

ADMINISTRATIVE JUSTICE IN EUROPE

The Supreme Court of Cyprus

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INTRODUCTION (History, purpose of the review and classification of administrative acts, definition of an administrative authority)

1. Main dates in the evolution of the review of decisions and actions of administrative authorities.

Cyprus became an independent state on 16th of August of 1960. Prior to its independence, Cyprus was a British colony.

The Constitution of Cyprus, signed on the aforementioned date, introduces judicial review of administrative action as a separate jurisdiction, distinguishable from all other judicial processes. Founded upon the continental prototype, Article 146 of the Constitution made judicial review a permanent feature of Cyprus' judicial system and the system of government in general. The effect of Article 146 was to render the right to judicial review, justiciable at the instance of a person or body whose legitimate interests were prejudicially affected by the act or omission of the administrative authorities. Under colonial legislation, public law rights other than those deriving from criminal law were not acknowledged to a person, except rights associated with the protection against arbitrary detention for which the writ of habeas corpus was available¹.

The Constitution of 1960, establishes 2 Supreme Courts:

- (a) The Supreme Constitutional Court, and

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

(b) The High Court of Justice

The competence and exclusive jurisdiction for judicial review was vested in the Supreme Constitutional Court. However, intercommunal upheavals that took place between 1960 and 1964 and the decision of the Turkish-Cypriot leadership to withdraw all participation from the constitutional functions, had grave consequences to Constitutional order. In fact, the judiciary and the State were paralysed. It is for this reason, that the Law of Necessity was invoked to secure state survival and the **Administration of Justice (Miscellaneous Provisions) Law of 1964**, was enacted to secure the functionality of the Judiciary to enable it to fulfil its constitutional role. The changes made by the Act, affected, *inter alia*, the exercise of judicial review under Article 146. The 1964 Act assigned jurisdiction to a single Justice of the Supreme Court, subject to an appeal to a Bench of at least three (3) Justices of the Supreme Court, a provision which was amended in 1991, in order for the appellate jurisdiction to be exercised by a Bench of five (5) Justices of the Supreme Court.

The constitutionality of the aforementioned Act was tested before the Supreme Court in the famous case of **Attorney General v. Moustafa Ibrahim of 1964**. In **Ibrahim**, the Court unanimously held that the Law of Necessity justified the creation of the present-day, unified Supreme Court.

The unified Supreme Court carried on the first instance judicial review jurisdiction as explained above, until the end of 2015. The Constitutional amendment of 2015 placed the competence and jurisdiction to the newly-founded Administrative Court, as a court of first instance, and in the Supreme Court as the appellate court of last instance. Article 146 of the Constitution now provides as follows:

“The Supreme Court shall have exclusive jurisdiction to adjudicate finally on an appeal made against a decision of the Administrative Court which has exclusive jurisdiction to adjudicate on first instance on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person.”

A further milestone year for administrative justice was the year of 1999. In 1999, the General Principles of Administrative Law codified the case law of the Supreme Court into a statute with the primary aim to safeguard administrative decision-making, by the provision of rules. The legal framework of administrative principles is governed by the **General Principles of Administrative Law, Law of 1999**. The statute incorporates the principles of fairness, competence, proper administration- bona fide and proportionality, legality, representation, natural justice- impartiality and right to be heard, equality, right to judicial review and to an appeal. Administrative decision-making is hence, rule-guided by the aforementioned principles.

2. Purpose of the review of administrative acts.

The Administrative Court has jurisdiction to review a decision on both points of law and fact. The Administrative Courts' powers are limited to testing the legality and not the correctness of administrative decisions. Two exceptions exist, as provided by the **Administrative Court's Law of 2015**. In asylum and tax cases, the Administrative Court has jurisdiction to review both the legality and the correctness of the decision, and to substitute the decision of the public organ with its own.

When reviewing the legality of a decision, the Court examines whether the public organ has exercised its discretionary powers, within lawful limits, but its jurisdiction does not extend to issues of technical nature or issues that require specialised knowledge².

The judiciary does not step into the sphere of administration. The jurisdiction of the court under Article 146 is in accordance with the doctrine of the separation of state powers. The Court will only intervene if, after taking into account all the facts of the case, it concludes that the findings of the administrative organ are not reasonably sustainable, or they are the result of an error of fact or law or are in excess of its discretionary powers³. In essence, the court reviews the decision in order to ascertain whether:

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

Therefore, the court reviews whether the public organ has abused its discretionary powers or acted ultra vires or in an illegal manner⁴.

Judgments of the Administrative Court can be appealed to the Supreme Court, on points of law only.

3. Definition of an administrative authority.

The Constitution does not provide for a definition of administrative authorities. Nor does any other piece of legislation.

The term administrative authority includes public legal entities, local governmental authorities and statutory bodies performing public functions.

The mandate of administrative authorities is to promote the ends of the law. Only acts, decisions or omissions of public bodies emanating from the exercise of powers in the public domain are amenable to judicial review under Article

² 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

³ Republic v. Georghiades (1972) 3 C.L.R. 594, Yuri Kolomoets v. Republic (1999) 4 A C.L.R. 443

⁴ Cyprus Administrative Law Manual, Nicos Charalambous, 3rd edition, 2016, Page 304-305

146 of the Constitution. The test to determine whether an act or decision is justiciable under Article 146 revolves around the primary object of the act or decision. If the decision is primarily aimed at promoting a public purpose, it falls in the domain of public law.

4. Classification of administrative acts.

Article 146.1 of the Constitution postulates in terms the justiciability of every executory act or decision in the domain of public law issued in the exercise of executive or administrative authority. The Court has not attempted to draw the line between executive and administrative authority or categorise acts and decisions by reference to the nature of the authority wherefrom they derive⁵.

As previously mentioned in Question 3, 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. 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

I- ORGANISATION AND THE ROLE OF THE BODIES, COMPETENT TO REVIEW ADMINISTRATIVE ACTS.

A. COMPETENT BODIES.

5. Non-judicial bodies competent to review administrative acts.

Provided that the relevant legislation makes provisions for an administrative decision to be challenged to a higher administrative authority, an aggrieved person has the right to contest that decision through a hierarchical recourse. This procedure, however, is not final or conclusive. An aggrieved person may subsequently contest the decision of the Higher Administrative Authority at the Administrative Court, with a further right to an appeal to the Supreme Court.

⁵ Constitutionalism-Human Rights-Separation of Powers, Georgios M. Pikis, 2006, Page 123

6. Organisation of the court system and the courts competent to hear disputes concerning acts of the administration.

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

1. Powers and jurisdictions of the current, unified Supreme Court:

- 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 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.

2. Powers and jurisdictions of the first instance courts:

- **District Courts**, one (1) for each of the six (6) districts of Cyprus. Since the Turkish invasion of 1974 and the continuing occupation of the North-Eastern part of the island two (2) of our District Courts, those of Famagusta and Kyrenia, are under occupation and their jurisdictions have been assumed by the District Courts of Larnaca and Nicosia, respectively. The District Courts have jurisdiction to hear at first instance:

- * Civil cases where the cause of action has arisen wholly or partly within the limits of the District where the Court is established, or where the Defendant resides or carries his business.

