation of written skeleton arguments where no cross-appeal was filed, the amount of €348-€1.012 may be awarded. Where a cross-appeal was filed the amount of €424-€1.214, may be awarded. For a hearing before the Court the amount of €261-€759 may be awarded.*

IV. Representation

- a. Does a party have to be represented by a legal professional? Answer yes/no.

Instance	I.	II.	III.
Representation of petitioner	No	No ³	
Representation of opposing party	Yes ⁴	Yes ⁵	

- b. Does your legal order provide free legal aid for participants (e. g. representation appointed at the request of a participant)?

*By virtue of sections 4, 5, 6, 6A, 6B, 6C, 6D, 6E and 6F of the **Legal Aid Law of 2002, L. 165(I)/2002** and in full compliance with the Covenant on Jurisdiction and the Recognition and Enforcement of Judgments in Family matters and in harmonisation with the Republic's obligations stemming from Chapter 24 of the Justice and Home Affairs, as well as with Regulation 604/2013 and Directives 2005/85/EC, 2008/115/EC, 2011/93/EU, 2013/32/EU, 2013/33/EU and in compliance with Article 47 of the Charter of Fundamental Rights of the European Union, legal aid is available to eligible applicants under certain conditions in the following proceedings:*

- *Criminal proceedings before a court, against any person, for an offence punishable with a custodial sentence of at least one (1) year. It includes interrogation procedures and any other procedures undertaken before the case is lodged in Court.*
- *Civil (filed against the Republic) and Criminal proceedings, before a court, for violation of human rights.*
- *Family proceedings relating to bilateral or multilateral Agreements signed by the Republic of Cyprus or for parental care, alimony, child recognition, adoption, property disputes among spouses and all other relevant marital and family matters.*
- *Cross-border proceedings.*
- *Administrative proceedings before the Administrative Court for international protection and refugee applicants.*
- *Administrative proceedings before the Administrative Court for recourses lodged by illegal third-country nationals.*
- *Civil proceedings before the District Courts, lodged by victims of trafficking or by children victims of child pornography, sexual harassment and/or sexual molestation, seeking damages.*
- *Proceedings before any Court relating to the sale of mortgaged land.*

³ No, if the appellant is a private individual. However, if the appellant is the State, then, representation will take place through the Office of the Attorney-General. Semi-governmental organisations, on the other hand, are represented by lawyers and advocate of their own choice.

⁴ The Office of the Attorney-General, represents the State and acts for the respondent to the recourse, that is the public authority. Semi-governmental organisations, on the other hand, are represented by lawyers and advocates of their choice.

⁵ Yes, if the respondent to the appeal is the State. If the respondent to the appeal is a private individual, he or she may choose to proceed as a litigant-in-person.

- ***Administrative proceedings before the Administrative Court lodged by a citizen of the European Union or a member of his family, relating to specified legislative provisions.***

- c. What are the forms and conditions of free legal aid? Please explain for all instances.

*By virtue of section 2 of the **Legal Aid Law of 2002, L. 165(I)/2002**, legal aid may be offered in the form of advice, assistance and legal representation.*

The conditions for eligibility are mainly concerned with:

- *the type of proceedings. Only prescribed proceedings under sections 4, 5, 6, 6A, 6B, 6C, 6D, 6E and 6F fall under the scope of free legal aid,*
- *an assessment of the applicant's financial resources, and*
- *the severity of the case. Free legal aid is only available where it is justified by the seriousness of the case and for the interest of justice.*

- d. Is there any connection between exemption from the duty to pay the judicial fee and the right to free legal aid?

No, there is no connection between the two. Court fees must be paid regardless of the fact that the Court issued a free legal aid order to an applicant.

V. Exclusions and immunities

(Note: If you answer yes to any question in this section, please provide details.)

- a. Are there any mandatory steps after the public authority delivers its final decision and prior to filing a petition to an administrative court (e. g. mediation)?

The only mandatory step on the part of administration is the publication of the decision or where the applicable statute imposes no such obligation on the administrative body then administration is under a duty to bring it to the knowledge (notification e.g through the post) of the adversely affected person. Therefore, where the applicable statute, conferring power on the administrative body to issue a decision, envisages publication as a necessary step for the decision's emergence, then the publication is treated as an essential formality, a necessary incident for the genesis of the decision. Decisions are published in the Official Gazette of the State.

