



**Seminar organized by the Supreme Court of Ireland and
ACA-Europe**

**How our courts decide: The decision-making processes
of Supreme Administrative Courts**

Dublin, 25 – 26 March 2019

Answers to questionnaire: Cyprus



Seminar co-funded by the «Justice » program of the European Union

Mr. Justice Leonidas Parparinos, Supreme Court of Cyprus

ACA-Europe Questionnaire

How our Courts Decide: the Decision-making Processes

II. Questions

A. Background questions in relation to your Supreme Administrative Court/ Council of State

1. Ανώτατο Δικαστήριο, Supreme Court.
2. Cyprus.
3. The Supreme Court of Cyprus is based in Nicosia.
4. Website: <http://www.supremecourt.gov.cy>

Greek version:

http://www.supremecourt.gov.cy/judicial/sc.nsf/DMLindex_gr/DMLindex_gr?OpenDocument

English version:

http://www.supremecourt.gov.cy/judicial/sc.nsf/DMLindex_en/DMLindex_en?OpenDocument

B. The Structure of your Supreme Administrative Court/Council of State

5. (a) and (b) An outline of the Supreme Court's functions, powers and jurisdictions follows:

- 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.
- 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 (five Justices) of the Supreme Court.
- It has exclusive jurisdiction to issue Prerogative orders, namely the prerogative orders of Habeas Corpus, Certiorari, Mandamus, Prohibition and Quo Warranto.
- Under Article 135 of the Constitution it has the power to make rules regulating the practice and procedure in the courts, and for prescribing the fees in respect to court proceedings.
- The Court also acts as the Supreme Council of Judicature, dealing with judicial appointments, promotions, transfers and disciplinary matters.
- Lastly, it has exclusive jurisdiction to sit as a Council and decide upon impeachment cases of the Highest Officials of the Republic.

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

C. Caseload

6. The President and 12 Justices.
7. Approximately 1213¹ cases per year.
8. Approximately 778² cases per year.

D. Internal organisation of the Supreme Administrative Court

9. The Supreme Court has panels/divisions for the adjudication of appeals. The Court divides its appeals work into divisions dealing with specific areas of law, such as criminal, civil, family and administrative.

10. a. The Supreme Court has a number of panel formations for different jurisdictions as explained above. Please see Answer to question 5(a) and (b) for further details. Two of those panels hear judicial review appeals against decisions of the Administrative Court.

¹ 2016 statistics, Functional Review of the Courts System of Cyprus 2017-2018 Final Report

² 2016 statistics, Functional Review of the Courts System of Cyprus 2017-2018 Final Report

b. By virtue of the **Administration of Justice (Miscellaneous Provisions) Law of 1964** the appellate jurisdiction of the Supreme Court is exercised by a Bench of three (3) Justices of the Supreme Court. Similarly, by virtue of section 13 of the **Administrative Court's Law of 2015**, appellate revisional jurisdiction is exercised by a Bench of three (3) Justices. In January 2016, the newly-founded Administrative Court assumed the originating jurisdiction assigned to the Supreme Court by Article 146 of the Constitution. On appeals against decisions of a Supreme Court Justice, adjudicated when exercising its originating jurisdiction, the Supreme Court sits in panel formations of five (5) Justices.

c. The Court's divisions deal with specific areas of law such as criminal, civil, family and administrative law. In that respect, the divisions do not deal with a varied list of appeals. Having said that, each administrative law division (judicial review appeals division) does not deal solely with a particular area of specialisation like commercial law or environmental law. There are no different areas or categories of specialisation for the review of different kinds of administrative authorities or different areas of administrative law. Both panels hear judicial review appeals on all areas of administrative law.

