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ReNEUAL I –

Administrative Law in the European Union

"Single Case Decision-Making"

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Answers to questionnaire: Cyprus

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ACA-Europe questionnaire

ReNEUAL I - Administrative Law in the European Union: Single case decision-making

I. Parties to Administrative Proceedings: Categories and Legal Positions

1. (a) As a general rule, only parties adversely affected by the intended decision enjoy procedural rights in administrative proceedings. Applicants and addressees of intended decisions are amongst the first to be determined as parties to proceedings since their interests might be adversely affected by the intended decision. For example, for the demolition of a construction, for urban planning purposes, the government, through the designated competent public authority, must acquire requisition or eminent domain of the ownership (expropriation of private property for public use), in accordance with Article 23 of the Constitution. Furthermore, the decision of a competent public authority to issue a certificate or license or permanently or temporarily revoke a license for non-compliance with statutory provisions will be addressed to the applicant or addressee.

Other individuals, associations, non-governmental organisations or other administrative bodies enjoy procedural rights in administrative proceedings if the relevant legislation applied so provides. Such provisions are distinctly made, if a large number of people are to be affected by the intended decision or environmental impact considerations need to be taken into account. For example, by virtue of the *Planning Act of 1972, 90/1972*, the Town Planning and Housing Authority, is under a statutory obligation to take into account the views and recommendations of any person, body or authority, including those of the Local Authorities, before altering or issuing a Local Planning Scheme[1]. Likewise, it is under a similar obligation (obligation to consult) before issuing or refusing to issue a planning permit[2]. Such parties may include adversely affected individuals, municipalities, Local Authorities with possible environmental or other interests in mind (e.g. health concerns).

Furthermore, the *Environmental Impact Act of 2018* provides for the participation of a plethora of third parties, whose interests are adversely affected, when the provisions of the said statute apply. According to the provisions of the statute the following distinct definitions are made:

- "interested public" means public adversely affected or potentially adversely affected or whose rights are being jeopardised from the intended decisions relating to the environmental impact of the projects conducted according to the provisions of the statute, and non-governmental organisations whose Articles of Association or Memorandum determine as their primary purpose of establishment the protection of the environment are regarded as having rights adversely affected;
- "interested authorities" means the authorities that are possibly interested in a project or have a reasonable interest in the environmental impact a project might have or hold particular expertise due to their specialised competences in environmental matters or due to local and/or district competences and

[1] Section 12C of the 90/1972 Act
[2] Section 23(2)(b) of the 90/1972 Act

include Local Authorities, depending on the nature of the prospective project and the expected, serious impact it can have on the environment, such Authorities are included in Annex III, the content of which is non-exhaustive:-

Interested Authorities (Annex III)

- State General Laboratory (Ministry of Health)
- Cyprus Wildlife Service (Ministry of Interior)
- Department of Fisheries and Marine Research (Ministry of Agriculture, Rural Development and Environment)
- Water Development Department (Ministry of Agriculture, Rural Development and Environment)
- Department of Antiquities (Ministry of Transport, Communications and Works)
- Geological Survey Department (Ministry of Agriculture, Rural Development and Environment)
- Department of Agriculture (Ministry of Agriculture, Rural Development and Environment)
- Department of Forests (Ministry of Agriculture, Rural Development and Environment)
- Deputy Ministry of Shipping
- Department of Labour Inspection (Ministry of Labour, Welfare and Social Insurance)
- Medical and Public Health Service (Ministry of Health)
- Department of Meteorology (Ministry of Agriculture, Rural Development and Environment)
- Department of Town Planning and Housing (Ministry of Interior)
- Department of Public Works (Ministry of Transport, Communications and Works)
- Energy Service (Ministry of Energy, Commerce, Industry and Tourism)
- Hydrocarbon Service (Ministry of Energy, Commerce, Industry and Tourism)
- Local Authorities within their administrative district bounds a prospective project is assessed for execution.

(b) Sources for the definition of parties to be determined by the administrative authority providing the procedure:

- ***General Codification:* –** the *General Principles of Administrative Law, Act of 1999* prescribes the procedural rights to be observed. Despite not explicitly defining the categories of parties who are eligible to participate in administrative proceedings, the statute, nevertheless, expressly refers to certain procedural rights as enjoyed by persons adversely affected by an intended decision of an administrative authority e.g. the right to be heard is enjoyed by any person who will be adversely affected by the intended decision.
- ***Applicable statutes / statutory instruments:* –** determine and define parties to be consulted / participate in administrative proceedings.
- ***Jurisprudence:* –** the experience of the Courts in the matter of parties differs from its administrative counterpart, however, despite their differences, the

jurisprudence of the Courts is a source of guidance to administrative authorities.

- ***Custom:* –** consultation might be based on administrative custom rather than a law-bound obligation. For example, it is customary for municipalities[3] or community councils to take into account the views of residents living in close vicinity to a project under assessment, which may adversely affect them, for the purpose of issuing or not a building permit, in order to ascertain their views.

2. (a) and (b) ***Additional parties to administrative proceedings***: for example, by virtue of *section 17* of the *Environmental Impact Act of 2018,* and independently of any other provisions prescribed by the *Planning Act of 1972, 90/1972* or any other statute or administrative custom, the Town Planning and Housing Authority when assessing an application for a planning permit or any other administrative authority for that matter, assessing an application, and when the provisions of the *Environmental Impact Act of 2018* apply, is obliged to take into account the opinion of the following persons before reaching a decision:

i. The Report of the Environmental Protection Authority prepared under section 24,
ii. The opinion of the Environmental Protection Authority prepared under section 29,
iii. Any views submitted by another state in accordance with section 21, and
iv. Any views submitted by any person or authority, which under the provisions of the said law have a right to submit their views.

Rationale: An administrative decision must be <u>well-informed and duly inquired</u> into every material aspect of the subject matter. Before reaching a decision, an administrative authority is duty-bound by this *sine qua non* obligation.