- * Criminal cases to be tried summarily, relating to offences punishable with a custodial sentence not exceeding five (5) years or with a pecuniary fine not exceeding the amount of €85.000 or both.
- **Assize Courts**, have criminal jurisdiction, to hear any criminal offence punishable by the Criminal Code or any other law. Currently, there are five (5) Assize Courts.
- **Courts of specialised Jurisdiction.**
 - * The recently established, **Administrative Court**, founded in January 2016. It is composed of seven (7) Judges, one of whom is the President. It adjudicates, at first instance, upon administrative recourses, under Article 146 of the Constitution.
 - * **The Rent Control Tribunals**, which have jurisdiction to try all disputes arising from the application of the Rent Control legislation. A Rent Control Tribunal is composed of one (1) President, who is a Judicial Officer, and two (2) lay members representing the landlords and the tenants. Three (3) such Tribunals are currently present.
 - * **The Industrial Disputes Tribunal**, which has jurisdiction to hear applications by employees for unfair dismissal and redundancies. It is composed of one (1) President, who is a Judicial Officer, and two (2) lay members representing the employers and the employees. Only one (1) such Tribunal is established for the whole of Cyprus.
 - * **The Military Tribunal**, which has jurisdiction to try offences committed by the members of the Armed Forces, under the Criminal Code and the Military Criminal Code. It is composed of one (1) President, who is a Judicial Officer, and two (2) military officers who have no power of decision. Only one (1) such Tribunal is established for the whole of Cyprus.
 - * **The Family Courts**, which have jurisdiction to hear matrimonial petitions for the dissolution of marriage, property disputes and matters relating to the custody, maintenance, access and adoption of children. They are composed of one (1) President and two (2) other Judges. At present three (3) such Courts exist.

B. RULES GOVERNING THE COMPETENT BODIES.

7. The origin of rules delimiting the competence of ordinary courts in the review of administrative acts.

Article 146.1 of the Constitution vests jurisdiction to review administrative action exclusively in the Administrative Court and in the Supreme Constitutional Court⁶ upon appeal. No other courts can assume directly or

⁶ Subsequently the Supreme Court as explained in Question 1.

indirectly jurisdiction to review acts, decisions or omissions of administrative authorities. To whatever extent an administrative decision is relevant to a judicial pronouncement in the context of civil or criminal proceedings, the court will accept it and act upon it without delay. For example, in the prosecution of a person for failure to pay taxes due, the Criminal Court will not inquire into the validity of the administrative authority. Its jurisdiction is limited to ascertaining whether the decision was duly taken and communicated to the person affected and if so whether there was failure to comply with it. A tax decision can only be contested by filing a recourse under Article 146. The validity of such decision can only be tested in this context⁷. The same applies to civil proceedings. In no circumstances will the Civil Court inquire into the validity of an administrative decision.

8. The existence and origins of specific rules related to the competence and duties of the administrative courts or tribunals.

As explained in Question 7, Article 146.1 of the Constitution vests jurisdiction to review administrative action exclusively in the Administrative Court and in the Supreme Constitutional Court⁸ upon appeal.

Statutory jurisdiction to review administrative acts, decisions or omissions is conferred on the Administrative Court by section 3 of the **Administrative Court's Law of 2015**. The Supreme Court's statutory appellate jurisdiction is conferred by section 13 of the aforementioned Act. Appeals may be filed on questions of law only.

Administrative Court's competences and duties:

The role of the Administrative Court in a claim for judicial review is limited to testing the legality and not the correctness of administrative decisions. The Administrative Court will not substitute itself for the decision maker. Two exceptions exist, by virtue of the **Administrative Court's Law of 2015**. In asylum and tax cases, the Administrative Court has jurisdiction to review both the legality and the correctness of the decision, and to substitute the Administration's decision with its own.

Under Article 146.4 of the Constitution the Administrative Court may:

- Confirm, either in whole or in part, the decision, act or omission; or
- Declare, either in whole or in part, the decision or act to be null and void and of no effect whatsoever; or
- Declare that the omission, either in whole or in part, ought not to have been made and that whatever has been omitted should have been performed; or
- Amend, either in whole or in part, the decision or act, subject to the provisions of the law, and provided that the decision or act concerns

⁷ Constitutionalism-Human Rights-Separation of Powers, Georghios M. Pikiş, 2006, Page 115

⁸ Subsequently the Supreme Court as explained in Question 1.

tax matters or international asylum procedures under European Union law.

Furthermore, the **General Principles of Administrative Law, Law of 1999** safeguards the principles of administrative justice:

- Legality: A public authority does not act unlimitedly nor does it act as it pleases. Its powers and activities derive from statute and are hence determined explicitly and limited to the extent such a statute provides (Section 8). The principle of legality is the most substantive and essential one to a democratic state which respects the rule of law and acts primarily for the public interest.
- Competence: A public authority's competence is determined by the Constitution or by Statute or Statutory Instruments/Regulations, enacted in accordance with the law (Sections 15 and 17).
- Proper administration:
 1. *Principle of bona fide/good faith*: A public authority must act in good faith. Measures conflict good faith if taken in bad faith, or in a contradictory or deceiving manner (Section 51).
 2. *Proportionality*: The principle of proportionality requires that a public authority's measures including imposition of sanctions must be proportionate (Section 52). Adverse effects cannot be disproportionate to the measure taken.
- Natural justice is regarded highly in administrative law. It is enshrined in **Article 30.2 of the Constitution**, which is identical to Article 6(1) of the ECHR.
 1. *Impartiality- Nemo iudex in causa sua*
An administrative body must act in accordance with the principle of impartiality (Section 42).
 2. *Right to be heard- audi alteram partem*
The right to be heard is enjoyed by any person who will be affected by the administrative act or measure of a disciplinary or sanction-like character or will, in any way, be adversely affected by it (Section 43).
- Reasoning/Justification: Administration must justify its decisions. Extent and details given may vary depending on the subject-matter. (Section 26).
- Representation: The right to be heard is exercised either as a litigant in person or via an attorney, either orally or in writing (Section 43).
- Equality is enshrined in **Article 28 of the Constitution**, which provides that all are equal before the law, administration and justice. Also, section 38 of the Act provides that a public body must act in accordance with the principle of equality which requires equal and uniform treatment of all civilians who are under the same or similar conditions.

Supreme Court's competences and duties:

Judgments of the Administrative Court may be appealed to the Supreme Court on points of law only.

Moreover, the Supreme Court 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 Law of 1964**, regulate the practice and procedure of the Court⁹. The power of the Supreme Court to regulate its own procedures and practice is very wide.

C. INTERNAL ORGANISATION AND COMPOSITION OF THE COMPETENT BODIES.

9. Internal organisation of the ordinary courts competent to review administrative acts.

Please see the answer to Question 7.

10. Internal Organisation of the Administrative Courts.

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. Initially, five (5) Judges were appointed. By September 2017, two (2) more Judges were appointed, increasing the total number of Administrative Judges to seven (7). One of those seven Judges is the President of the Administrative Court. Cases are heard by a single judge. 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 plenary of the Court.

After the eighth Constitutional amendment of 2015, appellate administrative jurisdiction is exercised by the Supreme Court as the appellate court of 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, the Supreme Court sits in formations of three (3) Justices. However, on appeals against decisions of a Supreme Court Justice, adjudicated when exercising its originating jurisdiction (that is before the eighth amendment of the Constitution), the Supreme Court sits in formations of five (5) 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.

D. JUDGES

11. Status of judges who review administrative acts.

The Administrative Court is one of Cyprus' specialised Courts. Only Administrative Judges may review acts, decisions or omissions of

⁹ Panayiotis Georghiou (Catering) Ltd v. Republic (1996) 3 C.L.R. 323, Application Gennaro Perella, Civil Appeal 9169, 14/4/1995 (plenary)

administrative authorities. No other Court can assume either directly nor indirectly such jurisdiction.