d. Division composition changes annually. If during the legal year, the composition of a division needs to change for the adjudication of a particular case for reasons that became apparent, then the Court itself will decide accordingly. In the event of a recusal(s), for example, the Court may decide for the appeal to be heard by the second Bench/division or for the recused Justice to be replaced by a Justice of the first Bench/division. It is settled precedent law that, Justices themselves decide whether they shall recuse or not from deciding a case and the matter is not decided by another Justice (*Re Efthymoulios Liasides (1999) 1 C.L.R. 185*).

e. The Court divides its appeals work into divisions dealing with specific areas of law, such as criminal, civil, family, administrative etc. A Justice of the Supreme Court who sits in a Bench/panel of appellate revisional jurisdiction, also sits in a Bench/panel of appellate civil or criminal or family jurisdiction.

f. The Supreme Court carried on the first instance judicial review jurisdiction, 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. Hence, 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 or issues of constitutionality are heard by the Full Bench of the Supreme Court. Issues of constitutional nature are always heard by the plenary.

g. Please see Answer to Question 10.f. above.

h. (i) and (ii) By virtue of the **Administration of Justice (Miscellaneous Provisions) Law of 1964** the appellate jurisdiction of the Supreme Court is exercised by a Bench of three (3) Justices of the Supreme Court. Similarly, by virtue of section 13 of the **Administrative Court's Law of 2015**, appellate revisional jurisdiction is exercised by a Bench of three (3) Justices. Appeals against decisions of a Supreme Court Justice, adjudicated when exercising its originating jurisdiction (that is before the 2015 eighth amendment of the Constitution), the Supreme Court sits in formations of five (5) Justices³. If an appeal raises issues of high importance or of constitutional importance, then the Full Bench of the Supreme Court will hear the case⁴.

i. If important issues or issues relating to administrative principles or issues of constitutional nature (e.g. the doctrine of separation of state powers) are raised, the appeal is heard by the Full Bench of the Supreme Court (the President and 12 Justices).

Furthermore, the common-law system, based on the principle of *stare decisis* means that the judiciary should assign similar outcomes to similar cases⁵. The doctrine of precedent law is a fundamental pillar of law, interlinked with *legal certainty* (predictability) and the *rule of law*⁶. When issues of divergence or deviation from precedent law arise, they are dealt with by an enlarged Bench or by the Full Bench of the Supreme Court and not by a panel of special formation. 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 discretion for departure widens when constitutional or administrative law issues are concerned⁷.

³ Section 11 of Administration of Justice (Miscellaneous Provisions) Law of 1964

⁴ Section 11 of Administration of Justice (Miscellaneous Provisions) Law of 1964

⁵ Ronald Watts and others v. Laouri and others, Civil Appeal 319/2008, 7/7/2014 (majority ruling), Republic v. Demetriades (1977) 3 C.L.R. 213, 263-264, Nicolaou and others v. Nicolaou and others (No. 2) (1992) 1B C.L.R. 1338, 1405-1406, Republic and others v. Yiallourou and others (1995) 3 C.L.R. 363, 373-374, Mavrogenis v. House of Representatives and others (No. 3) (1996) 1 C.L.R. 315, 332-337, Koulounti and others v. House of Representatives and others (1997) 1B C.L.R. 1026, 1105, Vironas v. Republic (1999) 3 C.L.R. 77, 85, Christos Hadjikyriakou Properties Ltd v. Republic (2001) 3B C.L.R. 901, 905, Antenna TV Ltd and others v. CY.T.A. and others (2002) 3 C.L.R. 793, 809-811, Panayides Contracting Ltd v. Charalambous (2004) 1A C.L.R. 416, 488 and Investylia Public Company Ltd v. Tseriotis, Civil Appeal 9/2009 and 10/2009, 13/3/2013

⁶ Ronald Watts and others v. Laouri and others, Civil Appeal 319/2008, 7/7/2014 (majority ruling), Republic and others v. Yiallourou and others (1995) 3 C.L.R. 363

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

j. Each division has its President. The most senior Justice of the division acts as the President of the Bench. When scheduling cases, the President of each division consults with the Registrar. Each President uses his/her own criteria for scheduling cases. Currently, there is no formal process or guidelines or directions on judicial case management. Usually, preceding cases are set for hearing first.