3. Potential parties who are not parties by law, may participate in administrative proceedings at a request. For example, when a municipality examines whether to grant or not a building permit for the construction of a commercial complex or a mall in a residential area, the opinion of the residents living in close vicinity to the potential project is a factor to be considered. Residents adversely affected (usually acting as a group) by the potential issuance may request to participate in the administrative procedure on their own motion, in order to have their views or objections taken into account.

4. (a) This depends on the provisions of the applicable statute. The administrative body providing the procedure will determine entitled third parties, in accordance with applicable law, i.e. the *Environmental Impact Act of 2018*. Similarly, by virtue of the *Planning Act of 1972, 90/1972*, the Town Planning and Housing Authority, is under a statutory obligation to consult any person or authority, before issuing or refusing to issue a planning permit[4].

(b) Again, an obligation to announce would be prescribed by law. For example, by virtue of the *Environmental Impact Act of 2018*, if a public hearing has been scheduled by the Environmental Protection Authority to take place, it must be

[3] Roads and Buildings Act, Chapter 96 and Roads and Buildings Regulations
[4] Section 23(2)(b) of the 90/1972 Act

announced at least 15 days beforehand[5]. Also, by virtue of *section 12C of the Planning Act, 90/1972*, the Town Planning and Housing Authority is under a statutory obligation to announce the preparation of a Local Planning Scheme or the altering of an existing one and invite any interested party, body or authority including Local Authorities to submit their views and recommendations within a designated time period.

(c) Within Cyprus' legal framework for an administrative decision to be contested, leave of the Administrative Court is not required. Equally, no leave of the Supreme Court is required for the first instance judgment to be appealed. Hence, a party's right to challenge the final decision is not impaired or foreclosed if for some reason he did not participate in the administrative proceedings. But, the party must have the required standing to challenge the final decision, in judicial review proceedings. Standing is assessed by the Court on its own motion and once judicial review proceedings have been initiated. The existence of a legitimate interest is presumed, if the recourse is filed by the applicant. If the applicant however, is not the addressee of the administrative decision he must reasonably argue how the administrative decision affects his legitimate interest[6]. No *actio popularis* is available in Cyprus and this was judicially acknowledged in the case of *Pitsillos v. C.B.C. (1982) 3 C.L.R. 208*.

Article 146.2 of the Constitution restricts this right to 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. The purpose of this exclusionary rule was to confine judicial review to prejudicially affected parties, however, it is mitigated by attaching a broad interpretation to the notion of 'interest'. 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. The interest must be legitimate, present, direct and personal.

The prerequisites for the valid invocation of judicial review may be summarised as follows:

- The pursuer must have an interest in the subject matter set down for judicial review, separate and distinct from the interest of the public or a section of it in the matter.
- The interest must be directly as opposed to indirectly prejudiced, i.e. not as a reflection of prejudice to the interest of a third party.
- The interest must be extant at the time the decision is taken by the administrative authority and must, as the case law establishes, subsist throughout the crucial stages of the proceedings, that is at the time the decision is taken, when recourse is filed to the Court and at the time judgment is delivered.
- The interest of the pursuer must be adversely affected presently, that is at the time the decision is taken or the omission occurs in contrast to future likely prejudice.

[5] Section 39(1)(c)(ii)
[6] Charalambous v. Republic (No. 1) (1996) 3 C.L.R. 73, 79, 82

5. (a) and (b) *Final decision:* The nature of the administrative decision contested is a core aspect. Some administrative 'decisions' cannot be judicially reviewed because they do not satisfy this requirement. Such are, inter alia, internal measures of the administration or preparatory measures preceding final decision or even an administrative authority's opinion. In those instances, the decisions of the administration do not generate rights nor do they impose obligations but merely identify rights existing under the law. In that respect, the non-acceptance of a party/ies' request to participate in administrative proceedings, is a preparatory measure of the administrative authority, preceding a final decision and not one productive of legal consequences. Preparatory measures are not executory in nature.

Executory nature of the decision: Only persons adversely affected by an executory act or decision or an omission of the administrative body prescribed in Article 146.1 of the Constitution are legitimised to seek judicial review of its legality. Hence, only acts and decisions definitive of the rights and obligations of the person affected thereby are justiciable, or omissions importing similar consequences. Such an act or decision of administrative bodies is characterised as executory[7].

Executoriness connotes action expressive of the will of the Administration determinative in itself of the rights and obligations of the subjects of the decision[8]. Executory acts are contrasted to acts of administrative bodies which are informatory, advisory or of a confirmatory character, as aforementioned.

Other public authorities: 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. Unless of course, conflict or dispute of power or competence is contested under *Article 139 of the Constitution*. 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 for the protection of the natural environment.

(c) Such omission may be remedied by the administrative authority any time before a final decision has been taken. Once the final decision has been issued, specific rules apply for its revocation. Revocation is governed by the provisions of the relevant statute or by the *General Principles of Administrative Law Act 158(I)/1999*[9], if applicable law makes no provision. As a general rule, revocation of an administrative decision after a period of reasonable time, is contrary to the principle of proper administration, especially if in the meantime, the decision, has created to the applicant / addressee, rights or favourable conditions.

6. (a) and (b) All those determined by the administrative authority to be parties to the proceedings enjoy the same procedural rights. Administrative proceedings are rule guided by a number of fundamental principles.

The overall legal framework is laid down in *General Principles of Administrative Law Act 158(I)/1999* which specifies one's procedural rights and administration's

[7] Constitutionalism-Human Rights-Separation of Powers, Georghios M. Pikis, 2006, Page 116
[8] Stephanides v. Municipality of Engomi (1994) 3 C.L.R. 49 (FB)
[9] Section 54 of the 158(I)/1999 Act

obligations. The statute safeguards the procedure by encapsulating 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 etc.