They are appointed by the Supreme Council of Judicature¹⁰. To be qualified for the appointment of President of the Administrative Court, one should hold the qualifications required to be appointed as President of the District Court, in accordance with the provisions of section 6(1) of **Courts of Justice Law of 1960**. The conditions, as provided by section 6(1), require one to be a practising advocate for at least ten (10) years, be of a high moral standard and hold relevant and substantial expertise in administrative law or proven experience in administrative court cases¹¹. To be appointed as an Administrative Judge, one should hold the qualifications required to be appointed as a Senior District Judge, in accordance with the provisions of section 6(1) of **Courts of Justice Law of 1960**. The conditions as laid down by section 6(1) require one to be a practising advocate for at least ten (10) years¹², be of a high moral standard and hold relevant and substantial expertise in administrative law or proven experience in administrative court cases¹³.

Section 5 of the **Administrative Court's Law of 2015**, provides that the President and Judges of the Administrative Court are permanent members of the Judiciary, equal to a President of the District Court and of a Senior District Judge, respectively, and are interchangeable with the holders of the aforementioned respective positions, subject to completing at least five (5) years as President or Judge of the Administrative Court.

Lastly, it should be mentioned that there are no different categories of Administrative Judges for the review of different kinds of administrative authorities.

The Supreme Court is the Appellate Revisional Court, empowered to hear appeals against decisions of the Administrative Court. In exercising its jurisdiction as an Appellate Administrative Court, the court sits in formations of three (3) Justices. The Supreme Court of Cyprus consists of 13 Justices, one of whom is the President.

Justices of the Supreme Court are appointed by the President of the Republic, under Constitutional provisions¹⁴. They hold office until they attain the age of sixty-eight (68). They are as a rule, selected from amongst the most Senior Judges serving in the lower Courts. It is customary and established practice for the President to seek and as a rule follow the recommendation of the Supreme Court before making a new appointment. This is in line with the

¹⁰ Section 3 of the Administrative Court's Law of 2015

¹¹ Section 4 of the Administrative Court's Law of 2015

¹² The Supreme Council of Judicature, may unanimously decide to appoint a practising barrister (broadly, advocate) of at least eight (8) years practice when the rest of the conditions are met.

¹³ Section 4 of the Administrative Court's Law of 2015

¹⁴ Articles 133(2) and 153(2) of the Constitution

well-entrenched constitutional doctrine of separation of state powers, diffused in the Constitution of the Republic. However, the President of the Republic may appoint anyone selected amongst jurists of supreme professional and moral standard¹⁵.

12. Recruitment of judges in charge of review of administrative acts.

Recruitment of the Administrative Court Bench follows the procedure set out by the Supreme Council of Judicature (SCJ). The SCJ is the competent body responsible for all judicial appointments. The selection is solely on merits and selected candidates must be of a high moral standard. Please see answer to Question 11 for further details.

13. Professional training of Judges.

In Cyprus, judges are appointed from the ranks of practising advocates. District Judges are recruited from amongst practitioners who have at least six (6) years of practice in the legal profession and are of a high moral standard¹⁶. For Administrative Court Judges and Supreme Court Justices, please see answer to Question 11.

On-going judicial training is provided by Judges' School (Judicial Training School), which was established in January 2017. The School is responsible for the development and delivery of training to judges in all Courts across Cyprus. A recent report by Professor Jeremy Cooper was prepared in May 2017. The first training programmes of the School are expected to be launched in October of 2018. Further information about the report and the School can be viewed on the Supreme Court's website, <http://www.supremecourt.gov.cy>.

14. Promotion of Judges.

Under Article 157 of the Constitution, the Supreme Council of Judicature (SCJ) is exclusively competent for the appointment, promotion, transfer, termination of appointment, dismissal from judicial duties and disciplinary matters of all judges of lower courts (District Courts, Assizes and Courts of Specialised Jurisdiction such as Administrative Court, Family Courts, Industrial Disputes Tribunal, Rent Control Tribunal and Military Court). The Supreme Council of Judicature is composed of the Supreme Court's Justices (the President and 12 Justices as provided by section 3(2) of the **Administration of Justice Law of 1964**). It is clear that under no circumstances is the involvement or participation of any person, authority or body allowed in any proceedings relating to the aforementioned judicial functions (appointment, promotion, etc).

District Court Judges may be promoted to Senior District Judges and subsequently to Presidents of the District Courts.

¹⁵ Article 133 of the Constitution

¹⁶ Section 6(1) of the Courts of Justice Law of 1960

To be promoted to a Supreme Court Justice, one must be appointed by the President of the Republic¹⁷. The selection is usually made amongst the Presidents of the lower Courts and it is established practice for the President to seek and as a rule follow the recommendation of the Supreme Court before making a new appointment. The President of the Republic has a constitutional privilege to appoint anyone eligible.

For Administrative Court Judges the sole prospect of promotion is to be appointed President of the Administrative Court or to be transferred to the District Courts in accordance with the provisions of section 5 of the **Administrative Court's Law of 2015**.

Judicial advancement is on merit, as opposed to time served.

15. Professional duties and transfers of Judges.

As explained in Question 14, the Supreme Council of Judicature (SCJ) is exclusively competent for all matters relating to the Judiciary, including their mobility and transfers.

District Court Judges serve in one of the six (6) District Courts of Cyprus. Since the Turkish invasion of 1974 and the continuing occupation of the North-Eastern part of the island two (2) of our District Courts, those of Famagusta and Kyrenia, are under occupation and their jurisdictions have been assumed by the District Courts of Larnaca and Nicosia, respectively. The District Courts have jurisdiction to hear at first instance:

- * Civil cases where the cause of action has arisen wholly or partly within the limits of the District where the Court is established, or where the Defendant resides or carries his business.
- * Criminal cases to be tried summarily, relating to offences punishable with a custodial sentence not exceeding five (5) years or with a pecuniary fine not exceeding the amount of €85.000 or both.

District Court Judges may also serve as Judges of the Assize Courts, which have criminal jurisdiction and may hear any criminal offence punishable by the Criminal Code or any other law. Currently, there are five (5) Assize Courts.

Broadly speaking, they usually spend a period of time in different District Courts or Assize Courts and in different districts of the Republic. Their assignment is for a term of time as specified by the SCJ.

For Administrative Court Judges the scene is rather different. The Administrative Court is composed of seven (7) Judges. The work of the Administrative Court is conducted in Nicosia. There are no regional Administrative Courts.

However, under section 5 of the **Administrative Court's Law of 2015**, the President and Judges of the Administrative Court are permanent members of

¹⁷ Articles 133(2) and 153(2) of the Constitution

the Judiciary, equal to a President of the District Court and of a Senior District Judge, respectively, and are interchangeable with the holders of the aforementioned respective positions, subject to completing at least five (5) years as President or Judge of the Administrative Court. Therefore, in the event of such a transfer taking place, the Judge previously assigned to the Administrative Court, is now by virtue of the transfer a District Court Judge and hence, subject to the same mobility terms that apply to all District Court Judges.

Supreme Court Justices hold office until they attain the age of sixty-eight (68). The work of the Supreme Court is conducted in Nicosia.

No serving Judge can take up a position in public administration.