It is often the case that individual Justices are assigned additional roles that do not, however, relate to particular cases but do relate to matters that concern the Court(s) and the court system in general. This is because the Supreme Court has the overall responsibility for the administration of the Courts system and is accountable for the use of public funds assigned to the Courts.

k. (i) Cases are assigned to a panel by the competent Registry. The competent Registry is responsible for the organisation and allocation of cases. Cases are allocated to each panel evenly. In the occasion of a recusal(s) the Bench will give directions accordingly. The appeal will either be transferred to the other Bench or another Justice of the Supreme Court will become member of that particular panel.

(ii) The number of Justices assigned to hear appeals is prescribed by statute law. As aforementioned, by virtue of the **Administration of Justice (Miscellaneous Provisions) Law of 1964** the appellate jurisdiction of the Supreme Court is exercised by a Bench of three (3) Justices of the Supreme Court. Similarly, by virtue of section 13 of the **Administrative Court's Law of 2015**, appellate revisional jurisdiction is exercised by a Bench of three (3) Justices.

Please see Answer to Questions 10.b. and f. for further details.

(iii) In addition to his judicial role and duties, the President of the Supreme Court also has overall responsibility for the management and administration of the courts system in Cyprus. To a large extent this responsibility is delegated to the Chief Registrar. Supervision of the courts of first instance is exercised through the Administrative Presidents, although the Supreme Court also meets weekly to discuss matters of administration.

Each division has its President. The most senior Justice of the division acts as the President of the Bench who is also responsible for case management. When scheduling cases, the President of each division consults with the Registrar.

(iv) No such other panels, assemblies or bodies exist to which cases are assigned.

11. (i) The concept of Advocate General, as established in the civil law systems, does not exist in Cyprus' legal system. A similar position exists,

that of a Legal Officer/Assistant. Currently, the Supreme Court is assisted by 11 Legal Officers. Legal Officers are not members of the Judiciary.

(ii) Legal Officers are not advocates representing clients in court. They are not members of the court either. Hence, they do not take part in the court's deliberations. They are legally qualified officers who assist the Court. They are in fact Civil Servants, assigned permanently to the Judicial Service. The Judicial Service of Cyprus is an independent service, bestowed with the task to better serve the courts. Legal Officers support the Justices as deemed appropriate by each, individual Justice and broadly speaking their duties include legal research, analysis of the relevant law, preparation of draft judgments, drafting sections of them, case summaries for legal publications anonymisation of court decisions, participation in Committees for legal matters relating to the Court and others matters as deemed appropriate by the individual Justice.

(iii) Legal Officers do not participate in the proceedings before the Supreme Court. He or she however may be asked to consider the written and oral submissions to the court on a particular case and draft an opinion/draft judgment. The opinion/draft judgment is not binding on the Court. Legal Officers do not take part in the Court's deliberations either.

E. Research and Administrative Assistance

12. Legal Officers provide legal research support to the Justices. Each Justice has a legally qualified Legal Officer who may assist the Court as deemed appropriate by the individual Justice.

Administrative assistance is provided by the Chief Registrar, Assistant Chief Registrar and the competent Registry (Registrar and personnel). The Registries of the Supreme Court provide the day-to-day administrative and operational support of the Court. The administrative practices and procedures in the Supreme Court Registries are provided by legislative requirements and by the relevant rules of court. A well-defined sequence is followed by the registry in the administrative preparation of a case for trial. Essentially, the registry ensures that all relevant documentation is received within the specified timeframes and in accordance with the rules of court. Once these have been filed, the case is put before the President of the division of appellate jurisdiction who will consider the basis of the appeal and advise the parties of the court's requirements regarding pleadings and the timelines for receipt of documentation. Once pleadings have been received, the case is brought to the President of the division for scheduling, in consultation with the Registrar, and a date for hearing is set.