A concise outline of 158(I)/1999 Act's principles:

- 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 denotes (*Article 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 (*Articles 15 and 17*).
- Proper administration:
  1. Principle of bona fide: A public authority must act in good faith. Measures/Sanctions, conflict good faith if taken in bad faith, or in a contradictory or deceiving manner (*Article 51*, *Tamassos Tobacco Suppliers and Co. v. Republic*[10]).
  2. Proportionality: The principle of proportionality requires that a public authority's measures must be proportionate (*Article 52*). Adverse effects cannot be disproportionate to the measure taken or sanction imposed[11].
- 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 ECHR*.
  1. *Impartiality- Nemo judex in causa sua*
     An administrative body must act in accordance with the principle of impartiality (*Article 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 (*Article 43*).
- Reasoning/Justification: Administration must justify its decisions. Extent and details given may vary depending on the subject-matter. (*Article 26*).
- Representation: The right to be heard is exercised either as a litigant-in-person or via an attorney, either orally or in writing (*Article 43*).
- Equality is enshrined in *Article 28 of the Constitution*, which provides that all are equal before the law, administration and justice. Also, *Article 38 of 158(I)/1999* Act determines 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.
- Any person aggrieved by an administrative decision may request an official copy of that decision. *Section 37* of the statute provides that any person aggrieved by a decision or who has the right to make use of a decision, may upon filing a written request, take a full copy of the decision. The request may be denied partially or wholly, by the competent public authority only if

[10] (1992) 3 C.L.R. 60

[11] Andreas Azinas v. Republic (1999) 3 C.L.R 508, Theoti v. Republic (2001) 3 C.L.R 1144, C.Y.T.A. v. Office of Electronic Communications and Postal Regulations (2009) 3 C.L.R. 465

acceptance would jeopardise the interests of the office or the interests of a third party.

- Judicial review (**judicial protection**): is a remedy made available under *Article 146 of the Constitution* where the right may be exercised on both points of fact and law with a subsequent right to an appeal to the Supreme Court, on points of law only (*131/2015 Act*). Most importantly, within Cyprus' legal framework for an administrative decision to be contested, leave of the Court is not required. Equally, no leave of the Supreme Court is required for the first instance judgment to be appealed. However, the Courts will assess, ex proprio motu, the required legitimate interest needed to bring the recourse.

Furthermore, any person with a right to be heard (*section 43(1))*, has the right to have access to the documents of the administrative file, upon filing a written request. The right may be deprived for reason's relating to the interests of the office or the interests of a third party. The right may also be refused when the public interest ought to be protected[12]. However, administration must provide reasons for its refusal.

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

7. Not as far as it is known.

8. A relatively recent and significant part of the case law has been the judicial acknowledgment of a legitimate interest (locus standi needed) to a broader number of aggrieved parties seeking judicial review on grounds of adverse environmental effects.

As it was previously mentioned, Article 146.2 of the Constitution restricts this right to persons prejudicially affected by the subject-matter of the act, decision or omission. The required locus standi, has been judicially acknowledged to Local Authorities seeking judicial review of administrative decisions on the ground of natural environmental protection within their districts[13], as the responsible authorities for the protection of the general interest of their residents[14]. In the case of *Republic v. Pyrgon Community and other (1996) 3 C.L.R. 503, 508* the Supreme Court held that: "Concerns about the natural environment have, universally, acquired paramount importance, because its protection is directly linked to the welfare of a person and to a person's quality of life". In the case of *Republic v. Yeri Improvement Board (1998) 3 C.L.R. 210, 219,* the full bench of the Supreme Court followed the same dictum and held that the Local Authority's interest was linked to the nature of its mission and hence its interest was legitimate. The Authority had contested an administrative decision on the ground that the natural environment was adversely affected.

[12] Hadjidemetriou v. Republic (1999) 3 C.L.R. 361
[13] Simonis and another v. Improvement Board of Latsia (1984) 3 C.L.R. 109
[14] Pantelouris v. Council of Ministers (1985) 3 C.L.R. 852

However, a legitimate interest similar to that of Local Authorities has not be judicially acknowledged to Associations. In the decided case of *Thanos Club Hotels and others v. ETEK and others (2000) 3 C.L.R 323, 337*, the full bench of the Supreme Court ruled that the Cyprus Scientific and Technical Chamber did not have the required standing, (legitimate interest) to seek judicial review of an administrative decision on the ground of environmental protection since the Chamber did not serve such purposes. The Supreme Court reiterated that Associations are not to be differentiated from individuals. For an individual to seek judicial review of an administrative decision on the grounds of adverse environmental effects, he must have the status of a nearby neighbour (vicinity) whose welfare, health, property, and decent living are factors at stake or jeopardised[15].

Judicially acknowledging a general standing would be equivalent to a judicial acknowledgment of actio popularis; a principle not available under Cyprus' legal order.

II- Determination of facts and discretionary powers

1. (a) Administrative authorities are under a duty to duly and impartially investigate all material facts of the case. By virtue of *section 45* of the *General Principles of Administrative Law Act 158(I)/1999,* an administrative decision must be preceded by a due inquiry into the material facts of the case held in the context of the law applicable to the subject and supported by the reasons founding it. A due inquiry is regarded as a *sine qua non* obligation, vital for the validity of the decision[16]. An inquiry is said to be complete when all material facts have been collected and evaluated as to lead and draw safe conclusions[17]. The public body is under an obligation to evaluate and balance all facts of the case, even contradictory ones, and prefer some more than others, as long as the choice is reasonably sustainable[18]. The competent public body is at liberty to choose the type and form such inquiry will take. For example, the investigation/inquiry may be conducted by the competent public body or via another authority or person. Whatever form the inquiry takes and however it is conducted, it must be impartially done (*section 42*). The obligation to conduct a due inquiry is reflected by the additional obligation for administrative decisions to be duly informed and duly reasoned[19]. Due reasoning of an administrative decision is an indispensable element for its validity[20]. Justification must be clear and not general or vague[21].

No inquiry is required if the competent public authority, is acting under mandatory powers, (that is non-discretionary powers).

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[15] Articles 7 and 9 of the Constitution are relevant

[16] Photos Photiades and Co. v. Republic (1964) C.L.R. 102, 115, Hadjilouca v. Republic (1966) 3 C.L.R 854, 860 Iordanou v. Republic (1961) 3 C.L.R. 245, 257, Philippos Demetriou & Sons v. Republic (1968) 3 C.L.R. 444, 450, Fragkides v. Republic (1968) 3 C.L.R. 90, 102, Republic v. Theodoulou Pantazi (1991) 3 C.L.R. 47, 52.