E. ROLE OF THE COMPETENT BODIES.

16. Available kinds of recourse against administrative acts.

The role of the Administrative Court in a judicial review recourse is to determine whether the decision complained of was taken in accordance with the law. The Administrative Court will not substitute itself with the decision maker. So long as the public authority acts within the parameters of the law, to further its purposes and in accordance with the norms of good governance and good administration and the general principles of administrative law, the judiciary will not intervene. Two (2) exemptions exist. When dealing with tax and asylum cases, the Administrative Court may amend the decision, in accordance with the provisions of the **Administrative Court's Law of 2015**.

Remedies which may be granted by the Administrative Court by virtue of Article 146.4 of the Constitution are as follows:

- Confirm, either in whole or in part, the decision, act or omission; or
- Declare, either in whole or in part, the decision or act to be null and void and of no effect whatsoever; or
- Declare that the omission, either in whole or in part, ought not to have been made and that whatever has been omitted should have been performed; or
- Amend, either in whole or in part, the decision or act, subject to the provisions of the law, and provided that the decision or act concerns tax matters or international asylum procedures under European Union law.

Furthermore, whenever an act or decision comes within the ambit of Article 146.1. of the Constitution it cannot be treated as being within the ambit of Article 155.4, as well. Article 155.4 relates to the jurisdiction of the Supreme Court to issue prerogative orders. These jurisdictions are mutually exclusive in nature.

Decisions of the Court are binding for all courts and on all organs or authorities in the Republic and must be given effect to. They are not binding on the Supreme Court.

The Administrative Court cannot award damages. Damages may be awarded by the District Courts. Hence, a person aggrieved by a decision declared void by the Administrative Court may seek just and equitable compensation in the District Court¹⁸.

17. Existence of mechanisms for the delivery of a preliminary ruling apart from the procedure under Article 267 of the Treaty on the Functioning of the European Union (ex-Article 234 of the EC Treaty).

There is no formal mechanism for a preliminary ruling, as far as judicial review is concerned.

In criminal proceedings, by virtue of the Criminal Procedure Law, Cap. 155, questions of law may be reserved for the opinion of the Supreme Court¹⁹ at any stage of the proceedings and judgments of the District Court in cases heard summarily may be appealed to the Supreme Court by way of case stated²⁰.

Courts of specialised jurisdictions, i.e. Family Courts²¹, Industrial Disputes Tribunals and Rent Control Tribunals may refer questions of constitutionality reserved for the opinion of the Supreme Court. District Courts, on the other hand, have been empowered to decide on constitutional issues, subject to an appeal to the Supreme Court.

18. Advisory body of the competent bodies.

No judicial body or individual judge has an advisory role in relation to the executive or the legislature.

Furthermore, the Supreme Court of Cyprus is not an independent advisory body with a general advisory function, such as the Council of State and does not review technical aspects of legislation, feasibility and language.

There is a constitutionally entrenched Separation of Powers principle between the three (3) State Powers in our Republic; and the separation has been stressed in many judgments of the Supreme Court.

There is however, a constitutional role of the Supreme Court in scrutinising the constitutionality of proposed Bills and Acts. Since the Supreme Court, is the Supreme Constitutional Court, Bills and Acts of Parliament may be referred to the Supreme Court by the President of the Republic to decide upon their constitutionality, that is whether they are compatible with the provisions of the constitution.

- Ex-ante, preventive scrutiny on the constitutionality of a Bill, under **Article 140 of the Constitution**. The President of the Republic may refer the Bill to the Supreme Court for an opinion on constitutional

¹⁸ Article 146.6. of the Constitution

¹⁹ Section 148 of Cap. 155

²⁰ Section 149 of Cap. 155

²¹ Nicolaou (1991) 1 C.L.R. 1045, Christoforou, Question of Law Reserved 373, 2/5/2017

issues, prior to the Act coming into force. Constitutionality in this context entails a thorough examination of the proposed Act's compatibility with the constitution as well as with EU law and extends to well entrenched constitutional principles²², such as separation of powers, natural justice (*audi alteram partem*)²³, proper administration and human rights²⁴. This kind of scrutiny serves as a guardianship to the quality of constitutional democracy.

- Ex-post scrutiny on the constitutionality of an Act, under **Article 137 of the Constitution**²⁵, referred to the Supreme Court by the President of the Republic within 75 days after the Act came into force.
- Ex-post scrutiny on the constitutionality of an Act, under **Article 144 of the Constitution**.

Lastly, the judiciary may respond to a public consultation by the government on proposed legislation which affects the administration of the courts and the administration of justice. As a general rule, the judiciary are reluctant to become involved in anything that would jeopardise their judicial independence like expressing views in relation to proposed legislation since they may have to interpret it at a later stage. However, consultations on matters that affect them are vital. Any proposed legislation or amendment bill which has direct or indirect effect on the judiciary and judicial procedures requires consultation. For example, consultations have been conducted between the Judiciary and the Ministry of Justice and Public Order for the establishment of the Administrative Court and in general any court of specialised jurisdiction (e.g. prospective Commercial Court²⁶).

19. Organisation of the judicial and advisory functions of the competent bodies.

Please see answer to Questions 6 and 18.

The Administrative Court and the Supreme Court do not have double functions.

F. ALLOCATION OF DUTIES AND RELATIONSHIP BETWEEN THE COMPETENT BODIES.

20. Role of the Supreme Courts in ensuring the uniform application and interpretation of the law.

It is the case that one of the fundamental principles on which the courts in Cyprus proceed is that of *stare decisis*. All lower Courts are bound by the case law of the Supreme Court. A refusal or omission, by a lower court, to apply

²² Cyprus Broadcasting Corporation and others v. Karageorghey and others (supra), President of the Republic v. House of Representatives (2011) 3B C.L.R. 777

²³ President of the Republic v. House of Representatives (2014), Referral no. 2/2014, 31/10/2014

²⁴ President of the Republic v. House of Representatives (2014 (supra)

²⁵ Arising from discrimination against one of the two communities of the Republic

²⁶ Supreme Court's Annual Report, June 2016, page 35

precedent of the Supreme Court would result to an error of law, which would be subject to an appeal.

Where there have been conflicting decisions, the Full Bench of the Supreme Court will resolve and clarify the law.

II – JUDICIAL REVIEW OF ADMINISTRATIVE ACTS.

A. ACCESS TO JUSTICE.

21. Preconditions of access to the courts.

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.

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.

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 Cyprus²⁷.

22. Right to bring a case before the Court.

A recourse for judicial review may be filed by an aggrieved person, whose existing legitimate interest, as a person or as a member of a community, has been adversely affected by a decision, act or omission. By virtue of Article 186 of the Constitution, a “person” is defined as any company, partnership, association, society, institution or body of persons, corporate or unincorporated. In addition, the interest necessary to justify a recourse to the Court is characterised as “legitimate”, that is an interest originating or deriving from a person's rights.

Furthermore, as a general rule a public authority may not seek judicial review of a decision taken by another public authority; it is not permissible for the Administration or the Executive to be segmented and turn against their own decisions. Semi-governmental organisations, however, may seek judicial review of a decision or omission taken by a public or executive body of the central administration, as long as the decision or omission affects its operations, or for the protection of its interests or competences or the natural environment.

²⁷ Pitsillos v. C.B.C. (1982) 3 C.L.R. 208

23. Admissibility conditions.

By virtue of Article 146 of the Constitution and the provisions of the Administrative Law Principles, Law of 1999, certain preconditions must co-exist for one to file a judicial review application. All of them are assessed by the Court *ex proprio motu* and are as follows:

- The decision must have been 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.
- Judicial review may only be brought by an applicant who has an existing and direct legitimate interest in the matter.
- Strict time limitation conditions.