On the applicant's part, he/she may be obliged to seek redress before a higher organ first, if the law so provides. In particular, subject to the provisions of the applicable law, an administrative act, decision or omission may be subject to a hierarchical recourse first before a higher organ and before the aggrieved person lodges a recourse before the Administrative Court with a subsequent right to an appeal before the Supreme Court, as the competent court of last instance. If the law makes such provisions, then the aggrieved person is obliged to follow the aforementioned course of action.

- b. Are there any final administrative acts of a public authority which are not reviewable at all?

*Only acts, decisions or omissions of administrative authorities emanating from the exercise of powers in the public domain are amenable to judicial review under **Article 146.1. of the Constitution** Administrative authorities act unilaterally conferring rights or imposing obligations upon a person. The unilateral imposition of the will of administration is the determinative factor for the content of the decision; a species of imperium.*

Acts not amenable to judicial review:

- *administrative acts that fall in the domain of private law*
- *acts of government (actes de gouvernement)*
- *decisions of the President of the Republic in the exercise of the prerogative of mercy entitling the President to remit, suspend or commute a sentence of a court of law with the consent of the Attorney-General*
- *decisions of the Attorney-General to initiate; discontinue or withdraw criminal proceedings*
- *decisions of the Supreme Council of Judicature*
- *regulations and by-laws issued by an organ of the Executive*
- *policy decisions of administrative authorities*

- c. Is there any particular public authority whose administrative acts are not subject to judicial review (e. g. acts of a head of state)?

Please see Answer above.

- d. Are there any final acts of a public authority which are reviewable by a (state or other) authority other than the administrative court?

If the law so provides and subject to the statutory provisions of the applicable law, an administrative act, decision or omission may be subject to a hierarchical recourse first before a higher organ and before the aggrieved person lodges a recourse at the Administrative Court with a subsequent right to an appeal before the Supreme Court, as the competent court of last instance.

Furthermore, the Administrative Court is competent to decide on the legality of an expropriation decision taken. However, Civil Courts and not the Administrative Court are competent to decide on a claim for damages in relation to an expropriation case.

Lastly, decisions of administrative bodies emanating from the exercise of powers in the private domain are not amenable to judicial review before the Administrative Court but the aggrieved may seek redress before the Civil Courts, as the competent courts established by law to determine any issue affecting the civil rights and obligations of a person⁶. For example, the provision of services by the Land Registry, in relation to

⁶ *Article 30.2 of the Constitution*

decisions which identify a person's private law rights (e.g. a decision of the Director of Land and Surveys Department to locate the boundaries of immovable property in case of doubt or dispute; also, a decision of the Director to correct errors in the Land Registry).

- e. Are there any cases which are reviewed by the administrative courts other than review of administrative acts of a public authority (e. g. review of elections, dissolution of a political party)?

Bearing in mind the uniqueness of the Supreme Court of Cyprus in terms of jurisdictions and the plethora of them that fall under its ambit of powers and competences, the Supreme Court has the following powers that stretch beyond its role as the appellate revisional court:

Powers and jurisdictions of the Supreme Court of Cyprus:

- *Bills and Acts of Parliament may be referred to the Supreme Court by the President of the Republic to decide a priori upon their constitutionality, that is whether they are compatible with the provisions of the constitution.*
- *It is the Constitutional Court of the land, with jurisdiction to annul any law which infringes provisions or entrenched principles of the Constitution (A posteriori control).*
- *It is the Appellate Court of last instance, empowered to hear Civil and Criminal appeals. The Supreme Court may uphold, vary or set aside the first instance judgment or may even order the retrial of the case. Civil and Criminal appeals are adjudicated by panels of three (3) Justices.*
- *It is the Appellate Revisional Court, empowered to hear appeals against decisions of the Administrative Court. Again, in exercising its jurisdiction as an Appellate Administrative Court, the court sits in formations of three (3) Justices.*
- *It has jurisdiction to hear appeals against decisions of the Family Court.*
- *It is the Electoral Court, with exclusive jurisdiction to hear and decide upon election petitions, concerning the interpretation and application of electoral laws.*
- *It has jurisdiction to hear Admiralty cases both at first and last instance. At first instance, the case is heard by a single judge and on appeal by the Full Bench (5 Justices) of the Supreme Court.*
- *It has exclusive jurisdiction to issue Prerogative orders, namely the prerogative orders of Habeas Corpus, Certiorari, Mandamus, Prohibition and Quo Warranto.*
- *Lastly, it has exclusive jurisdiction to sit as a Council and decide upon impeachment cases of the Highest Officials of the Republic.*

VI. Selection by lower and higher jurisdictions

a. Do the administrative courts have power to select cases? Answer yes/no.