[17] Nicolaides and others v. Mina and others (1994) 3 C.L.R. 321, EEY v. Zamboglou (1997) 3 C.L.R. 270, 276.

[18] Section 46 of the 158(I)/1999 Act

[19] Constitutionalism-Human Rights-Separation of Powers, Georghios M. Pikis, 2006, Page 119 and Section 26(1) of the General Principles of Administrative Law Act of 1999

[20] Constitutionalism-Human Rights-Separation of Powers, Georghios M. Pikis, 2006, Page 118

[21] Kounounas v. Republic (2001), 3 C.L.R. 1163, Marina Neofytou v. Council of Ministers and others (2006) 3 C.L.R. 768

(b) Generally speaking, parties to administrative proceedings initiated either ex officio or by application must present facts and evidence and aid in the conduction of the inquiry. An obligation of this kind is manifested in many statutory provisions[22]. The significance of such an obligation is mirrored in *section 45* of the *General Principles of Administrative Law Act of 1999. B*y virtue of the said provision, an inquiry may be foregone if the administré has rendered one unachievable. This demonstrates that administrative authorities do not bear the responsibility of accurate fact finding alone. An administrative authority cannot be held responsible if parties to the proceedings do not assist in the collection of all material facts to the case.

(c) The same rules apply to administrative proceedings initiated ex officio and to those initiated by application. There is no disparity.

(d) The process of determining the facts is ultimately a process of discretionary decision-making. For the determination of the facts, the administrative authority will isolate factors, evaluate each one of them and draw a conclusion after a process of final evaluation and balancing of interests. The exercise of discretionary powers is governed, inter alia, by the principles of good faith, proportionality, impartiality and equal treatment[23]. Since the inquiry will have revealed all relevant and material facts of the case, all of them must be taken into account. Irrelevant facts, are of course excluded. As long as the public authority has evaluated and balanced all material facts of the case, even contradictory ones, it may give greater weight to some than others, if such a choice is reasonably sustainable.

(e) No such different models of fact finding exist.

2. (a) and (b) Yes, as it was previously mentioned, the parties to the proceedings are expected to cooperate with the public authority. The public authority is under a duty to conduct a due and impartial inquiry and the parties' cooperation supplements it. The duty to cooperate is intensified for the applicant / addressee (administré). If the conduction of an inquiry has failed and the applicant is responsible for such failure then the administrative authority is not responsible for the unfeasibility of the inquiry.

(c) Applicants bear a more intensified duty to cooperate. Again, this may be ascertained by the fact that by virtue of *section 45* of the *General Principles of Administrative Law Act* an administrative authority is not responsible for not conducting an inquiry if the applicant – administré - renders the inquiry unachievable. An administrative authority requires all material facts to be before it, before making an informed and final decision. Often administrative proceedings take longer than anticipated because of a party's delayed cooperation.

3. (a) Generally speaking, the fact-finding process is subject to the discretion of the administrative authority, provided that it is exercised within the parameters of the law. However, a public authority may exercise its discretion guided by circulars or

[22] e.g. section 9(1)(a) of the Environmental Impact Act of 2018, provisions under the Roads and Buildings Act, Chapter 96 and Roads and Buildings Regulations on applications for a building permit

[23] General Administrative Law, P.D. Dagtoglou, 6th Edition, Page 173, Para. 384

criteria set by it, as long as they do not conflict the law and each, individual case is examined based on its own facts and merits[24].

(b) The assessment of the facts lies with the administrative authorities and so long as the evaluation made and conclusions drawn therefrom are reasonably open to them and the public authorities acted within the parameters of the law, they are the sole arbiters of their decisions and the Courts will not interfere with a choice resting thereupon. Misconception of facts, on the other hand, materially affecting the decision made will result in its voidance[25]. An administrative authority may not take into account irrelevant or non- existent facts or fail to take into account substantial / material facts to the case. However, as long as the public authority evaluated and balanced all material facts of the case, even contradictory ones, it may give greater weight to some than others, if such a choice is within the bounds of reason.

Ultimately, the process is one of isolating factors, evaluating each one of them and drawing a conclusion after a process of final evaluation and balancing of interests. But, the process is governed, inter alia, by the principles of good faith, proportionality, impartiality and equal treatment[26]. In addition, discretion may be guided by circulars or administrative instructions of hierarchically higher administrative bodies or by criteria set by the public authority itself; as long as they do not conflict the law and each case is individual assessed on its own facts and merits.

(c) By virtue of *section 45(2) of the General Principles of Administrative Law Act of 1999*, the competent administrative authority is responsible for the way the inquiry will be conducted and may choose the preferred type and form. The inquiry may be conducted solely by the competent administrative authority, or via another person or body; reflecting the availability for a prospective and potential cooperation. Similarly, an administrative body may allocate different tasks to different officers within the authority. As long as the investigation was conducted duly, administrative bodies can opt the preferred way for a complete inquiry.

4. (a) No such rules of evidence for the admissibility of evidence in administrative proceedings before administrative bodies are provided. However, as aforementioned, a public body is not allowed to take into account irrelevant to the case facts or to omit to take into account material facts[27]. All evidence adduced and taken into account must be lawful and relevant to the purpose of the law[28]. In addition, Criteria established by the administrative body itself and Circulars[29] may provide guidance during the administrative proceedings; provided that they are in accordance with the law and each case is assessed on its own merits.