Please see Questions 21, 22, 24 and 25 for further information.

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*.

Furthermore, by virtue of Article 134.2 of the Constitution the Supreme Court may strike out any appeal that appears to be *prima facie* frivolous, after hearing the parties' arguments and may dismiss it without a public hearing if satisfied that it is in fact frivolous. In practice however, the Supreme Court does not dismiss an appeal without a public hearing.

24. Time limits to apply to the Courts.

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.

This is a strict time limit. It cannot be extended but in exceptional cases. Reasons of *force majeure*, constitute good and sufficient reason for the time limitation to be extended.

Section 13 of **Administrative Court's Law of 2015**, introduces a second strict time limit of 42-day period, for exercising the right to appeal the first instance judgment, to the Supreme Court.

25. Administrative acts excluded from judicial review.

By virtue of Article 146 of the Constitution, the administrative jurisdiction of the Administrative Court and of the Supreme Court is exercised on decisions, acts or omissions of any organ, authority or person, exercising an executive or administrative authority, within the domain of the public law. The following acts are not therefore, susceptible to judicial review:

- acts that fall in the domain of private law,
- preparatory acts of Administration,
- confirmatory acts, opinions and information,
- decisions that have been revoked,
- administrative measures of internal nature,
- 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 concurrence of the Attorney-General,
- decisions of the Attorney-General to initiate a prosecution or discontinue criminal proceedings,
- decisions of the Supreme Council of Judicature,
- regulations and by-laws issued by an organ of the Executive,
- acts of the legislature and the judiciary,
- policy decisions of administrative authorities,
- electoral acts,
- collective agreements.

26. Screening procedures.

No leave of the Court is required to apply for judicial review under Article 146 of the Constitution. Permission to appeal to the Supreme Court is also not required. The Supreme Court however, is empowered to 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 provides 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 satisfied that it is in fact frivolous. In practice, the Supreme Court does not dismiss an appeal without a public hearing.

27. Form of application.

The application for judicial review must be made on the appropriate form, as provided by the Administrative Court (No.1) Procedure Rules of 2015 and must include and be accompanied by:

- the applicant's details,
- address of service,
- name of the administrative body involved,
- remedy sought,
- a statement of the legal grounds for bringing a recourse for judicial review (not required in the case of a litigant-in-person),
- a statement of the facts relied upon,
- a copy of the decision which the applicant seeks to annul,
- copies of any documents referred in the application.

Non-compliance is not fatal and may be remedied.

On appeals to the Supreme Court, **Appeals (Judicial Review Jurisdiction) Procedure Rules of the Supreme Court of 1964** require an appellant to use a prescribed form and include specified information and documents. Rule 3 explicitly provides 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 period²⁸ 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 ground²⁹. It is settled precedent law that issues not raised during the first instance proceedings cannot be raised on appeal, with the exception of public order grounds that may be raised by the court on its own motion³⁰.

A notice of appeal may be amended at any time as the Supreme Court may think fit in the interests of justice³¹. The notice of appeal must, be served together with an office copy of the judgment upon all parties directly affected by the appeal³².

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 appeal³³.

28. Possibility of bringing proceedings via information technologies.

It is not yet possible for applicants or appellants to lodge proceedings through the internet in the Administrative Court or the Supreme Court. We expect this to change soon with the introduction of e-justice to Cyprus Courts.

29. Court fees.

The fee for lodging a recourse for judicial review to the Administrative Court is €137. 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 €192 is payable upon lodging an appeal

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

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).

30. Compulsory representation.

Although most applicants and appellants are represented by an advocate, both the Administrative Court and the Supreme Court will hear litigants-in-person, who wish to argue their case themselves.

31. Legal aid.

By virtue of sections 4, 5, 6, 6A, 6B, 6C, 6D, 6E and 6F of the **Legal Aid Law of 2002**, legal aid may be granted 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.
- 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.

32. Fine for abusive or unjustified applications.

There is no fine for abusive, unjustified, frivolous or vexatious applications. As a general rule, legal costs follow the outcome of the case. Therefore, the unsuccessful applicant will be ordered to pay all costs of the proceedings.

B. MAIN TRIAL.

33. Fundamental principles of the main trial.

Judicial review proceedings are inquisitorial. The inquiry extends, into every aspect of the decision, the background thereto and its reasoning. Its inquisitorial character provides a contrast to the adversarial character of civil

and criminal trials where the submittal of evidence burdens the parties. In the inquisitorial system, such initiative lies upon the Judge who may order the submission of evidence, call witnesses and set trial issues³⁴. Due to the special character of the administrative trial and the inquisitorial system in general, the submission of evidence and facts that were not before the public body and are hence not part of the administrative file, is not allowed, only in very exceptional circumstances³⁵ and when the matter relates to asylum cases before the Administrative Court³⁶. For the submittal of evidence which do not form part of the administrative file, leave of the court is required, conditional to the fact that evidence is relevant to the issues of the case³⁷ as to aid the court in administering justice³⁸. It is for this reason that the administrative file or files that disclose and make the case are unswervingly accepted as evidence³⁹.

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.

The right to a fair trial is enshrined in **Article 30 of the Constitution** which is identical to **Article 6.1 of the ECHR**. Article 30 of the Constitution enshrines **judicial protection**. Article 30.2 provides 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 obligations⁴⁰. Fair trial standards are applicable at all stages of administrative proceedings.

The rules of natural justice perform a similar function. Natural justice requires 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 iudex in causa sua*, allow any person who will be affected the right to be heard⁴¹ 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*

³⁴ Cyprus Administrative Law Manual, Nicos Charalambous, 3rd edition, 2016, Page 39

³⁵ Iacovides v. Public Service Commission (1997) 3 C.L.R. 28

³⁶ Section 11(3) of 131(I)/2015 Law

³⁷ Petrolina Ltd and others v. Cyprus Port Authority, Case No. 223/2000, Date 4/4/2002, Zarvos v. Republic (1989) 3(B) A.A.Δ. 106, Kyriakides v. Republic, 1 RSCC 66

³⁸ Tasni Enviro Ltd and Telmen Ltd v. Republic, Case No. 862/2005, Date 26/6/2008

³⁹ Constantinou v. Water Board Council (No. 1) (1992) 4 C.L.R. 3330

⁴⁰ Ringeisen v. Austria, July 16, 1971, para. 94, Ferrazzini v. Italy, July 12, 2001, para. 27, see also Konig, 28 June, 1978, para. 89

⁴¹ Republic v. Zena Poulli (2001) 3 B C.L.R. 1060, Kazamias v. Republic (1982) 3 C.L.R. 239

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 administered⁴². What the rule guarantees is an adequate opportunity to appear and be heard. The *ratio decidendi* of the judgment as per Mr. Justice Pikiis (as he then was) in the case of **Republic v. Zena Poulli (2001) 3 B C.L.R. 1060** where there had been no service of process to the interested parties 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.’”

34. Judicial impartiality.

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. Similarly, the principles of natural justice include the principle that an adjudicator must be disinterested and unbiased (procedural impartiality) - *Nemo iudex in causa sua*. An aggrieved party may raise issues of impartiality on appeal for alleged breach of Article 30.2 of the Constitution and Article 6.1. of ECHR.