Furthermore, each Justice has a suitably trained stenographer / shorthand typist and other support staff for hearings and clerical and secretarial work.

13. Currently, there are 11 Legal Officers assigned to the Supreme Court.

14. Please see Answer to Question 12.

15. Each Legal Officer is assigned to an individual Justice.

In relation to administrative matters, the Supreme Court is supported in the administration by a staff of 72, headed by the Chief Registrar. The Chief Registrar is supported in her role by the Assistant Chief Registrar. Registrars, are assigned to a particular Registry and they, together with the rest of the staff, provide day-to-day administrative and operational assistance to all Justices of the Supreme Court.

16. No such department exists for additional pooled research support.

17. All duties mentioned in Question 17 may be undertaken by a Legal Officer who assists the Court, as requested and to the degree requested by the individual Justice he or she is assigned to. The role of each Legal Officer varies depending on the requirements of the Justice to whom he/she is assigned to. Broadly speaking, Legal Officers assist the Court in the preparation of judgments, legal research, drafting, consideration of the relevant law, discussing aspects of a case, preparing case summaries for legal publication, anonymisation of court decisions, participation in Committees for legal matters relating to the Court and any other matter as deemed appropriate by the individual Justice they are assigned to.

F. Oral hearings

18. 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 never dismisses an appeal without a public hearing.

One of the distinctive features of administrative justice is the common use of written proceedings by the Court. Written submissions/statements are, indeed, an indispensable part of the procedure. Once written submissions are filed, an oral hearing will follow in all cases. Oral arguments/clarifications may become decisive for the fair resolution of the case. In fact, under the **Appeals (Pre-trial procedure, Written Skeleton arguments, Advocacy time limits and Summary procedure for striking out manifestly unfounded appeals) Procedure Rules of 1996**, the Court may enter an appeal for hearing without undertaking the pre-trial stage in which written submissions are filed, if the Court considers it just. The Rules of Court, make no provisions for an oral hearing to be omitted under the directions of the Court. The reason for this is explained below.

Administrative proceedings conducted only in writing would raise a constitutional point of concern. Conducting them solely in writing means that there is no court room hearing to observe. Articles 134.1 and 154 of the Constitution stipulate that court sessions of the Supreme Court for all proceedings are public but the court may hear any proceeding in the

presence of the parties only, if it considers it to be in the interest of the orderly conduct or national security or public morals.

Similarly, *Article 30.2 of the Constitution* guarantees that hearings of all courts must be held in public, except in exceptional cases for the interest of national security, or constitutional order, or public order, or public safety, or public morals or for the interest of juveniles, or the protection of parties' private life, or for special circumstances under the opinion of the court, or publicity will adversely affect the interests of justice. Likewise, similar provisions are provided in *Article 6.1 of the ECHR*.

19. Please see Answer in Question 18.

20. The Court will deliberate in private in all cases before the hearing begins. Deliberation prior to the commencement of the hearing takes place amongst the Justices of the panel who will hear the case and allows the panel to discuss matters of the case that will need to be set forth and clarified by the advocates at the time of the hearing.

21. By virtue of Rule 14 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**, all parties have fixed time limits within which to make their oral clarifications / submissions.

- 30 minutes for the Appellant.
- 30 minutes for the Respondent. If a cross-appeal was made then the Respondent has 40 minutes.
- 10 minutes for the Appellant's response. If a cross-appeal was made then the Appellant has 20 minutes to respond.

The court may extend the time limits accordingly if it is just under the circumstances.

22. The Court may interrupt a party while he or she is making his/her oral clarification/submissions and ask questions. By virtue of Rule 14(f) of the aforementioned Procedure Rules of 1996, time spent answering questions of the Court, is not calculated in the overall oral clarification time that corresponds to each party.

23. First and foremost, 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 motion⁸. Further mention and explanation on public order grounds is made below.