5. (a) No evidential burden in the form such burden takes in the adversarial system of justice lies on the applicant or any other interested party taking part in the litigation. It is the responsibility of the Court to inquire into the legality of the act, decision or omission complaint of. The burden of proof lying on the applicant, linked to the presumption of legality of an administrative decision, is a weak one going no

[24] Section 44 of the 158(I)/1999 Act
[25] Papantoniou and others v. Public Service Commission (1983) 3 C.L.R 64
[26] General Administrative Law, P.D. Dagtoglou, 6th Edition, Page 173, Para. 384
[27] Section 46 of the General Principles of Administrative Law Act of 1999
[28] Section 47 of the General Principles of Administrative Law of 1999
[29] Section 44 of the General Principles of Administrative Law Act of 1999

further than requiring the applicant to specify the reasons for which the legality of the act, decision or omission is challenged or contested. Having said that, it is of course the case that if the facts casting doubt on the legality of the decision are extra-administrative as in the case of allegations of bias and prejudice, it is for the applicant to substantiate them to the extent of casting doubt on the impartiality of the body. The process of judicial review is an inquisitorial one. The inquiry extends into every aspect of the decision, the background and its reasoning[30].

Inquisitorial trials provide a contrast to the adversarial system 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 issues[31]. This feature of the administrative trial and the inquisitorial system in general, does not allow the submission of evidence and facts that were not before the public body and are hence not part of the administrative file, only but in very exceptional circumstances[32] and when the matter relates to asylum cases before the Administrative Court[33]. For the submittal of evidence which are not part of the administrative file leave of the court is required, conditional to the fact that evidence is relevant to the issues of the case[34] as to aid the court in administering justice[35]. It is for this reason that the administrative file or files that disclose and make the case are unswervingly accepted as evidence[36].

(b) At the pre-trial stage (written statements stage) the aggrieved person can have access to his administrative file and other evidence that affect his legal rights[37]. All parties are entitled to see and challenge all the evidence relied upon before the Court and to introduce evidence of their own in rebuttal. EU law takes into account the importance of such a right. *Article 41(2) of the Charter of Fundamental Rights of the European Union* denotes that proper administration means that every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union. This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
(c) the obligation of the administration to give reasons for its decisions.

Similarly, within Cyprus' legal order, an aggrieved person has the right to have access and knowledge of his administrative file except if the public body refuses, wholly or partially, on grounds relating to the protection of a third party's interest or for the interest of the office. It is settled law that inspection and disclosure of

[30] Yiasemides and others v. Cyprus Organisation for the Dairy Industry (1989) 3 C.L.R. 2585 and Constitutionalism-Human Rights-Separation of Powers, Georghios M. Pikis, 2006, Page 134
[31] Cyprus Administrative Law Manual, Nicos Charalambous, 3rd edition, 2016, Page 39
[32] Iacovides v. Public Service Commission (1997) 3 C.L.R. 28
[33] Section 11(3) of 131(I)/2015 Act
[34] Petrolina Ltd and others v. Cyprus Port Authority, Case No. 223/2000, Date 4/4/2002, Zarvos v. Republic (1989) 3(B) C.L.R. 106, Kyriakides v. Republic, 1 RSCC 66
[35] Tasni Enviro Ltd and Telmen Ltd v. Republic, Case No. 862/2005, Date 26/6/2008
[36] Constantinou v. Water Board Council (No. 1) (1992) 4 C.L.R. 3330
[37] Republic v. D. Avlonitis & Sons Ltd (2000) 3 C.L.R. 137

evidence is allowed when the documents are relevant[38]. Relevance might be direct or indirect, one that helps the party requesting disclosure in the advancement of his case or in undermining the opposing party's case or even one that might lead to one of the two said consequences to take effect. Furthermore, all relevant facts and documents that surround the case must be disclosed, so that the court can scrutinise the legality of the act[39]. As stressed in the cases of *Kyriaki Georgiou v. Republic*[40] and in *FBME BANK LTD v. Central Bank of Cyprus and others, Case No. 1024/2014, 18/12/2015*, it is not for administration to decide what is necessary to be disclosed in court but ought to disclose fully all documents that led to the administrative decision taken and leave it to the court to evaluate the importance of each document.

(c) Once at the hearing stage, the conduct of the trial is largely in the hands of the Judge who may order the submission of evidence, call witnesses and set trial issues[41]; features of the inquisitorial system. This feature of the administrative trial and the inquisitorial system in general, prohibits the submission of evidence and facts which were not before the public body and are hence not part of the administrative file, only but in very exceptional circumstances[42] and when the matter relates to asylum cases before the Administrative Court[43]. For the submittal of evidence which do not make the administrative file leave of the court is required, conditional to the fact that evidence is relevant to the issues of the case[44] as to aid the court in administering justice[45]. It is for this reason that the administrative file or files that disclose and make the case are unswervingly accepted as evidence[46].

Furthermore, the Court however, does not take a primary view of the facts. For example, the Court will not order the submission of an interested party's PhD dissertation as evidence, in order to ascertain whether the interested party did have the required knowledge on the subject needed for the position he was appointed[47].

6. (a) The Administrative Court has jurisdiction to review a decision on both points of law and fact. The Court's powers lie in scrutinising the legality of acts or omissions and not to evaluate their correctness, but in two exceptional cases of asylum and tax, in accordance with the provisions of the *Administrative Court's Act of 2015.* The judiciary does not step into the sphere of administration. The jurisdiction of the Court under Article 146 of the Constitution 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 body are not reasonably sustainable, or they result from an error of fact or law or are in excess of its

[38] The National Bank of Greece, S.A v. Paraskevas Mitsides (1962) C.L.R. 40, KEAN SOFT DRINKS and others v. Republic, Case No. 1247/05, Date 25/9/2007
[39] C.D. Hay Properties Ltd v. Republic (1992) 3 C.L.R. 238, FBME BANK LTD v. Central Bank of Cyprus and others, Case No. 1024/2014, Date 18/12/2015
[40] Case No. 629/2009, Date 28/9/2010
[41] Cyprus Administrative Law Manual, Nicos Charalambous, 3rd edition, 2016, Page 39
[42] Iacovides v. Public Service Commission (1997) 3 C.L.R. 28
[43] Section 11(3) of 131(I)/2015 Act
[44] Petrolina Ltd and others v. Cyprus Port Authority, Case No. 223/2000, Date 4/4/2002, Zarvos v. Republic (1989) 3(B) C.L.R. 106, Kyriakides v. Republic, 1 RSCC 66
[45] Tasni Enviro Ltd and Telmen Ltd v. Republic, Case No. 862/2005, Date 26/6/2008
[46] Constantinou v. Water Board Council (No. 1) (1992) 4 C.L.R. 3330
[47] Petsas v. Republic, 3 S.C.C.R. 60, 63

discretionary powers[48]. In essence, the court reviews the decision in order to ascertain whether:

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

Therefore, the court reviews whether the public body has abused its discretionary powers or acted ultra vires or in an illegal manner[49].
Judgments of the Administrative Court can be appealed to the Supreme Court, on points of law only.