Instance	I.	II.	III.
Power to select cases	No*	No*	

* The Courts have power however, to decide, either *ex proprio motu* or by application of a party to the proceedings, whether a case will be heard by the plenary of the Court.

First instance

As a general rule, cases before the Administrative Court are heard by a single judge. In exceptional cases, the Administrative Court may decide that a particular case ought to be heard by the plenary of the Court. In particular, under section 11 of the **Administrative Court’s Law of 2015**, with the suggestion of the President of the Administrative Court or of an Administrative Judge, before whom a particular case is being heard, the Administrative Court may decide that the case should be heard by the full bench of the Court.

Last instance

Under section 13 of the **Administrative Court’s Law of 2015** and section 11 of the **Administration of Justice Law of 1964**, in exercising its jurisdiction as an Appellate Administrative Court against decisions of the Administrative Court, the Supreme Court sits in formations of three (3) Justices. Appeals raising issues of uppermost importance are heard by the Full Bench of the Supreme Court. Issues of constitutional nature are rendered amongst those that call for plenary adjudication.

b. If you answered yes, under what conditions can they select cases? Are there any objective criteria stated in the legislation/case law of the court or is the selection a matter of full discretion?

Please see Answer to VI. a. above.

c. Is the power to select cases restricted to certain fields of law? Please give details.

There is no case selection process in either court. The Courts have power however, to decide, either *ex proprio motu* or by application of a party to the proceedings, whether a case will be heard by the plenary of the Court. This power to refer a case to the plenary is not limited to specific fields of administrative law. The Court (meaning both the Administrative Court and the Supreme Court) may decide, for any case being heard before it, that it should be heard by the full bench of the Court. In relation to the Supreme Court, plenary sessions are more common when issues of constitutional nature are raised.

- d. Does the court have power to select cases that fall under administrative criminal law? If it does, are the conditions for selection the same as in others fields of law? Please give details.

No, the Court does not have such power.

- e. Please specify who selects the cases to be heard and how. Is there a special judicial panel or case selection procedure for that purpose? Is that procedure only a matter for the higher jurisdiction that will ultimately hear the case, or do the lower courts also somehow participate in that selection?

There is no selection process as asked in the Question. However, in relation to the selection of cases to be heard by the plenary the process is as follows:

First instance

*Under section 11 of the **Administrative Court's Law of 2015**, with the suggestion of the President of the Administrative Court or of an Administrative Judge, before whom a particular case is being heard, the Administrative Court may decide that the case should be heard by the full bench of the Court.*

Last instance

Initially, the revisional appeal against a decision of the Administrative Court is taken before a panel of three(3) Justices. The same panel will decide whether to refer the appeal to the plenary and the matter is not decided by another panel nor by the full bench itself.

- f. If the court decides to select/not to select a case, is it obliged to notify a petitioner? If it is, does it deliver a formal decision (e. g. rejects the petition) or does it notify a petitioner by an “informal” letter?

Not applicable, since there is no selection process in either the Administrative Court nor the Supreme Court.

- g. Is the court obliged to give reasons when it decides not to select a case?

Not applicable. See above.

- h. If a lower court decides not to select its own case, is the decision reviewable by a higher court? Please give details.

Not applicable. See above.

- i. Does a lower court have power to select cases of a higher court? If it does, is its selection reviewable by a higher court? Please give details.

The Administrative Court has no such power.

- j. Does a judge determine the order of the cases to decide?

Upon filing, recourses and revisional appeals are allocated a serial number, by the competent Registry. According to their serial number, they are then allocated to a single-judge bench of the Administrative Court, in the case of judicial review recourses and to a panel of three (3) Justices of the Supreme Court, in the case of revisional appeals against decisions of the Administrative Court. Once the case has been allocated to a Judge / Panel, pre-trial procedures, direction hearings and interim applications, all take place prior to setting a hearing date. The general approach of the judiciary is to give priority to the hearing of older cases, but this of course depends on the parties' compliance to the Court's pre-trial directions and case management.