⁸ 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

Secondly, all appeals must be brought by written notice of appeal filed and must abide to certain rules; such as, 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 ground⁹. Grounds not stated in the notice of appeal will not be dealt by the Court if they are raised for the first time in the written submissions. Likewise, grounds of appeal stated in the notice of appeal which are not further argued in the written submissions are rendered forsaken.

Thirdly, according to settled precedent law, points of law not pleaded clearly, remain unjustified and unsusceptible to judicial scrutiny¹⁰. In the case of ***Anthousi v. Republic***¹¹ the Court ruled that any laxity in this area would result in the ousting of the provisions of the Rules of Procedure and their role in the determination of disputed issues in the administrative trial.

Fourthly, the Administrative Court (first instance court) has jurisdiction to review a decision taken by an organ exercising executive or administrative authority, on both points of law and fact. Judgments of the Administrative Court however, can be appealed to the Supreme Court, only on points of law.

In addition to the above, the oral hearing is, as a general rule, confined to the legal grounds raised in the notice of appeal (statement) and written submissions with the exception of public order grounds that may be raised by the Court of its own motion¹².

Public order grounds raised ex proprio motu, include the following:

- (a) By virtue of Article 146 of the Constitution and the provisions of the Administrative Law Principles, Act of 1999, certain preconditions must co-exist for a person 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.
- (b) Further to the above, the Court may raise the following points of law ex proprio motu:

⁹ Order 35, r.4 of Civil Procedure Rules

¹⁰ Pavlides v. AHK, Case No. 227/2007, 20/3/2008, Stavros Zaharia v. Republic (2011) 3A C.L.R. 293

¹¹ (1995) 4C C.L.R. 1709

¹² 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

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

24. By virtue 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**, judicial review appeals are conducted in a two-stage process. First, written submissions are filed. Once that stage is completed (conclusion of the pre-trial stage) the Court will enter the appeal for hearing (oral hearing stage). Following the hearing, judgment is reserved by the Court. No further written submissions may be filed after that unless the Court directs otherwise in the interest of justice. Once the court reserves judgment, the case cannot be reopened. Reopening is only permissible under court's inherent jurisdiction for the interest of justice¹³. In ***Sigma Radio T.V. LTD and others v. Cyprus Radio and Television Authority***¹⁴ the applicants/appellants requested the reopening of the case after judgment was reserved in light of ECtHR's new-ruled case law. The *full bench* of the Supreme Court held that this is only possible in exceptional circumstances which relate to the facts and issues of the case. Similarly, in the case of ***Lampi and others v. Governor of the Central Bank of Cyprus***¹⁵ the applicant submitted an ex parte application requesting the case to be reopened after judgment was reserved in light of new-found case law. The Supreme Court by an *enlarged bench* repeated the principles laid down by settled precedent law and explained that "in the present case the matter did not concern facts but case law that the court was aware or could take into account even if reference was not made during the hearing".

25. It is settled case-law that, liberty is acknowledged to a Justice/Judge to excuse himself/herself from the composition of the Court of which he or she is a member whenever the Justice/Judge deems this to be in the interest of justice¹⁶. Therefore, the Justice himself/herself decides whether he/she shall recuse or not from deciding a case and the matter is not decided by another Justice (***Re Efthymoulos Liasides (1999) 1 C.L.R. 185***). This is vitally important in a democracy that individual judges and the judiciary as

¹³ Republic v. Sampson (1991) 1 C.L.R. 848, page 849, Papaioannou and others v. Republic (No.1) (1991) 3 C.L.R. 659, Xenophontos v. Republic (2008) 3 C.L.R. 261

¹⁴ (2004) 3 C.L.R. 134

¹⁵ (2013) 3 C.L.R. 302

¹⁶ President of the Republic v. House of Representatives (1985) 3 C.L.R. 1501 and Mavrogenis v. House of Representatives (No.1) (1996) 1 C.L.R. 857

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.