Having said that, the Supreme Court can examine allegations of impartiality on appeal against decisions of inferior courts.

Furthermore, in all proceedings, if a Judge becomes aware of any matter which can be said to jeopardise his impartiality, then he must recuse himself. If an oral or written application for recusal is made or filed by a party to the proceedings, then, as it emerges from the case-law, the Judge himself will decide whether he shall recuse or not from deciding the case and the matter is not decided by another Judge (**Re Efthymoulos Liasides (1999) 1 C.L.R. 185**). This is vitally important in a democracy that individual judges and the judiciary as a whole are impartial and independent of all external pressures and of each other so that those who appear before them and the wider public can have confidence that their cases will be decided fairly and in accordance with the law.

35. Possibility to rely on the new legal arguments in the course of the proceedings.

On first instance, pleadings and procedure are governed by the **Administrative Court (No.1) Procedure Rules of 2015** and the **Supreme Constitutional Court Procedure Rules of 1962**.

⁴² 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

The application for judicial review must be lodged on the appropriate form, as provided by the Administrative Court (No.1) Procedure Rules of 2015 and must include a statement of the legal grounds for bringing a recourse for judicial review to the Administrative Court⁴³. Legal grounds not raised in the application for judicial review cannot be raised for the first time in the legal addresses filed later on during the proceedings. Only legal grounds relating to public order, are reviewed by the Administrative Court on its own motion. Non-compliance may be remedied by the Court, upon an application for amendment.

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 on its own motion⁴⁴.

36. Persons allowed to intervene during the main hearing.

A party other than the applicant and the respondent (administrative body), who has a personal interest in the outcome of the review, has a right to take part in the proceedings; a right acknowledged and its exercise was institutionalised by the Rules of Court⁴⁵ regulating the exercise of the administrative jurisdiction under Article 146.1 of the Constitution. Legitimation of third-party intervention derives from the interest such a person has in the sustenance of the decision challenged. The intervener, interested party must have an interest in the decision akin, though not necessarily identical, to that of the applicant. Arguably a more flexible test is applied. But the interest of the intervener, interested party, in the decision, must be separate and distinct from that of the general public⁴⁶. In other words, the interested third party may intervene to support the non-annulment of the administrative decision, and never for its annulment.

On appeal, even interested parties who did not take part in the first instance proceedings have the right to take part in the appeal proceedings. This right was acknowledged and institutionalised by the Appeals (Revisional Jurisdiction) Rules of Procedure of 1964⁴⁷.

⁴³ not required in the case of a litigant-in-person

⁴⁴ *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

⁴⁵ Rule 5 of the Administrative Court (No.1) Procedure Rules of 2015

⁴⁶ *Constitutionalism-Human Rights-Separation of Powers*, Georghios M. Pikis, 2006, Page 135

⁴⁷ Rule 4

37. Existence and role of the representative of the State (“ministère public”) in administrative cases.

The Office of the Attorney-General, represents the State and acts for the respondent, that is the public authority. Semi-governmental organisations or statutory bodies, are represented by lawyers and advocates of their choice.

38. Existence of an institution or a person with a role analogous to the French “Commissaire du gouvernement”.

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. It is noticeable that in the famous **Ibrahim** case (supra), the Attorney-General appeared as an *amicus curiae*.

An interested party to the proceedings, cannot be heard as an *amicus curiae*⁴⁸.

39. Termination of court proceedings before the final judgment.

Proceedings may be terminated at any time before final judgment, if the applicant so wishes. In general, proceedings may come to an end in the following circumstances:

- Discontinuance / withdrawal of the case by the applicant.
- The administrative decision has been revoked or the omission is rectified. Proceedings are not terminated if the revoked act, caused material damage to the applicant which can only be claimed once the administrative decision is annulled.
- Death of the applicant unless his heirs have a legitimate interest in the recourse (distinction between *right in personam* and *right in rem*)
- Settlement was reached.
- The case is dismissed / struck out by the Court, for example, due to advocate’s non-compliance or inadvertence with court directions.

40. Role of the Court Registry in serving procedural documents.

By virtue of the Administrative Court (No.1) Procedure Rules of 2015, the application for judicial review and all supporting documents are lodged to the Registry of the Administrative Court. Court bailiffs of the said Registry will serve them to the respondent and all interested parties. Following that, the respondent may file to the competent Registry, his written objection, within 45 days of service and the interested parties may file acknowledgement of service (appearance) within 21 days of service. The respondent’s written

⁴⁸ Theodossiadou and Others v. Republic (1985) 3 C.L.R., Graham Thomas Peece v. ESTIA Anonymous Insurance & Counter-Insurance Company (1990) 1 C.L.R. 695, and President of the Republic v. House of Representatives (Referral No. 4/90 – interlocutory judgment - 16/11/1990, (Full Bench)

objection is served by the respondent to all parties via the post or usually it is left to the Law Firm's court box.

Once the above have been concluded, the Court Registry will set a date for court directions. The Court will direct the parties as to the pleadings (written statements) to be filed. Parties are responsible for the service of their own pleadings.

All interlocutory applications are served by court bailiffs.

Appeals against decisions of the Administrative Court must be filed to the competent Registry of the Supreme Court (Revisional Jurisdiction Court Registry)⁴⁹. All appeals must be brought by written notice of appeal filed together with an office copy of the judgment complained of. The notice of appeal must be served together with an office copy of the judgment appealed from upon all parties directly affected by the appeal. Court bailiffs of the said Registry will serve them to the respondent and all interested parties. If a respondent intends to cross-appeal, he must give a 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 competent Registrar of the Supreme Court.

The pre-trial procedure and hearing are governed by the **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. During the pre-trial procedure and under Rule 10 of the 1996 Procedure Rules, the Supreme Court may, inter alia, order the filing of written skeleton arguments relating to the grounds of appeal and cross-appeal (if any). Parties are responsible for serving their own skeleton arguments.

41. Duty to provide evidence.

Judicial review proceedings are inquisitorial. The inquiry extends, into every aspect of the decision, the background thereto and its reasoning. Its inquisitorial character provides a contrast to the adversarial character of civil and criminal trials where the submittal of evidence burdens the parties. In the inquisitorial system, such initiative lies upon the Judge who may order the submission of evidence, call witnesses and set trial issues⁵⁰. Due to the special character of the administrative trial and the inquisitorial system in general, the submission of evidence and facts that were not before the public body and are hence not part of the administrative file, is not allowed, only in very exceptional circumstances⁵¹ and when the matter relates to asylum

⁴⁹ Rule 12 of the Administrative Court (No.1) Procedure Rules of 2015

⁵⁰ Cyprus Administrative Law Manual, Nicos Charalambous, 3rd edition, 2016, Page 39

⁵¹ Iacovides v. Public Service Commission (1997) 3 C.L.R. 28

cases before the Administrative Court⁵². For the submittal of evidence which do not form part of the administrative file, leave of the court is required, conditional to the fact that evidence is relevant to the issues of the case⁵³ as to aid the court in administering justice⁵⁴. It is for this reason that the administrative file or files that disclose and make the case are unswervingly accepted as evidence⁵⁵.

By virtue of Rule 11 of the **Supreme Constitutional Court Procedure Rules of 1962**, the Administrative Court is empowered to call witnesses in order to give evidence or produce documents, for the better administration of justice.