(b) A limited control comparable to the concept of technical discretion applied by the ECJ, is applied in Cyprus' legal order when issues of technical nature or ones requiring specialised knowledge are raised. When the Court reviews the legality of a decision, it examines whether the public body has exercised its discretionary powers, within lawful limits, but its jurisdiction does not extend to issues of technical nature or issues that require specialised knowledge[50]. When such issues are raised, public bodies are the sole arbiters of their decisions, and the Court will only intervene if either misconception of fact, or abuse of power or failure to conduct a due inquiry[51], is proved. This is further illustrated by the fact that an administrative authority is not under an obligation to justify its decision on issues of technical nature. Despite of the general rule, that requires administrative decisions to be well and sufficiently reasoned (*section 26(1) of General Principles of Administrative Law Act 158(I)/1999*), justification is "… constrained of course, to the issues upon which discretion was exercised and it is unnecessary to extend to issues of technical nature, which fall outside the jurisdiction of the Administrative Court"[52].

(c) It is settled precedent law that when an administrative decision requires technical, specialised knowledge, which the administration possesses through the qualifications of its civil servants' or through the experience they have gained over the years of employment in the civil service, their discretion / decision on technical issues cannot be substituted with that of the Administrative Court[53]. Broadly speaking, technical issues or issues that require specialised knowledge usually arise in, inter alia:

- competition cases,

[48] Republic v. Georghiades (1972) 3 C.L.R. 594, Yuri Kolomoets v. Republic (1999) 4 A C.L.R. 443
[49] Cyprus Administrative Law Manual, Nicos Charalambous, 3rd edition, 2016, Page 304-305
[50] 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
[51] Republic v. Lefkou Georgiade (1972) 3 C.L.R. 594, 692-693, Nicolas v. Republic and others (1989) 3 C.L.R. 228, 236, Republic v. Matthew (1990) 3 C.L.R. 2452, Westpark v. Republic (1990) 3 C.L.R. 915, 921, Holy Archbishop of Cyprus and others v. Republic (1990) 3 C.L.R. 1175, 1185, Civil Servants Commission v. Andreas Anastasiades (1991) 3 C.L.R. 1, 10, Cyprus Broadcasting Corporation and others v. Sisel Holdings Ltd and others (2013) 3 C.L.R. 326, Podium engineering Ltd v. Republic (2008) 3 C.L.R. 430, Charalambos Christou Chomatenos v. Republic (2009) 3 C.L.R. 120, Logicom Public Ltd v. Tenders Review Authority and others, A.E. 153/2009, 14/1/2014
[52] Lambrou v. Republic and others (2009) 3 C.L.R. 79
[53] LELLA KENTONIS INVESTMENT CO LTD v. Republic, Revisional Appeal 138/2010, 21/12/2016

- cases relating to telecommunication laws,
- tenders etc.

(d) Issues of technical nature and issues that required specialised knowledge fall under a specific category. Here, the Courts' review is limited to and focusses on whether there has been:

- no misconception of the facts of the case,
- no abuse of powers (i.e. no abuse of discretionary powers),
- a due inquiry into all material facts of the case.

7. (a) Generally speaking, decisions of administrative authorities spring, as a rule from the exercise of discretionary powers as prescribed by law. Administrative authorities are duty bound to exercise their powers, including their discretionary powers, bona fide for the advancement of the purposes ordained by law. In doing so they must abide to and act within the bounds of the law; and the procedural standards safeguarded by the general principles of administrative law must be duly observed and applied. One such procedural standard is the obligation to conduct a due inquiry. No inquiry is required however, if a decision is generated by the competent administrative authority, acting under mandatory powers, (that is non-discretionary powers).

Similarly, an administrative decision must be well-reasoned. Justification must extend to all issues upon which discretion was exercised. Again, no justification is required, if a decision has been generated by the competent administrative authority, acting under mandatory powers. Similarly, automated, computerised decisions do not require justification. *Section 27* of *General Principles of Administrative Law Act 158(I)/1999* states that administrative acts issued uniformly in large numbers or mechanically or by the means of computers, do not require justification. This is so, as decisions falling under this category were not generated from the exercise of discretion.

Hence, it can be said that, the broader the discretion the more profound is the requirement for the procedural standards, laid down in the *General Principles of Administrative Law*, to be observed and applied.

(b) The Judiciary does not intrude into the sphere of administration. The jurisdiction of the Court under Article 146 of the Constitution is in accordance with the doctrine of the separation of state powers. To justify intervention, the choice made by the administrative authority must, in view of all the material facts of the case, be such that no authority in the position of the decision maker could have arrived at. The apparent deviation from the principle of separation of powers is more a matter of appearance rather than substance; in as much as acting in a manner contrary to reason and good sense portraits abuse of power.

(c) and (d) Judicial review under Article 146.1 of the Constitution, is intended to scrutinise the legality of acts or omissions; a pre-eminently judicial matter, and not to evaluate their correctness from the point of view of the Judiciary[54]. So long as the

[54] Two exceptions exist, as provided by the *Administrative Court's Act 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.

administrative authority acts within the parameters of the law, in furtherance to its purposes and according to the norms of proper administration, the administrative authority trusted with the power to determine a given matter is the sole arbiter of its decisions. Any choice between alternative courses rests entirely with it. The Judiciary will not intrude into the province of the Administration. The jurisdiction of the Court under Article 146.1 accords with the principle of separation of powers. The decision in *Christofi v. Republic (1992) 4 C.L.R. 939* adverts to the distinction between the judicial and administrative spheres of authority. The Court may annul an administrative decision if it concludes that it was one not reasonably open to the administrative authority to take[55]. To justify judicial intervention on this ground, the choice made must, in view of the material facts of the case, be such that no administrative authority in the position of the decision makers would have arrived at. As previously stressed, this apparent deviation from the principle of separation of powers is not one of substance; acting in a manner contrary to reason and good sense indicates abuse of power, establishing a ground for the annulment of the act[56].