VII. Other measures

- a. Does your legal order have other measures which simplify or restrict access to the courts? Please explain.

*Within Cyprus' legal framework, for an administrative or executive act to be challenged, leave of the court is not required. Similarly, no leave of the Supreme Court is required for the first instance judgment to be appealed. The unimpeded access to the Court for the assertion of one's rights is acknowledged by **Article 30.1 of the Constitution** as a fundamental right of the individual.*

*Having said that, it should be borne in mind that the Constitution introduces a strict time limit within which administrative decisions can be challenged by way of judicial review. Such recourse shall be made within seventy-five (75) days from the day the decision was published or, in the case of an omission, when that omission came to the knowledge of the person filing the recourse. Similarly, section 13 of **Administrative Court's Law 2015, L. 131/2015**, introduces a second strict time limit of 42-day period, for the first instance judgment to be appealed to the Supreme Court. These are strict time limits. They cannot be extended but in exceptional cases. Reasons of force majeure, constitute good and sufficient reason for the time limitation to be extended.*

*In addition, only persons adversely affected by the decision or the omission prescribed in Article 146.1 of the Constitution are legitimised to file a judicial review claim. A person seeking judicial review must have an existing legitimate interest and be adversely and directly affected by the decision or omission. No *actio popularis* is available in Cyprus⁷. The right of appeal lies with the losing party. The winning party cannot appeal against the first instance judgment unless the Administrative Court has ruled against him on an issue that concerns him and that issue will acquire the force of *res judicata*.*

*In addition to the above, once a party files a judicial review recourse/appeal, the Court will assess *ex proprio motu* the following:*

- *Whether the decision was taken by an organ, or authority or person exercising executive or administrative authority in the domain of public law.*
- *The executory nature of the administrative decision; that is an action expressive of the will of the administrative body.*

⁷ *Pitsillos v. C.B.C. (1982) 3 C.L.R. 208*

- *Judicial review may only be brought by an applicant who has an existing and direct legitimate interest in the matter.*
- *Strict time limitation conditions (as explained above).*

Furthermore, the Court may raise the following points of law ex proprio motu:

- *The Supreme Court, by virtue of **Article 134.2 of the Constitution** and **Rule 10(i) of the Procedure Rules of 1996**, may strike out any appeal that appears to be prima facie frivolous, after hearing the parties' arguments and may dismiss it if satisfied that it is in fact frivolous.*
- *Validation of the notification of the administrative decision to parties affected and the information necessary to fix an affected party with knowledge.*
- *The decision was taken by a non-competent authority.*
- *Breach of statutory provisions (procedural impropriety).*
- *Unlawful composition of the administrative authority.*

*Also, by virtue of section 13 of the **Administrative Court's Law of 2015**, appeals against decisions of the Administrative Court can be lodged on points of law only. Therefore, in an appeal against a decision of the Administrative Court where the legality of the decision was tested, the Supreme Court, in its appellate revisional jurisdiction will restrict its review of the first instance decision on points of law only. In an appeal where the Administrative Court has jurisdiction to review both the legality and the correctness of the decision, again the Supreme Court, in its appellate revisional jurisdiction will restrict its review of the first instance decision on points of law only. Findings of fact of the first instance Court can be reviewed by the Supreme Court when the findings of the Administrative Court as to the facts of the case were drawn based on a misinterpretation/misguidance of the law or they contrast the evidence/content of the administrative file or of evidence heard during trial or the findings of fact are not sustainable⁸.*

Lastly, on appeal, it is settled precedent law that issues not raised during the proceedings at first instance cannot be raised for the first time on appeal, with the exception of public order grounds that may be raised by the court of its own motion⁹.

⁸ *Cyprus' Administrative Law Manual, Nicos Charalambous, 2016, 3rd edition, Page 53*

⁹ *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*

VIII. Statistics

- a. Please give exact numbers of case load and number of cases decided for the years 2016, 2017 and 2018 in each of the instances of the administrative judiciary (including all specialized jurisdictions, e. g. financial or social security).

Instance	I.	II.	III.
Case load 2016	9 280	933	
Cases decided 2016	1 740	116	
Case load 2017	9 380	822	
Cases decided 2017	1 355	127	
Case load 2018	9 975	1 090	
Cases decided 2018	4 275	155	

Mr. Justice Leonidas Parparinos

Supreme Court of Cyprus