Bundesverwaltungsgericht

ACA EUROPE

Seminar organized by the Federal Administrative Court of Germany and ACA-Europe

Functions of and Access to Supreme Administrative Courts

Berlin, 13 May 2019

Answers to questionnaire: Cyprus

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

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ACA Europe Questionnaire on Functions of and access to Supreme Administrative Courts

I. Functions of the Supreme Administrative Court (SAC)

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

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

   b) 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, the Supreme Court exercises only the appellate administrative jurisdiction as the appellate court of last instance.

   c) As aforementioned, the appellate revisional jurisdiction is exercised by the Supreme Court as the court of last instance. The Supreme Court however, is empowered to hear at first instance the following type of cases, which do not however relate to its appellate judicial review jurisdiction:

   - It has jurisdiction to hear Admiralty cases both at first and last instance. At first instance, the case is heard by a single judge and on appeal by the Full Bench of the Supreme Court.

- It has exclusive jurisdiction to issue Prerogative orders, namely the prerogative orders of Habeas Corpus, Certiorari, Mandamus, Prohibition and Quo Warranto.

d) The Court's first instance caseload takes up approximately 22% of its entire caseload. This percentage includes admiralty, civil and criminal applications, which are heard by the Supreme Court at first instance.

2. a) Civil appeals (34%) and Criminal appeals (29%) make up a large group of cases within the overall workload of the Court. Civil and Criminal appeals are adjudicated by panels of three (3) Justices. Furthermore, the Supreme Court Justices also 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. Admiralty cases make up approximately 4% of the overall workload of a single Supreme Court Justice. Lastly, prerogative orders heard at first instance make up about 18% of a Justice's workload.

b) The categories mentioned in the answer to Question 2.a) relate to different types of jurisdictions of the Supreme Court and do not fall into the sphere of its appellate judicial review jurisdiction. For this reason, no comparison can be made between them and the judicial review appeals as to their complexity and amount of time required in dealing with them.

3. a) By virtue of section 13 of the **Administrative Court's Act of 2015**, judgments of the Administrative Court can be appealed to the Supreme Court, on points of law only[1].

Bearing this in mind, a distinction will need to be made. The Administrative Court, as a first instance court, has jurisdiction to review a decision on both points of law and fact. The Administrative Courts' powers are limited to testing the legality and not the correctness of administrative decisions. Two exceptions exist under the **Administrative Court's Law of 2015**. In asylum and tax cases, the Administrative Court has jurisdiction to review both the legality and the correctness of the decision, and can substitute the Administration's decision with its own. In such cases, on appeal, the Supreme Court, will only go as far as to review the first instance judgment on points of law only, unless the findings of the Administrative Court as to the facts of the case were drawn by a misinterpretation/misguidance of the law or they contrast the evidence/content of the administrative file or of evidence heard during trial or the findings of fact are not sustainable[2].

[1] Section 13 of the Administrative Court's Act of 2015, N. 131(I)/2015

[2] Cyprus' Administrative Law Manual, Nicos Charalambous, 2016, 3rd edition, Page 53

Furthermore, it is settled precedent law that issues not raised during the first instance proceedings cannot be raised on appeal, with the exception of public order grounds that may be raised by the court on its own motion[3].

4. First, the Supreme Court is the Appellate Revisional Court, empowered to hear appeals against decisions of the Administrative Court. Judgments of the Administrative Court may be appealed to the Supreme Court on points of law only. In exercising its jurisdiction as an Appellate Administrative Court, the court sits in formations of three (3) Justices.

Furthermore, the common-law system, based on the principle of *stare decisis* means that the judiciary should assign similar outcomes to similar cases[4]. The doctrine of precedent law is a fundamental pillar of law, interlinked with *legal certainty* (predictability) and the *rule of law*[5]. 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 concerned[6].

Moreover, the Supreme Court has the power to make its own Rules of Procedure as well as Rules of Procedure regulating the procedure before lower courts. **Articles 135, 163 and 164 of the Constitution** together with **section 17 of the Administration of Justice Law of 1964**, regulate the practice and procedure of the Courts[7]. The power of the Supreme Court to regulate the procedures and practice is very wide.

5. a) and b) The Supreme Court does not exercise first instance judicial review (revisional) jurisdiction. It is the Appellate Revisional Court, empowered to hear appeals against decisions of the Administrative Court.