Therefore, the Court reviews the reasonable limits within which an administrative authority must exercise its discretionary powers. Detecting those bounds of discretion is not an easy task for the Administrative Judge, who by no means should take the role of a "gouvernement des juges"[57].

(e) An expert opinion will be weight together with all other material facts of the case before the administrative authority reaches its decision. However, on certain occasions administrative authorities have a statutory duty to grant higher consideration / validity to such expert reports / opinions. For example, the Planning Authority in the assessment of an application for a planning permit, or the Council of Ministers or any other administrative authority when assessing an application for a project that falls under Annex I and II of the *Environmental Impact Act of 2018*, must duly take into account, as a material factor, the Impact Assessment Report of the Environmental Protection Authority[58].

(f) The doctrine of separation of powers is so apparent in the Constitution of Cyprus that the mere 'meddling' of one state power into the other, under any disguise, is unacceptable[59]. Along the same lines and based on the entrenched constitutional principle of separation of state powers, there is a subsequent further distinction between the judicial and administrative spheres of authority. Reviewing a public body's discretion on technical issues or on issues that require specialised knowledge, would ultimately be an encroachment on their sphere. Administration possesses a solid advantage on specialised technical knowledge. The Administrative Judge regards this knowledge as prima facie acceptable. Otherwise, he would be

[55] Constitutionalism-Human Rights-Separation of Powers, Georghios M. Pikis, 2006, Page 128 and Sarruhan v. Republic 2 R.S.C.C. 133
[56] Constitutionalism-Human Rights-Separation of Powers, Georghios M. Pikis, 2006, Page 128
[57] Action and Control of the Administration, Nicos Ch. Charalambous, 2004, 2nd Edition Page 317
[58] Section 17
[59] President of the Republic v. House of Representatives (1985) 3 C.L.R. 2165, President of the Republic v. House of Representatives (1986) 3 C.L.R. 1159, President of the Republic v. House of Representatives (No.3) (1992) 3 C.L.R. 458, President of the Republic v. House of Representatives (No.1) (2000) 3 C.L.R. 157

taking up the role of the in line (hierarchical) supervisor of the administrative authority whose decision is under scrutiny[60].

8. Article 146.1 of the Constitution 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."

Subject to the Constitution, authority claimed by the administration must derive from the law. Administrative discretion must be exercised in a manner promoting the ends of the law and for the due enforcement or application of the law. Under Article 146.1, excess or abuse of power constitutes distinct grounds for the annulment of administrative decisions.

The review of the exercise of an administrative authority's discretionary powers and whether such discretion has been abused or not, concerns the following:

- whether there is a clear statutory empowerment of discretion to be exercised and its extent,
- whether the administrative authority has indeed exercised its discretion,
- whether discretion has been exercised after a due inquiry has been conducted on all material facts of the case and the administrative authority has evaluated and balanced all the facts of the case and no misconception as to the real and material facts of the case is manifested,
- whether the administrative authority exercised its discretionary powers correctly, without abuse and within the limits prescribed by the law, the Constitution and the general principles of administrative law[61].

Please see Answer to Question 7 (c) and (d) of Part II for further details.

9. Not as far as it is known.

10. The Court will only intervene if after taking into account all the facts of the case, it concludes that the findings of the administrative body are not reasonably sustainable, or they result from an error of fact or law or are in excess of its discretionary powers[62]. The following cases illustrate the Courts' approach, as explained above:

In *Soliman v. Refugees Review Authority (2010) 3 C.L.R. 87,* the applicant filed an appeal against the decision of the Refugees Review Authority for rejecting his application for asylum. The Supreme Court held that the judiciary will not intervene

[60] Abstract and Technical Definitions of Administrative Law, Evaggelia Koutoupa-Regkakou, 1997, Page 116 and FIRST ELEMENTS EUROCONSULTANTS LTD v. Republic, Revisional Appeal 34/2012, 15/12/2017
[61] Action and Control of Administration, Nicos Chr. Charalambous, 2014, 2nd Edition, Page 315
[62] Republic v. Georghiades (1972) 3 C.L.R. 594, Yuri Kolomoets v. Republic (1999) 4 A C.L.R. 443, Holy Archbishop of Cyprus v. Republic, (2010) 3 C.L.R. 90

with the merits of the exercise of an administrative authority's discretion. The competent authority was responsible to conduct and observe his interview and evaluate all the facts deriving from it. The Court will not take up the role of the administrative authority. As long as the administrative authority did not abuse its discretionary powers or acted under a misconception of material facts and its decision was a reasonable one to take, then the Court will not intervene with the decision of the body.

In the case of *Holy Archbishop of Cyprus v. Republic (2010) 3 C.L.R. 90,* the applicants filed an appeal against the decision of the administrative authority for rejecting their application to convert a piece of land (field) into a plot. The Supreme Court stated that it is settled precedent law that the Court will not interfere into the sphere of the administration, unless misconception of facts or law or abuse of powers has been proved. As a matter of principle, the evaluation of the facts by the administrative authority is not overturned if they are held to be within the limits of reason.

III- Case Study

Initial case

1. First of all, the Court will examine ex proprio motu, whether M, F and P have the required standing to seek judicial review contesting the decision. The prerequisites for the valid invocation of judicial review may be summarised as follows:

(a) The pursuer must have an interest in the subject matter set down for judicial review, separate and distinct from the interest of the public or a section of it in the matter.
(b) The interest must be directly as opposed to indirectly prejudiced, i.e. not as a reflection of prejudice to the interest of a third party.
(c) The interest must be extant at the time the decision is taken by the administrative authority and must, as the case law establishes, subsist throughout the crucial stages of the proceedings, that is at the time the decision is taken, when recourse is filed to the Court and at the time judgment is delivered.
(d) The interest of the pursuer must be adversely affected presently, that is at the time the decision is taken or the omission occurs in contrast to future likely prejudice.