Self-exclusion apart, the Court will not address a question of bias of a Justice/Judge unless it is raised by one or both of the parties to the case. The following extract from the decision in the case of ***Makrides v. Republic***¹⁷ characterises the approach of the Court to a plea of disqualification by a litigant:

“As I perceive my duty, in the absence of valid reasons disqualifying me from sitting in the case, to excuse myself would be an abdication of duty; an abdication of duty with visible dangers to the administration of justice. One such danger is that we would be coming close to acknowledging to a litigant a right to choose the Judge who will try him. I could neither condone such a practice nor shut off from my mind the repercussions from any such decision.”

The test of impartiality of the Court is objective. The yardstick for determination of bias on the part of the court is the reaction of a reasonable man acquainted with the facts relevant to the interest of the Justice/Judge in the case. Justices and Judges in general, must conduct themselves in a manner compatible with the requisites of impartiality and the impersonal character of the judicial process. Especially, they must refrain from passing unnecessary comments that may create the impression of descending into the arena of the trial. Any departure from this stance of aloofness may compromise, in the eyes of the litigant, as well as third parties, his/her impartiality¹⁸.

Judicial review proceedings are conducted under the inquisitorial system. The inquisitorial system 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 issues¹⁹ and the inquiry extends, into every aspect of the decision, the background thereto and its reasoning. Nevertheless, despite his/her active role, a Justice/Judge of administrative jurisdiction is bound by the same aforementioned principles.

G. Written submissions of parties

26. The parties have an obligation to comply with the Rules of Procedure. By virtue of Rule 10(b)(iv) 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**, written submissions must contain concisely and precisely the arguments of

¹⁷ (1984) 3 C.L.R. 304

¹⁸ Evangelou a.o. v. Ambizas a.o. (1982) 1 C.L.R. 41

¹⁹ Cyprus Administrative Law Manual, Nicos Charalambous, 3rd edition, 2016, Page 39

the parties in the appeal or cross-appeal, as the case may be, without repetitions. As a general rule, reference should be made to established precedent law.

In accordance with the Procedure Rules of 1996, the following principles ought to be followed:

-
- Determination of material issues. Each ground of appeal must be set out and argued separately, unless they correlate.
 - Legal grounds must refer to the relevant provisions of the Constitution or the law, accordingly, as well as to relevant case law. Written submissions must be accompanied by copies of relevant case law, indicating the material extract.
 - Factual grounds must refer to the material findings of fact of the first instance court, indicating the relevant extract of the evidence in the transcripts and to the principles of law that justify interference by the last instance court.
 - The appellant's written submissions must be accompanied by a chronology of the proceedings.

Written submissions must comply with the aforementioned rules. They must be as short and precise as possible. A typical written submission would usually extend over the length of 15-20 pages, depending of course on the complexity of the legal grounds raised.

20. There is no maximum length for written submissions, provided by the Rules of Procedure. As long as written submissions abide to the aforementioned rules, their length would depend on the complexity of the issues raised.

H. Consideration of the case

21. On appeal, it is settled precedent law that issues not raised during the proceedings at first instance cannot be raised for the first time on appeal, with the exception of public order grounds that may be raised by the court of its own motion²⁰.

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.

²⁰ 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

- 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.

Further to the above, the Court may raise the following points of law *ex proprio motu*:

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

22. Once all pleadings and written submissions have been filed, the Court will enter the appeal for hearing. The Justices who will hear the case will discuss it before the oral hearing takes place. With the completion of the hearing, the trial-stages of the proceedings are brought into conclusion and the Court will reserve judgment at this stage. Further deliberation of the case will be undertaken by the Court division. The Court will proceed into a careful consideration of all aspects of the case. Once the Court is ready to hand down judgment all parties to the proceedings are notified accordingly, by the competent Registrar.

23. The Constitution of the Republic of Cyprus was signed on the 16th of August of 1960. By virtue of Article 3 of the Constitution, the official languages of the Republic are Greek and Turkish. Article 3.4 makes provisions as to the language(s) to be used during judicial proceedings and for judgment writing.

