

## 1. Administrative consent procedure

Please give a short outline ( no specific details ) of the administrative consent procedure applying to project planning in your national legal order (procedural steps, time- limits, competent authorities, involvement of lobby groups and technical experts)

The promotion and control of development in all areas in Cyprus including urban centres and rural areas is pursued through the implementation of published Development Plans.

According to the Town and Country Planning Law :“development” includes the opening of new roads/highway.

The Town and Country Planning Law provides for the following four types of Development Plans:

- The **Island Plan** is the planning instrument for socio-economic development of the entire area of the Republic and the Minister of Finance is responsible for its preparation. Up to now no Island Plan has been published since such plan should refer to the whole of the island, including its occupied part.
- **Local Plans** contain, among others, a broad range of provisions which refer to a wide variety of types of development, infrastructure networks, standards, quantitative limitations and intensities of development and they usually refer to wide geographical areas that function as unitary entities.
- **Area Schemes** contain policy measures and provisions, which are substantially more detailed than those contained in Local Plans and as a rule they cover smaller geographical areas. No Area Schemes have been published until today.

The Minister of the Interior is designated by Law as the competent Planning Authority for the preparation of Local Plans and Area Schemes. The Minister has the power to delegate some of his power to the Planning Board.

- The **Statement of Policy for the Countryside** concerns the entire territory of the State excluding the areas where Local Plans or Area Schemes exist, the British Sovereign Bases and the occupied part of Cyprus. The Minister of the Interior retains all the powers conferred to him by Law with respect to the Statement of Policy.

The local plans are firstly examined by the Common Council, which is composed of members of local authorities and experts appointed by the Council of Ministers, and subsequently by the Planning Board, which submits, the plan to the Minister of Interior for approval and publication.

All the persons affected must file a well reasoned objection within 8 months from the publication. After the expiration of that period, all objections are examined. Government departments and services, Local Authorities and the

Planning Board participate in the examination of the objections and they make their suggestions. The Minister then submits to the Council of Ministers recommendations and suggestions for the amendment of the Development Plan . The Council of Minister has the authority to approve or amend the local plan. Copies of the local plan are published in the official gazette of the Republic and are also available for inspection.

In relation to planning permissions, the Planning Authority is obliged, in certain cases prescribed by the Law, to ensure that an application for planning permission has been adequately publicised. The relevant procedure intends to inform the public and in particular those citizens who may be affected by any proposed development in a timely and reliable manner so that any views and representations may be submitted to the Planning Authority before decision-making.

In addition, the Planning Authority shall keep an updated Register of Applications and planning decisions which may be inspected by any interested person.

Based on this information, the public is invited to submit in writing any views, representations or objections with respect to the application under consideration within the period specified in the relevant notification.

As a rule, the Planning Authority does not refuse a planning permission merely because of numerous reactions or objections. Nevertheless, the views of third parties often reveal various planning aspects which need to be taken into account for reaching a balanced planning decision (e.g. the effect on traffic conditions or on the local environment or on specific amenities of neighbouring properties). In accordance with the Law, the Planning Authority cannot take into account views which only concern the effect on land values, personal circumstances or matters of morality.

The Planning Authority shall take into account any views, representations or objections submitted by the public or organised groups which are relevant to the application.

Any person submitting written representations with respect to any development shall be informed on their receipt and the decision taken by the Planning Authority on the application.

The possibility to submit a hierarchical recourse against the decision of a Planning Authority ensures the citizen's right of review by a body other than the one which took the initial decision.

A hierarchical recourse is lodged by submitting to the Council of Ministers a special form, duly completed (the form together with the various supporting documents is in fact submitted to the Ministry of the Interior) within a period of 30 days from the date of notification of the planning decision, in the following cases:

- refusal of planning permission or approval.
- granting of planning permission or approval with conditions attached thereto which in the applicant's view are onerous or unnecessary.
- failure to take a decision with respect to an application and to notify the decision to an applicant within the specified time period.
- serving of an enforcement notice, provided that the terms specified by the Law are met or
- refusal to grant a certificate of commencement of works.
- Hierarchical recourses, which are submitted after the prescribed time or are not adequately justified, may be rejected without further consideration.