In fact, the Supreme Court carried on the first instance judicial review jurisdiction, until the end of 2015. The Constitutional amendment of 2015

[3] 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

[4] 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

[5] 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

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

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

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.

6. a) and b) For reasons of clarity, a brief, historical background follows:

Cyprus became an independent state on 16th of August of 1960. The Constitution of 1960, establishes 2 Supreme Courts:

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

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

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

The present-day, unified Supreme Court's has hence, a plethora of powers and jurisdictions. There is a constitutional role of the Supreme Court in

scrutinising the constitutionality of proposed Bills and Acts. Since the Supreme Court, is the Supreme Constitutional Court, Bills and Acts of Parliament may be referred to the Supreme Court by the President of the Republic to decide a priori upon their constitutionality:

- Ex-ante, preventive scrutiny on the constitutionality of a Bill, under **Article 140 of the Constitution**. The President of the Republic may refer the Bill to the Supreme Court for an opinion on constitutional issues, prior to the Act coming into force. Constitutionality in this context entails a thorough examination of the proposed Act's compatibility with the constitution as well as with EU law and extends to well entrenched constitutional principles[8], such as separation of powers, natural justice (*audi alteram partem*)[9], proper administration and human rights[10]. This kind of scrutiny serves as a guardianship to the quality of constitutional democracy.

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):

- Ex-post scrutiny on the constitutionality of an Act, under **Article 137 of the Constitution**[11], referred to the Supreme Court by the President of the Republic within 75 days after the Act came into force.
- Ex-post scrutiny on the constitutionality of an Act, under **Article 144 of the Constitution**.

c) 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. **Article 35 of the Constitution**, imposes a direct and positive obligation on all state authorities 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 case law of the Supreme Court emphasises that respect for human rights must be uppermost in the mind of all state powers.

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.

d), e) and f) Please see Answer to Question 6 a) to c).

II. Access to the SAC

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

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

[10] President of the Republic v. House of Representatives (2014 (supra)

[11] Arising from discrimination against one of the two communities of the Republic

1. a) Parties can either be represented by an advocate or appear before the Supreme Court as litigants-in-person.

b) If a party is represented in court, then the lawyer/attorney-at-law has to be a registered, licensed, practising lawyer legally qualified to practise law in Cyprus by the Legal Council (Bar Council). Otherwise, a litigant may choose to appear before the Court in person.

c) Foremost, a lawyer must be legally qualified and registered by the Legal Council (Bar Council) in order to practise law in Cyprus and appear before any Court, including the Supreme Court. Secondly, by virtue of section 6A of the **Lawyers' Act, Cap. 2,** he/she must be a registered practising lawyer by the Council of the Cyprus Bar Association. Moreover, under section 11A of the **Lawyers' Act, Cap. 2**, a registered practising lawyer may not appear before the Supreme Court for the hearing of any appeal if he/she has not completed at least two (2) years of law practice, unless he or she appears before the Court together with another registered lawyer who meets this criterion.

Lastly, under section 4B(1) of the aforementioned Act pupil lawyers undergoing their pupillage may only appear before the Supreme Court together with a lawyer of the Law Firm in which the pupil conducts his/her pupillage. Pupils undertaking their pupillage at the Attorney-General's Office, may only appear before the Supreme Court together with the Attorney-General, the Deputy Attorney-General or an Attorney of the Republic.

d) No other legal professionals who do not satisfy the requirements set out by the provisions of the **Lawyers' Act, Cap. 2** may appear before the Supreme Court or any other Court of the Republic for that matter. Special mention should be made to the provisions of the Act, relating to lawyers practising law in a foreign jurisdiction. Under section 7(1) of the Act the Legal Council (Bar Council) may grant special permission to a renowned foreign lawyer to appear before any Court of the Republic for a particular proceeding or case, under the condition that such person will appear before the Court together with a registered and licensed lawyer practising law in Cyprus.

e) Administrative authorities of the central administration are represented by attorneys of the Republic of the Attorney-General's Office. Semi-governmental authorities, on the other hand, that is legal persons of the public law domain, are represented by attorneys of their own choice who, of course, meet the criteria laid down by the **Lawyers' Act, Cap. 2**.

By virtue of **Article 113 of the Constitution**, the Attorney-General is the Legal Adviser of the Republic, of the President, the Council of Ministers and of the Ministers themselves.

2. a) First, 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 ground[12]. 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.

Secondly, 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 motion[13].