First, reference should be made from the start that the Constitution of 1960 establishes 2 Supreme Courts:

- (a) The Supreme Constitutional Court, and
- (b) The High Court of Justice

By virtue of Article 146 of the Constitution, the competence and exclusive jurisdiction for judicial review was vested in the Supreme Constitutional Court. The Supreme Constitutional Court was composed of a Greek, a Turkish and a neutral Justice²¹. 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

²¹ Article 133 of the Constitution

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.

The present day, unified Supreme Court, hears cases and deliberates in Greek. In the occasion of Turkish-Cypriot litigants-in-person or Turkish-Cypriots advocates legally qualified to practise law in Cyprus by the Legal Council (Bar Council), the provisions of the Constitution will be complied with.

24. First, the Supreme Court consists of the President and 12 Justices. When the Court hears a case in plenary session deliberations are undertaken by the full Bench. It must be borne in mind that; the President is first amongst equals. No casting opinion or vote applies to the President.

When the Supreme Court sits in panels/divisions, then the most senior Justice, acts as the President of the division. Again, the President of each division does not have a casting opinion or vote.

Furthermore, 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.

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

On appeals, a panel of three (3) Justices hears the case. Deliberations are conducted in private solely by the members of the Supreme Court (division) 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.

Preferences for particular outcomes are communicated between the Justices during these private deliberations.

Judgments are given by the Justices 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.

26. Written submissions/statements are, indeed, an indispensable part of the procedure. Once filed, an oral hearing follows in all cases. By virtue of constitutional provisions, oral hearings are a sine qua non obligation for the fair determination of a case.

Oral arguments/clarifications in support of the legal grounds pleaded may become decisive for the fair resolution of the case. They give the opportunity to the Court to ask questions and hear arguments on matters that the Court needs further argumentation and clarification on.

27. In administrative jurisdiction, written submissions/statements are an indispensable part of the proceedings. The Procedure Rules of 1996, make provisions in relation to a party's omission to file his written submissions during the pre-trial stage. If the omission burdens the appellant, then the appeal is dismissed by the Court. An omission by the respondent results in the appeal being entered for hearing and the respondent will have no right to be heard. The same applies for cross-appeals (if any). At the end of each month the competent Registry prepares a list of appeals in which the parties have failed to file their written submissions and the Supreme Court will act accordingly²².

It is of course the case, that reinstatement of appeals or cross-appeals is possible if the party can demonstrate reason beyond his control for not filing his written statement²³ and non-reinstatement would deprive him of his right to be heard.

I. The decision of the institution

28. A collective judgment is delivered by the Court, however, concurring, separate and dissenting ones are possible. 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.

29. If a collective judgment is delivered then, one Justice will write the judgment for the panel which heard the appeal.

²² 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

²³ Rouvianas Ltd and others v. Republic (2000) 3 C.L.R. 191, Christodoulos Christodoulou v. Republic (2001) 3 C.L.R. 1134

30. 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.

The importance of reasoning and the implications of failure to provide it are articulated in the extract cited below from the case of **Neophytou v. The Police (1981)** 2 C.L.R. 195 (CA):

“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”.

The reasoning of judicial judgments is, a type of accountability for judicial action.

31. Under Article 30.2 of the Constitution and Article 6.1 of the ECHR, judgments of the Court must be duly reasoned; a cardinal and indispensable element of a fair trial. 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.

The Court’s judgments, contain both the order - the operative part of the judgment, and the findings – reasoning- contained in the *ratio decidendi* which provides the necessary underpinning for the operative part.

32. 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*.

J. Timeframes for the decision-making process

33. Currently, on average, it takes about 6 years between the time a judicial review appeal is lodged into the system of the Supreme Court and the final determination of the case. It should be borne in mind that this figure represents the time needed for a judicial review appeal to be determined by a

panel of five (5) Justices against a decision of a single Supreme Court Justice (that is, before the enforcement of the eight amendment of the Constitution). No appeals against decisions of the Administrative Court have been finally determined yet by the panels of three (3) Justices²⁴.