The Council of Ministers has delegated its powers to decide on hierarchical recourses to a Ministerial Committee. The Ministerial Committee examines the hierarchical recourse on the basis of the provisions of the applicable Development Plan, the planning policies which may be included in other documents and other material considerations related to the development.

If the decision reached by the Ministerial Committee is not to the applicant's satisfaction, the latter has the right of recourse to the Supreme Court.

There is no specified time limit for the conclusion of the procedure of consideration of a hierarchical recourse which involves various bodies. The Planning Authorities under the Department of Town Planning & Housing and the Ministry of the Interior make every possible effort to attain the following objectives:

- The Ministry of the Interior, to which the hierarchical recourse is submitted, shall forward it to the Planning Authority for the preparation of a relevant report within 10 days of its submission.
- The Planning Authority shall prepare and send its report within a period of two months from the receipt of an appeal.
- Other consultees (the Director of the Department of Town Planning & Housing, Municipalities and District Officers) shall submit their views to the Ministry of the Interior within a period of 21 days from receipt of the Planning Authority's report.
- The Ministry of the Interior shall submit the hierarchical recourse and a complete report to the competent Ministerial Committee within one month from receipt of all aforementioned reports.

The Ministry of the Interior shall notify the decision of the Ministerial Committee to the applicant and to the Planning Authority within 15 days of the decision-making.

In certain cases, the applicant may not be satisfied with the way the Planning Authority handles an application or with the manner in which it has reached its decision. In other instances, third parties or organised groups may feel that their representations and views with respect to an application for development

or their objections with respect to a provision contained in the published Development Plan have not been considered adequately.

In the above-mentioned cases it is possible to submit a written complaint to the Ministry of the Interior, to the Department of Town Planning & Housing or to the Commissioner for Administration.

The Ministry of the Interior and the Department of Town Planning & Housing shall investigate all complaints submitted with respect to the services provided to applicants by the Planning System and shall respond to the complainant within a period of 15 days. If it is necessary to carry out a more thorough investigation, the complainant shall be informed about it.

Every citizen has the right of recourse to the Supreme Court within the time limits specified by the Constitution.

## **2) Public Involvements:**

See Question 1 above.

## **3. Judicial Process:**

**Please give a short outline (no specific details) of the judicial process applying to project planning decisions (pre-trial proceedings, time limits, competent courts, appeal, interlocutory injunctions).**

The Supreme Court as the only administrative court has exclusive jurisdiction to adjudicate on any recourse filed against a project planning decision. Any such recourse must be filed within 75 days from the date of the publication of the decision or, if not published, from the day when it comes to the knowledge of the applicant (Article 146.3 of the Constitution). If there is doubt or uncertainty as to the commencement of the period, such doubt has to be resolved in favour of the applicant.

The Supreme Court exercises both original and appellate jurisdiction. At first instance, cases are heard by one judge and following an appeal by a bench of at least five. Where the case involves issues of particular importance, it is heard by all the Supreme Court judges. Among such cases are those in which the Supreme Court is called upon to decide on constitutional matters.

The grant of a provisional order in an application to the Supreme Court under Article 146 of the Constitution is regulated by Rule 13 of the Supreme Constitutional Court Rules, 1962. It is a cardinal principle of administrative law that a provisional order is granted only if the applicant shows manifest illegality or the likelihood of irreparable damage.

## **4. Standing:**

**a) Do all of the above listed plaintiffs have standing before your national courts?**

Not all of the above listed plaintiffs have a right to file a recourse.

**b) If not, which are the reasons for their exclusion?**

A recourse to the Supreme Court is admissible only if the applicant possesses a direct, present, concrete, legitimate interest.