Furthermore, 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). The parties have an obligation to comply with the Rules of Procedure. By virtue of Rule 10(b)(iv) of the **Procedure Rules of 1996,** written submissions must contain concisely and precisely the arguments of 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.

b) It must be borne in mind that the jurisdiction of both the Administrative Court, as the court of first instance and of the Supreme Court as the court

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[12] Order 35, r.4 of Civil Procedure Rules

[13] 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

of appellate jurisdiction, under Article 146 of the Constitution, is in accordance with the doctrine of the separation of state powers. The judiciary does not step into the sphere of administration.

The role of the Supreme Court in an appeal for judicial review is limited to testing the legality of administrative decisions. The Court will not substitute itself for the decision maker.

When reviewing the legality of a decision, the Court examines whether the public organ has exercised its discretionary powers, within lawful limits, but its jurisdiction does not extend to issues of technical nature or issues that require specialised knowledge[14].

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[15]. 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 enquiry 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[16].

Furthermore, the Court will also review a decision, act or omission of a body exercising administrative or executive power, under the provisions of the **General Principles of Administrative Law, Act of 1999** which safeguards the principles of administrative justice*:*

- Legality: A public authority does not act unlimitedly nor does it act as it pleases. Its powers and activities derive from statute and are hence determined explicitly and limited to the extent such a statute provides (Section 8). The principle of legality is the most substantive and essential one to a democratic state which respects the rule of law and acts primarily for the public interest.
- Competence: A public authority's competence is determined by the Constitution or by Statute or Statutory Instruments/Regulations, enacted in accordance with the law (Sections 15 and 17).
- Proper administration:
    1. *Principle of bona fide/good faith*: A public authority must act in good faith. Measures conflict good faith if taken in bad faith, or in a contradictory or deceiving manner (Section 51).

[14] 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

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

[16] Cyprus Administrative Law Manual, Nicos Charalambous, 3rd edition, 2016, Page 304-305

2. *Proportionality*: The principle of proportionality requires that a public authority's measures including imposition of sanctions must be proportionate (Section 52). Adverse effects cannot be disproportionate to the measure taken.

- Natural justice is regarded highly in administrative law. It is enshrined in **Article 30.2 of the Constitution**, which is identical to Article 6(1) of ECHR.
  1. *Impartiality- Nemo judex in causa sua*
  An administrative body must act in accordance with the principle of impartiality (Section 42).
  2. *Right to be heard- audi alteram partem*
  The right to be heard is enjoyed by any person who will be affected by the administrative act or measure of a disciplinary or sanction-like character or will, in any way, be adversely affected by it (Section 43).
- Reasoning/Justification: Administration must justify its decisions. Extent and details given may vary depending on the subject-matter. (Section 26).
- Representation: The right to be heard is exercised either as a litigant in person or via an attorney, either orally or in writing (Section 43).
- Equality is enshrined in **Article 28 of the Constitution**, which provides that all are equal before the law, administration and justice.
  Also, section 38 of the Act provides that a public body must act in accordance with the principle of equality which requires equal and uniform treatment of all civilians who are under the same or similar conditions.

c) By virtue of section 34(A) of the **Courts of Justice Act of 1960**, the Supreme Court may request a preliminary ruling from the CJEU under Article 267 of the TFEU, if the Supreme Court is of the opinion that such ruling is necessary for delivering its own judgment. Under the said section a preliminary ruling may only be requested by the Supreme Court if the Court's judgment cannot be appealed. The procedure is governed by the **Preliminary Ruling to the Court of Justice of the European Union Rules of Procedure (No.1) of 2008**.

According to settled case-law of the CJEU, the CJEU has jurisdiction to give preliminary rulings on questions concerning European Union provisions and on questions concerning European Union provisions in situations where the facts of the cases being considered by the national courts are outside the scope of European Union law, but in which domestic law refers to the content of those provisions of European Union in order to determine the rules applicable to a situation which is purely internal to the Member State concerned[17]. Therefore, in cases where the facts of the case concern a purely internal situation and the applicable law is purely national, the CJEU lacks

[17] see, inter alia, Case C-3/04 Poseidon Chartering [2006] ECR I-2505, § 15, Case C-280/06 ETI and Others [2007] ECR I-10893, §22 and §26, Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08 Salahadin Abdulla and Others [2010] ECR I-1493, §48, Cicala, § 17, and Case C-583/10, Nolan [2012] ECR, § 45

jurisdiction[18]. To illustrate this with an example, if in a judicial review appeal before the Supreme Court, the facts of the case concern the obligation of an administrative authority to give reasons for its decision, then the Court cannot and will not refer the case for a preliminary ruling since the matter relates to a purely national situation.