Since the establishment of the Administrative Court in 2016, the rate of case completion in the Supreme Court has risen by 13%. It is expected that this increase in the rate of case completion will reflect a substantial reduction in the length of time needed for the judicial review appeals against decisions of the Administrative Court heard by the panels of three (3) Justices.

Furthermore, the existing court system is undergoing further restructuring in order to address the overall problem of backlogs, amongst other things. Please see Answer to Questions 37. and 38. for further details.

34. & 35. & 36. There is no mandatory timeframe for deciding all cases or a portion/category of them. Justice should be dispensed within a reasonable time. The dispensation of justice within a reasonable time is incorporated in Article 30.2 of the Constitution as a necessary element of a fair trial. The timely administration of justice constitutes an element of justice itself. In **Agapiou v. Panayiotou (1988) 1 C.L.R. 257** the Court proclaimed: “Justice delayed is justice denied. This aphorism must be in the forefront of judicial thought and actions.”

Reasonableness of the length of the proceedings is not decided in abstracto but by reference to the facts and circumstances of the case, particularly its complexity and the conduct of the parties relevant to the discharge of their duty to present their case before the court. However, it is the bounden duty of the Court to ensure that cases are tried within a reasonable time. In **Paporis v. National Bank of Greece (1986) 1 C.L.R. 578** the Court explained that the need to conclude the proceedings within a reasonable time is not a rule of prescription (limitation of action) but a fundamental principle of the administration of justice.

In the case of **Victoros v. Christodoulou (1992) 1 C.L.R. 512**, the judgment of the trial Court was set aside because of the inordinate delay of the first instance Court in giving judgment after the conclusion of the proceedings.

The interval that elapses between the reporting of the case and the outcome of the proceedings should never be unreasonably long; that is one that strays outside the parameters of a fair trial. As such, the holding of a fair trial is assessed within the context of the trial in its entirety.

37. & 38. Administrative proceedings are governed by a well-structured procedure. Skeleton arguments/written submissions need to be exchanged between the parties within a set time frame and time-limited oral addresses/clarifications are made thereafter. Judgment is reserved once the oral hearing is concluded.

²⁴ With the exception of two cases

As illustrated in the Answer to Question 5(a) and (b), the Supreme Court of Cyprus has a plethora of jurisdictions and in that respect an ever-increasing workload to be completed. To illustrate the point, the full Bench of the Supreme Court decides posteriori upon the constitutionality of any law enacted by Parliament and referred to the Supreme Court by the President of the Republic. In the past year, this type of referrals has quadrupled in number. The Court will give priority to them over other court work. Moreover, the Supreme Court has the overall responsibility of the administration of all Courts in the Republic. In addition, further restructuring of Cyprus' entire 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.

K. Developments over time

39. The first instance judicial review jurisdiction was vested in the Supreme Court, under Article 146 of the Constitution, 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. 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). The Supreme Court transferred all pending first instance administrative cases to the Administrative Court in 2016.

After the eighth Constitutional amendment of 2015, appellate administrative jurisdiction is exercised by the Supreme Court as the appellate court of last instance. Judgments of the Administrative Court can be appealed to the Supreme Court, on points of law only. 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.

Furthermore, as explained above the Supreme Court now divides its work into divisions dealing with specific areas of law rather than for each division to have a varied list as was the case before. This has been a relatively recent initiative of the Court and is expected to have improved efficiency. A formal review of the initiative will follow in due time.

40. The recent establishment of the Administrative Court has helped to alleviate backlogs and delays on hearing appeals in that it has freed up judicial time to focus on appeals.

41. There is concern that the number of appeals from the newly-founded Administrative Court may further add to the backlog at the Supreme Court over the coming years. However, there is not yet sufficient evidence to indicate if this will in fact be the case.