According to Article 146.2 of the Constitution : “*such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a community, is adversely and directly affected by such decision or act or omission*”.

The concept of “interest” is not similar to the concept as applied in civil law. It must be concrete of a financial or moral nature. Whether the interest is directly affected is a question of fact to be decided in the circumstances of each case.

The requirements of Article 146.2 must be satisfied at the time of the filing and hearing of a recourse; such requirements are satisfied if at the said material times it is clear that the existing interest of an applicant, though not yet actually adversely and directly affected, is unavoidably bound to be so affected eventually.

**i) An inhabitant of the residential area who is afraid of the unbearable traffic noise and air pollution.**

As mentioned above a citizen cannot contest the validity of every administrative act unless he has the quality of a direct, present and legitimate interest. In this respect a person’s interest must be distinguished from the interests of the general public. No *actio popularis* is allowed.

The interest of the inhabitant of the area is more prominent than that of members of the general public, because of financial repercussions and particular inconvenience arising from the projected traffic routing. This interest is not limited to the owners of neighbouring properties only but extends to the owners of property in the same area, whose ways of living may be adversely affected.

**ii) one of the municipalities which has divergent project plans for its territory.**

Local authorities are expected, within the sphere of their responsibilities and always subject to their authority under the law, to give effect to what appears best for the locality they serve.

Recourses by local authorities against acts of organs of central administration have been held to be permissible where the interests of the local administration, as distinct from those of local residents, are affected in

consequence of a given decision, that is they are entitled to challenge any decision which directly and adversely affects them.

Furthermore municipalities have a legitimate interest to challenge a decision which will result in substantial damage to the environment.

However in the present case the municipality is not protesting against the proposed project based on the reasons stated above but due to the existence of different project plans it has for its territory. Therefore it lacks the necessary legitimate interest.

**iii) The national environment agency which is of the opinion that the motorway will seriously affect the environment.**

We do not have in Cyprus a national environment agency, that is a body separate from the government. There is only an environment service of the Ministry of Agriculture, Natural Resource and Environment.

That service lacks the necessary legitimate interest to file a recourse, as a recourse by one organ of the Administration against the decision of another organ of the Administration is not possible.

**iv) A farmer who will lose part of his farmland.**

Under Article 23 every person, alone or jointly with others, has the right to acquire, own, possess, enjoy or dispose of any movable or immovable property and has the right to respect for such right.

This right, however, is not an unlimited one. It is subject to restrictions and limitations as provided by paragraph 3, of the said Article which are absolutely necessary in the interest of, inter alia, town and country planning or the development and utilization of any property for the promotion of the public benefit or for the protection of the rights of others.

In the present case the deprivation of the property of the applicant can be effected only by the means of compulsory acquisition under the provisions of the Compulsory Acquisition Law, 1962 (Law 15/62), which is "a general law for compulsory acquisition" envisaged by Article 23.4(a) of the Constitution. Accordingly the farmer has legitimate interest to challenge the acquisition of his land.

**v) A national association for the protection of the environment which is of the opinion that the motorway constitutes a serious threat to the environment in general and to the species listed by the "Habitats Directive" in particular.**

The legal status of an association in relation to the environment is the same as that of an individual. If individuals lack the necessary legitimate interest to file a recourse against a decision affecting the environment then associations lack such interest as well. The fact that the protection of the environment is

among the objects of the association, as set out in its articles of association, does not alter the position. The provisions of Article 146.2 of our Constitution cannot be relaxed.

**vi) An association for the protection of the environment of your neighbouring state which is afraid of transboundary pollution.**

The Convention on the Long Range Transboundary Air Pollution of 1979 was ratified in Cyprus (Law 184/91).

According to Article 13 of the Convention: *“If a dispute arises between two or more Contracting Parties to the present Convention as to the interpretation or application of the Convention, they shall seek a solution by negotiation or by any other method of dispute settlement acceptable to the parties to the dispute.”*

It emerges from this Article that only the State affected has the right to start proceedings against another State for long range transboundary air pollution

Furthermore as it is mentioned above an association does not have a legitimate interest.