On the basis of the above and further to them, the Supreme Court will refer a question to the CJEU for a preliminary ruling where EU law is applicable- that is the case does not only involve national law[19] and the matter was assessed by the Court under the principles of acte claire and acte éclairé as explained below.

The case of **President of the Republic v. House of Representatives, Referral 5/2016, 5/4/2017**, can shed some light as to how the Supreme Court deals with requests from litigants for preliminary ruling referrals to the CJEU or when the question is raised by the Court on its own motion, on the basis of the principles of:

- Acte claire - the national court is under no obligation to request a preliminary ruling from the CJEU if the correct application and interpretation of EU law is clear and the court has no doubt as to how to interpret or answer the question in issue[20].
- Acte éclairé – the question in issue has already been answered by the CJEU on another materially similar question.

3 a) The right of appeal lies with the losing party. The winning party cannot appeal against the first instance judgment unless the Administrative Court has ruled against him on an issue that concerns him and that issue will acquire the force of res judicata.

b) By virtue of Rule 13 the **Supreme Constitutional Court's Rules of Procedure of 1962,** the Administrative Court can issue interim orders, either ex proprio motu or by application. An interim order may be granted if the party can demonstrate irrevocable damage, either of a material or of a moral nature. On the other hand, the Court will not rule in favour of such order if it would create a material obstacle in the smooth and proper operation of the administration, unless the decision is of course manifestly illegal.

With this in mind and by virtue of section 25 of the **Courts of Justice Act of 1960,** interlocutory judgments decisive as to the rights of the parties can be appealed to the Supreme Court. Moreover, a party also maintains the right to raise an issue relating to the interlocutory judgment on appeal of the final decision.

4 a) to g) Within Cyprus' legal framework, for an administrative or executive act to be challenged, leave of the court is not required. Similarly, no leave of the Supreme Court is required for the first instance judgment to be

[18] C-186/90 Duringello v. INPS
[19] C-297/88, Dzodzi, C-313/12, Romeo, 7/11/2013, §21 and §23, Ullens de Shooten, C-268/15, 15/11/2016, §54
[20] Srl CILFIT v. Ministry of Health, Case 283/1981 (1982) E.C.R. 3415

appealed. The unimpeded access to the Court for the assertion of one's rights is acknowledged by **Article 30.1 of the Constitution** as a fundamental right of the individual.

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

In addition, only persons adversely affected by the decision or the omission prescribed in Article 146.1 of the Constitution are legitimised to file a judicial review claim. A person seeking judicial review must have an existing legitimate interest and be adversely and directly affected by the decision or omission. No *actio popularis* is available in Cyprus[21]. The right of appeal lies with the losing party. The winning party cannot appeal against the first instance judgment unless the Administrative Court has ruled against him on an issue that concerns him and that issue will acquire the force of res judicata.

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

- Whether the decision was taken by an organ, or authority or person exercising executive or administrative authority in the domain of public law.
- The executory nature of the administrative decision; that is an action expressive of the will of the administrative body.
- Judicial review may only be brought by an applicant who has an existing and direct legitimate interest in the matter.
- Strict time limitation conditions (as explained above).

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

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

[21] Pitsillos v. C.B.C. (1982) 3 C.L.R. 208

- Breach of statutory provisions (procedural impropriety).
- Unlawful composition of the administrative authority.

Lastly, by virtue of section 13 of the **Administrative Court's Law of 2015,** appeals against decisions of the Administrative Court can be lodged on points of law only. Therefore, in an appeal against a decision of the Administrative Court where the legality of the decision was tested, the Supreme Court, in its appellate revisional jurisdiction will restrict its review of the first instance decision on points of law only.
In an appeal where the Administrative Court has jurisdiction to review both the legality and the correctness of the decision, again the Supreme Court, in its appellate revisional jurisdiction will restrict its review of the first instance decision on points of law only. Findings of fact of the first instance Court can be reviewed by the Supreme Court when the findings of the Administrative Court as to the facts of the case were drawn based on a misinterpretation/misguidance of the law or they contrast the evidence/content of the administrative file or of evidence heard during trial or the findings of fact are not sustainable[22].

5. First of all, 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 motion[23].
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 recourse/appeal. 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.

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.

[22] Cyprus' Administrative Law Manual, Nicos Charalambous, 2016, 3rd edition, Page 53
[23] 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

- 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.