Furthermore, special provisions apply for international protection and tax cases before the Administrative Court. As provided by Rule 10 of the **Administrative Court (No.1) Procedure Rules of 2015**, the Court is empowered to determine the procedure to be followed and give directions in relation to the submission of written or oral evidence or any other kind of evidence, as it considers it to be just under the circumstances.

Appeals to the Supreme Court can be filed only on points of law⁵⁶.

42. Form of the hearing.

Hearings before the Administrative Court and the Supreme Court are held in public. Article 30.2 of the Constitution provides 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.

The right to a public hearing requires that evidence be heard in public.

Hearings before the Administrative Court- first instance:

Once pleadings and written addresses have been filed, the case is fixed for hearing. At the hearing, oral clarifications⁵⁷ are submitted, in support of the written addresses filed. Under Rule 9 of the Administrative Court (No.1) Procedure Rules of 2015, each party has a specified time frame to make its oral clarifications. In exceptional circumstances, the Court may extend it if it regards it just under the circumstances. The administrative file is submitted in court at this latter stage.

Hearings before the Supreme Court- last instance:

Once pleadings and skeleton arguments have been filed, the appeal is fixed for hearing⁵⁸. At the hearing, the parties have specified time frames within

⁵² Section 11(3) of Law 131(I)/2015

⁵³ *Petrolina Ltd and others v. Cyprus Port Authority*, Case No. 223/2000, Date 4/4/2002, *Zarvos v. Republic* (1989) 3(B) A.A.Δ. 106, *Kyriakides v. Republic*, 1 RSCC 66

⁵⁴ *Tasni Enviro Ltd and Telmen Ltd v. Republic*, Case No. 862/2005, Date 26/6/2008

⁵⁵ *Constantinou v. Water Board Council (No. 1)* (1992) 4 C.L.R. 3330

⁵⁶ Section 13 of Law 131/2015

⁵⁷ Rule 9 of Administrative Court (No.1) Procedure Rules of 2015

⁵⁸ 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

which to make their oral clarifications. The court may extend the time accordingly, if it is just under the circumstances.

43. Judicial deliberation.

Judicial deliberation is undertaken in private solely by the members of the Court who heard the case.

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 before the plenary of the Court. Its deliberations are conducted in private.

On appeals, a panel of three (3) Justices hears the case. Deliberations are conducted in private solely by the members of the Supreme Court who heard the case. If an appeal is heard by the Full Bench of the Supreme Court deliberations are again conducted in private by the plenary.

C. JUDGMENT.

44. Grounds for the judgment.

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 express their reasoning in their judgments.

Judgments of the Court must be duly reasoned; a 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 to the parties that their case has truly been heard.

Elements of a duly reasoned judgment must include the following:

- An analysis of the evidence adduced in light of the issues pleaded,
- Concrete findings,
- A clear judicial pronouncement indicating the outcome of the case.

Failure to give adequate reasons for a decision, entitles the losing party to appeal to the Supreme Court. 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 it⁵⁹. Similarly, in **Paphitis & Iordanous Constructors Ltd a.o. v. A.N. Stassis Estates Ltd. (1998)**⁶⁰ the judgment of the court was annulled 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

⁵⁹ Glyky v. Municipality of Limassol (1998) 1 C.L.R. 2319

⁶⁰ 1 C.L.R. 916 (CA)

provide it are articulated in the extract cited below from the case of **Neophytou v. The Police (1981)**⁶¹:

“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”.

Judgments are given by the Judge of the Court in open court either orally immediately after the conclusion of the hearing (an ex-tempore judgment) or, if further deliberation is required, at a later date, in which case the judgment will be pronounced in open court and handed down in writing. If an ex-tempore judgment is given, the parties can ask for a transcript. A selection of judgments is published on the website of the Supreme Court and all are published in legal online portals.

45. Applicable national and international legal norms.

A number of legal pillars co-exist; European Union law, the national Constitution and Laws, the European Convention of Human Rights and other treaties that have been ratified. Union law takes supremacy over the Constitution (**Article 1A of the Constitution**) which is sovereign nevertheless (**Article 179.1 of the Constitution**). The ECHR has acquired augmented force over national legislation after ratification (**Article 169.3 of the Constitution**). Other domestic applicable norms are statute law, statutory instruments/regulations and the common law (judicial precedent).

Since in the sphere of public law Cyprus applies the Greek administrative system it is not rare for the Administrative Court and the Supreme Court in exercising its revisional jurisdiction, to cite judicial precedent of the Greek Council of State.

46. Criteria and methods of judicial review.

Please see answer to Questions 2 and 8 for the grounds for judicial review.

47. Distribution of legal costs.

Costs, as a general rule, follow the outcome of the case. Broadly speaking, the losing party will be required by the Court to pay all legal costs. However, the issue of costs is at the discretion of the Court. In the presence of reasons that substantiate deviation from the general rule, the Court may order otherwise and accordingly.

⁶¹ 2 C.L.R. 195 (CA)

48. Composition of the Court (single judge or a panel).

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 before the plenary of the Court⁶².

On appeals against decisions of the Administrative Court, a panel of three (3) Justices hears the case. On appeals against decisions of a single Justice of the Supreme Court exercising revisional jurisdiction⁶³, a panel of five (5) Justices of the Supreme Court hears the case⁶⁴. If important issues or issues of constitutionality are raised, the appeal is heard by the Full Bench of the Supreme Court.

49. Dissenting opinions.

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.

50. Public pronouncement and notification of the judgment.

Please see Answer in Question 44.

D. EFFECTS AND EXECUTION OF JUDGMENT.

51. Authority of the judgment. *Res judicata*, *stare decisis*, *erga omnes*.

Judgments issued are final and will acquire the force of *res judicata*⁶⁵. A decision of the Administrative Court, or if an appeal has been filed the decision on the appeal, applies *erga omnes*; binds all, both the applicant and the administrative body. The administrative body, however, is duty-bound with an extra obligation; to give effect to the court's decision, i.e. re-examine its decision bound by the judgment's *dictum*⁶⁶.

The principle of *stare decisis* applies to all judgments of the Supreme Court. The Supreme Court's decisions are binding on all lower Courts. The *ratio decidendi* of the judgment is binding, unlike *obiter dictum*. By virtue of section 59 of the **General Principles of Administrative Law, Law of 1999**, administration is duty-bound by the same principles.

The Plenary of the Supreme Court may depart from its own earlier precedent if the decision was taken *per incuriam* or there have been material changes in circumstances in the application of the legal principle(s) in issue. The

⁶² Section 11 of the Administrative Court's Law of 2015

⁶³ For judgments given before and those reserved after the 8th Amendment of the Constitution

⁶⁴ Section 11 of the Administration of Justice Law of 1964

⁶⁵ Section 59 of the General Principles of Administrative Law, Law of 1999

⁶⁶ Article 146.5 of the Constitution and Sections 57 and 58 of the General Principles of Administrative Law, Law of 1999

discretion for departure widens when constitutional or administrative law issues are concerned⁶⁷.

52. Powers of the Courts in limiting the effects of judgment in time.

No such powers are applied.

53. Right to the execution of judgment.

Article 146.5 of the Constitution and sections 57 and 58 of the General Principles of Administrative Law, Law of 1999 impose an obligation on public bodies to give effect to judgments. By virtue of Article 146.5A of the Constitution, both the Administrative Court and the Supreme Court are empowered to assess whether effect has been given to their decisions and if not, impose sanctions accordingly, in so far as statute law prescribes. Until now, no statute has been enacted to regulate the aforementioned constitutional provision. In practice, judgments against administrative bodies are always complied with.