**5. Are the above listed plaintiffs only allowed to claim infringements of their individual rights ( e.g. illegal expropriation of farmland, pollution of their private property) or may they claim infringements of public interests ( e.g adverse effects on the environment) or the unlawfulness of the planning decision in general ( e.g because of procedural deficiencies) as well?**

For a person to file a recourse he must be directly and individually affected. As mentioned above no *actio popularis* is allowed.

**6. Scope of judicial review:  
Do your courts review the lawfulness of planning decision in every procedural and substantive respect or is the scope of judicial review restricted ( e.g to procedural aspects or clear and serious infringements of national or community law)?**

According to Article 146 of our Constitution the Supreme Court shall have exclusive jurisdiction to adjudicate finally 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 provision of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority of a person.

The Supreme Court is vested with the power to control judicially, in every aspect, the actions of the Administration.

**7. EU environmental law:  
which decision will your court take, if**

- a) the environment impact prescribed by community law has not or not duly been carried out in connection with the project in question?**

Cyprus has implemented the Council Directive 85/337/EEC and the Council Directive 97/11/EC on the assessment of the effects of certain public and private projects on the environment, through the enactment of ***the Law for the Assessment of the Environmental Impacts From Certain Projects, (No.57 (I)/2001)***.

This law provides that the effects on the environment will be taken into consideration before the project is authorized to proceed.

Environmental impact assessment is mandatory for the project in question (appendix I of the Law) and the conclusion of the authorization process without this assessment would not be lawful. The same would apply where the assessment was made but was later ignored.

Furthermore by failing to carry out, prior to the construction of the motorway, an impact assessment, contrary to the requirements of the Directive on the assessment of the effects of certain public and private projects on the environment, the state will fail to fulfil its obligations under the directive.

- b) The project adversely affects a natural habitat which is eligible for designation as a special area of conservation in the sense of the EU “Habitats Directive” but has not yet been transmitted to the Commission?**

The Council Directive on the conservation of natural habitats and of wild fauna and flora has been implemented into our legal system (Law on the Protection and Management of Nature and Wildlife (No.153(I)/2003)).

Furthermore Council Directive on the conservation of wild birds has also been implemented into our legal system (Law for the Protection of Wild Birds (No. 152(I)/03)).

According to the ECJ case law, areas which have not been classified as Special Protection Areas but should have been so classified fall under the regime governed by the first sentence of Article 4(4) of the Birds Directive.

The first sentence of Article 4(4) of the Directive 79/409 on the conservation of wild birds requires Member States to take appropriate steps to avoid deterioration of habitats, not only in areas classed as special protection areas but also in areas which are the most suitable for the conservation of

wild birds, even if they have not been classified as special protection areas, provided that they merit such classification.

Therefore even if a habitat has not yet been transmitted to the Commission ,it must still be protected.

The Minister has also the power, by issuing an order to impose measures for the protection of habitats that are not designated as special protection areas. A person who disobey to that order is guilty of an offence (Article 7(6)(7))

Therefore that decision cannot be reconciled with the Directive or the law.

**c. The project adversely affects a natural habitat which has been transmitted to the Commission as being eligible for designation as a special area of conservation but which has not yet been placed on a Commission list?**

The ECJ has stated that on a proper construction of Article 4(5) of the Directive, the protective measures prescribed in Article 6(2), (3) and (4) of the Directive are required only as regards sites which, in accordance with the third subparagraph of Article 4(2) of the Directive, are on the list of sites selected as sites of Community importance adopted by the Commission in accordance with the procedure laid down in Article 21 of the Directive.

This does not mean that the Member States are not to protect sites as soon as they propose them, under Article 4(1) of the Directive, as sites eligible for identification as sites of Community importance on the national list transmitted to the Commission.