P is the President of a Local Association for Preserving the Traditions. In the case of *Thanos Club Hotels and others v. ETEK (Cyprus Scientific and Technical Chamber) and others (2000) 3 C.L.R. 323, 337,* the full bench of the Supreme Court held that the Association "Friends of Akama[63]" had no standing and ruled the following: "First of all, an Association cannot have a higher legal status than individuals in relation to environmental concerns: the number of person that make up the Association is no factor to differentiate them, nor what the Association chooses to include as its purpose in its Articles of Association. If under such circumstances an individual has no legitimate interest then so does an Association as well….". P, therefore, has no legitimate interest (locus standi) to bring the recourse.

[63] A natural reserve area in Cyprus

F, on the other hand, has the required standing. In the same decided case referred to above, the plenary of the Court proceeded to add "…standing exists when an individual has the status of a close-by resident, that is if he lives in close vicinity. In such case, the environment is examined under the lens of the interest of the pursuer for the protection of his welfare and his property rights in the degree they are affected by the administrative decision".

M also has the required standing. As the municipality - the Local Authority of the district - its interest is legitimate in protecting the natural environment of its area and the general interests of its residents. In the case of *Republic v. Yeri Improvement Board (1998) 3 C.L.R. 210, 219,* the full bench of the Supreme Court, acknowledged a Local Authority's locus standi (legitimate interest). In that case the Local Authority contested an administrative decision on the ground that the natural environment was adversely affected. The plenary of the Court held that their interest was linked to the nature of the Local Authority's mission and hence its interest was legitimate.

2. Here, both standing and the time limit for challenging the decision will be examined by the Court on its own motion. O brought a recourse five (5) months after the final decision was taken. The Constitution of Cyprus introduces a strict time limit of 75 days, within which decisions of the Administration can be challenged by way of judicial review. The wording of Article 146.3 regulates in mandatory terms the time within which a recourse may be taken by a prejudiced party after gaining knowledge of the decision. The principles relevant to notification and the information necessary to fix an affected party with knowledge were reviewed in the case of *Papaioannou v. Republic (1982) 3 C.L.R. 103.* The following propositions were distilled:

(a) publication in the official gazette of the Republic when required by law sets in motion the time limit for making a recourse. If parties gain knowledge of the decision from any other source, prior to publication in the official gazette, time begins to run from that earlier date unless publication is an essential ingredient of the genesis of the act.

(b) notification whether through the official gazette or by any other means need not extend to every detail of the decision. Notification is valid "… so long as it adequately acquaints the party affected thereby of the result and the reasoning behind it…".

Furthermore, in *Neophytou v. Republic (1964) C.L.R. 280*, the Court underlined that "… provisions such as para 3 of Article 146, which limit the right of access to the Court, should be strictly interpreted and applied and in case of doubt should be applied in favour of and not against the citizen…". In the same spirit it was stressed in *Liveri v. Republic (1981) 3 C.L.R. 398* that any doubt as to notification or the adequacy of the information conveyed about the decision taken will be resolved in favour of the subject.

Following precedent law, O's recourse will not be ruled to be out of time, since the recourse for judicial review was lodged once the organisation gained knowledge of the contested decision.

O's standing will also be assessed by the Court ex proprio motu. It appears that O does not have the required legitimate interest to bring the recourse. As was the case with P, O is an organisation established for the protection of nature. The fact that S did not involve O in the administrative proceedings will not necessarily help O's action, since he does not have the required standing.

Since standing is a requisite to judicial review, the party seeking to address the risks to the red kites[64] must be legitimised to bring the recourse. M, the Local Authority (municipality) in this case, is legitimised to act for the protection of its natural environment; the natural habitat of red kites. The Court will assess whether the provisions of the applicable laws have been applied, and in particular the provisions of the *Protection and Management of Wild Birds and Hunting Act of 2003, 152(I)/2003* (natural reserves and bio-reserves) and the *Protection and Management of Nature and Wildlife Act of 2003, 153(I)/2003 (sections 15 and 16* on Decrees and Environmental Impact Assessment*)*. The Court will further review if either misconception of fact, or abuse of power or failure to conduct a due and impartial inquiry is proved. The Court will only intervene if after taking into account all the facts of the case, it concludes that the findings of the administrative body are not reasonably sustainable, or they result from an error of fact or law or are in excess of its discretionary powers[65].

Modification

In this scenario, the said project falls under the provisions of Annex II of the *Environmental Impact Act of 2018* (*Directive 2011/92/EU*). Hence, the provisions of the Act must be applied.

By virtue of *section 48* of the Act, O[66] has the required legitimate interest to bring a recourse for judicial review, contesting the decision of E- the Environmental Protection Authority- for granting environmental approval or S's omission to allow O's participation[67]. *Section 48* provides that any legal person, whose Articles of Association or Memorandum includes as its main competence and responsibility the protection of the environment has a legitimate interest, which might be adversely affected from any decision, act or omission, exercised within the competencies in accordance with the provisions of the said Act, of:

(a) The Environmental Protection Authority for granting environmental approval, or
(b) The Environmental Protection Authority that no Environmental Impact Report is required, or
(c) Relating to the participation of the public,

and can lodge a recourse for judicial review under *Article 146 of the Constitution*.

[64] By virtue of the Protection and Management of Wild Birds and Hunting Act of 2003, 152(I)/2003, red kites are a protected species (Annex I, No. 116). Sections 15 and Section 16 of the Protection and Management of Nature and Wildlife Act of 2003, 153(I)/2003 also apply.
[65] Republic v. Georghiades (1972) 3 C.L.R. 594, Yuri Kolomoets v. Republic (1999) 4 A C.L.R. 443
[66] Provided that the organisation is a legal person and its Articles of Association or Memorandum includes as its main competence and responsibility the protection of the environment
[67] Sections 38(1)(a) and section 27(1) and Annex VII