Furthermore, a person aggrieved by a decision declared void by the Administrative Court or the Supreme Court on appeal, may seek just and equitable compensation in the District Court⁶⁸.

54. Recent efforts to reduce length of court proceedings.

The newly-founded Administrative Court was established to take over the originating jurisdiction previously assigned to the Supreme Court. It has helped by freeing up the Supreme Court's judicial time to focus on appeals.

Further restructuring of Cyprus' court system is under way. For this purpose, a report has been prepared by Experts from the Institute of Public Administration of Ireland (IPA). The report can be found on the website of the Supreme Court, <http://www.supremecourt.gov.cy>. The report addresses many issues including backlogs and ways to minimise them. The report will be given effect to by the Commissioner of Reform.

E. REMEDIES.

55. Sharing out of competencies between the lower Courts and the Supreme Courts.

Please see above and in particular Question 10.

56. Recourse against judgments.

An appeal to the Supreme Court against a decision of the Administrative Court is available on points of law only.

⁶⁷ Ronald Watts and others v. Yianni Laouri, Civil Appeal 319/2008, 7/7/2014 (Full Bench)

⁶⁸ Article 146.6. of the Constitution

F. EMERGENCY AND SUMMARY PROCEEDINGS / APPLICATIONS FOR INTERIM RELIEF.

57. Existence of emergency and/or summary proceedings.

There is no distinguished procedure for urgent and/or summary judicial review applications before the Administrative Court. However, in urgent cases where the applicant can demonstrate manifest illegality or the likelihood of irreparable damage caused, an interim injunction may be ordered by the Court⁶⁹.

On appeals, the Supreme Court is empowered with summary jurisdiction proceedings under certain circumstances. Under Rule 5 of the **Appeals (Pre-trial procedure, Written Skeleton arguments, Advocacy time limits and Summary procedure for striking out manifestly unfounded appeals) Procedure Rules of 1996**. Under Rule 5 of the **Procedure Rules of 1996**, the Supreme Court has the power to enter a case for hearing without undertaking the pre-trial procedure, whenever the court considers it to be just. However, the need for an expedient trial on the appeal is no reason for circumventing 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 Registry⁷⁰.

By virtue of Rule 10 of the 1996 Procedure Rules, during the pre-trial procedure the Supreme Court may inter alia, 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 restraint but without inhibition where the case is found to be such⁷¹. Before the court strikes out an appeal the appellant has the right to be heard either orally or in writing.

Furthermore, the Supreme Court has a broad power to 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** prescribes 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, the Supreme Court never dismisses an appeal without a public hearing.

⁶⁹ Rule 13 of Supreme Constitutional Court Procedure Rules of 1962 by virtue of Rule 2 of the Administrative Court (No.1) Procedure Rules of 2015

⁷⁰ Supermarkets Association and others v. Republic (1997) 3 C.L.R. 142

⁷¹ 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

58. Requests eligible for the emergency and/or summary proceedings.

Please see answer in Question 57.

59. Kinds of summary proceedings.

Please see answer in Question 57.

III- NON-JUDICIAL SETTLEMENT OF ADMINISTRATIVE DISPUTES.

60. Role of administrative authorities in the settlement of administrative disputes.

An individual may request the decision of the public authority to be reviewed internally by them. The review may result in the claim being satisfied.

Also, in certain cases the law provides for an individual to have the right to request an administrative decision to be reviewed by a higher administrative body (hierarchical recourse).

61. Role of independent non-judicial bodies in the settlement of administrative disputes.

The Office of the Commissioner for Administration and Human Rights (Ombudsman) is a senior independent authority. The institution of the ombudsman constitutes an institution of extra judicial control of the administration and protection of human rights. It has the power to investigate complaints against any public service or officer for actions that violate human rights, or are exercised in contravention of the laws or the rules of proper administration and correct behaviour towards the people administered. The Commissioner will, normally, start an investigation after the submission of a complaint by a citizen who is directly and personally affected by the action against which the complaint is directed. It is, however, possible for the ombudsman to start an investigation by order of the Council of Ministers or by ex officio decision on matters of general interest. The Commissioner's Reports (suggestions or recommendations) are not binding. However, as a result of recent amendments to the relevant legislation, the Commissioner is now able to proceed to consultations with the implicated authority, in an attempt to find a way for that authority to adopt the Commissioner's positions and comply with them on a practical level.

62. Alternative dispute resolution.

Please see Questions 60 and 61 above.

IV- ADMINISTRATION OF JUSTICE AND STATISTIC DATA.

A. FINANCIAL RESOURCES MADE AVAILABLE FOR THE REVIEW OF ADMINISTRATIVE ACTS.

63. Proportion of the State budget allocated to the administration of justice.

In 2017, the Judicial Service of the Republic received €33.053.367 in voted expenditure, 0.54% of the State Budget.

64. Total number of magistrates and judges.

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)

There are no magistrates in Cyprus' judicial system.

65. Percentage of judges assigned to the review of administrative acts.

The Administrative Court consists of 7 Judges.

Appellate revisional jurisdiction is exercised by all thirteen (13) Justices of the Supreme Court.

66. Number of assistants of judges.

No legal assistants are assigned to the Administrative Court.

Currently, there are 11 legal assistants assigned to the Supreme Court.

67. Documentary resources.

The Supreme Court of Cyprus where the Administrative Court temporarily sits has a library which includes textbooks on Cyprus law, Greek Administrative law, English law and American Constitutional law as well as published law reports of cases decided in Cyprus, the Greek Council of State, England and Wales and the European Court of Human Rights.

In addition, Justices of the Supreme Court and Administrative Court Judges have their personal library which includes Cyprus law reports and selected textbooks.

All Judges and legal assistants have access to additional information available online.

68. Access to information technologies.

All Judges have their personal, office computer and online law reports.

Judgments are sometimes typed either by the Judges or their personal assistants.

The e-justice system is currently a program undertaken by the Judicial Service. Digitisation of the entire justice system will provide a significant tool to modernising the courts and enhancing the capacity of court management. A budget of €9 million has been allocated to the project.

69. Websites of courts and other competent bodies.

The Supreme Court has a website, where selected judgments, rules of procedure, announcements and other legal documents can be found.

B. OTHER STATISTICS.

70. Number of new applications registered every year.

71. Number of cases heard every year by the courts or other competent bodies.

72. Number of pending cases.

73. Average time taken between the lodging of a claim and a judgment.

Judicial Review

First instance jurisdiction

<i>Year of reference</i>	<i>Cases lodged</i>	<i>Cases disposed of</i>	<i>Pending cases</i>	<i>Average time to judgment</i>
2015	1694	2031	7737	---
2016	1543	1740	7540	---
2017	1840	1355	8025	---

Last instance jurisdiction

<i>Year of reference</i>	<i>Cases lodged</i>	<i>Cases disposed of</i>	<i>Pending cases</i>	<i>Average time to judgment</i>
2015	131	116	886	---
2016	47	116	817	---
2017	5	127	695	---

74. Percentage and rate of the annulment of administrative acts decisions of the lower courts.

For the time being no such data is held.

75. The volume of litigation per field.

Since there are no different categories of Administrative Judges for the review of different kinds of administrative authorities nor any specialised Administrative Courts, it is not possible to provide such information.

C. ECONOMICS OF ADMINISTRATIVE JUSTICE.

76. Studies or works concerning the influence of judicial decisions against the administrative authorities on public budgets.

None known.