It is apparent, therefore, that sites eligible for identification as sites of Community importance that are mentioned on the national lists transmitted to the Commission may include in particular sites hosting priority natural habitat types or priority species and the Member States are, by virtue of the Directive, required to take protective measures appropriate for the purpose of safeguarding that ecological interest.

Therefore if the Administration decides to proceed with the projected traffic routing, it will be in breach of its obligations arising under the Directive.

**d. The project adversely affects a bird sanctuary in the sense of the EU “Birds Directive”**

Council Directive on the conservation of wild birds has been implemented into our legal system. (Law for the Protection of Wild Birds (No. 152(I)/03))

The object of the law is the protection and preservation of wild birds.

Article 6 of the Law provides that the Minister shall designate special protection areas (SPAs) with a legal protection regime that is capable, in particular, of ensuring both the survival and reproduction of the bird species listed in Annex I. Furthermore the minister shall, by an order, provide for necessary measures to be taken for the protection of those areas.

If a person does not comply with these measures is guilty of an offence.

**e. The project is likely to exceed the limit values of the EU- “Ambient Air Directive”**

By the Law on the Quality of Air no. 188(I)/02), Council Directive 96/62/EC on ambient air quality assessment and Council Directive 1999/30 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air were implemented in Cyprus .

According to the law the State must take the measures necessary to ensure that concentrations of sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air do not exceed the limit values laid down in Annex I.

Therefore the decision in question cannot be reconciled with the Directive or the Law.

**8. Consequences of procedural and substantive deficiencies of the planning decision:**

**a. Are there - in your national legal order - any procedural and/or substantive deficiencies which regularly render a planning decision completely void?**

One of the main reasons for which recourses against planning decisions succeed is the lack of sufficient and due inquiry. It is essential for the validity of an administrative act that an inquiry be carried out for ascertaining fully all the relevant facts.

**b. For which kinds of rulings does your national legal order provide in this case ( e.g cassation of the planning decision or declaratory ruling establishing its nullity)?**

The jurisdiction of the court to annul administrative decisions, acts or omissions is in terms declaratory.

Article 146.4 of the Constitution provides that: *”upon such a recourse the court may, by its decision declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever”.*

**c. For which kinds of rulings does your national legal order provide if the planning decision has only minor deficiencies/is not completely void (e.g modification of the planning decision by**

**imposing additional requirements such as noise barriers, speed limits or reforestation)?**

The Supreme Court in its revisional jurisdiction in administrative law matters is not a Court of Appeal, it therefore cannot reach a decision as to how the decision of the administrative organ ought to have been. It only decides whether in the circumstances such decision of the organ under recourse was proper and correct or not. The review and the inquiry it entails is limited to the validity of the act impeached. Such validity is tested by reference to the powers vested by law in the administration, the manner of their exercise and the factual substratum, particularly its correctness.

The revisional jurisdiction of the Supreme Court is primarily of a corrective character. It is aimed to ensure, in the interest of legality and public good that the administration functions within the sphere of its authority and always subject to the principles of good administration. The court will not assume administrative responsibilities, a course impermissible under a system of separation of State powers, constitutionally entrenched in Cyprus.

**d. Which rulings are likely to be given in the cases of the above listed plaintiffs?**

Article 146.4 of the Constitution provides that upon such recourse the Court may, by its decision

- a) confirm, either in whole or in part, such decision or act or omission; or
- b) declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever; or
- c) declare that such omission, either in whole or in part, ought not to have been made and that whatever has been omitted should have been performed.

**9. Remedy of deficiencies**

**May procedural or substantive deficiencies of the planning decision be remedied during the judicial process? If yes on which conditions?**

The Court cannot remedy procedural or substantive deficiencies of the planning decision. As stated above the court is not empowered to substitute its own discretion for that of the administration. The Court, in the exercise of its revisional jurisdiction as an administrative Court, cannot go into the merits of an administrative decision.