6. As aforementioned, Article 146 of the Constitution provides that the Supreme Court has exclusive jurisdiction to adjudicate finally on an appeal made against a decision of the Administrative Court. By virtue of section 13 of the **Administrative Court's Law of 2015,** the Supreme Court has jurisdiction to review a decision on points of law only.

Therefore, in an appeal against a decision of the Administrative Court where the legality of the decision was tested, the Supreme Court, in its appellate revisional jurisdiction will restrict its review of the first instance decision on points of law only. In an appeal where the Administrative Court has jurisdiction to review both the legality and the correctness of the decision, again the Supreme Court, in its appellate revisional jurisdiction will restrict its review of the first instance decision on points of law only. However, findings of fact of the first instance Court can be reviewed by the Supreme Court when the findings of the Administrative Court as to the facts of the case were drawn based on a misinterpretation/misguidance of the law or they contrast the evidence/content of the administrative file or of evidence heard during trial or the findings are not sustainable[24].

7. a) The Constitution of the Republic places the competence and jurisdiction to the Administrative Court, as a court of first instance, and in the Supreme Court as the appellate court of last instance. Article 146 of the Constitution provides as follows:

"The Supreme Constitutional Court[25] 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."

b) First of all, within Cyprus' legal framework, for an administrative or executive act to be challenged, leave of the court is not required. Similarly, no leave of the Supreme Court is required for the first instance judgment to

[24] Cyprus' Administrative Law Manual, Nicos Charalambous, 2016, 3rd edition, Page 53

[25] The competence and exclusive jurisdiction for judicial review was vested in the Supreme Constitutional Court, under Constitutional provisions. However, intercommunal upheavals that took place between 1960 and 1964 and the decision of the Turkish-Cypriot leadership to withdraw all participation from the constitutional functions, had grave consequences to Constitutional order. In fact, the judiciary and the State were paralysed. It is for this reason, that the Law of Necessity was invoked to secure state survival and the **Administration of Justice (Miscellaneous Provisions) Law of 1964**, was enacted to establish the present-day, unified Supreme Court in order to secure the functionality of the Judiciary to enable it to fulfil its constitutional role.

be appealed. The unimpeded access to the Court for the assertion of one's rights is acknowledged by **Article 30.1 of the Constitution** as a fundamental right of the individual.

Secondly, **Article 146 of the Constitution** provides that the Supreme Court has exclusive jurisdiction to adjudicate finally on an appeal made against a decision of the Administrative Court. By virtue of section 13 of the **Administrative Court's Law of 2015,** the Supreme Court has jurisdiction to review a decision on points of law only.

Having said that, the Administrative Courts' powers are limited to testing the legality and not the correctness of administrative decisions. Two exceptions exist, as provided by the **Administrative Court's Law of 2015**. In asylum and tax cases, the Administrative Court has jurisdiction to review both the legality and the correctness of the decision, and to substitute the decision of the public organ with its own. In an appeal where the Administrative Court has jurisdiction to review both the legality and the correctness of the decision, the Supreme Court, in its appellate revisional jurisdiction will restrict its review of the first instance decision on points of law only. Findings of fact of the first instance Court, on the other hand, can be reviewed by the Supreme Court when the findings of the Administrative Court as to the facts of the case were drawn based on a misinterpretation/misguidance of the law or they contrast the evidence/content of the administrative file or of evidence heard during trial or the findings are not sustainable[26].

Lastly, when reviewing the legality of a decision, the Court examines whether the public organ has exercised its discretionary powers, within lawful limits, but its jurisdiction does not extend to issues of technical nature or issues of specialised knowledge[27].

The judiciary does not step into the sphere of administration. The jurisdiction of the court under Article 146 is in accordance with the doctrine of the separation of state powers. The Court will only intervene if, after taking into account all the facts of the case, it concludes that the findings of the administrative organ are not reasonably sustainable, or they are the result of an error of fact or law or are in excess of its discretionary powers[28]. In essence, the court reviews the decision in order to ascertain whether:

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

[26] Cyprus' Administrative Law Manual, Nicos Charalambous, 2016, 3rd edition, Page 53

[27] 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

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

Therefore, the court reviews whether the public organ has abused its discretionary powers or acted ultra vires or in an illegal manner[29].

8. Not as far as it is known.

III. Implementation / Procedural Aspects

1. The 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 Administrative Court commenced its operation in January 2016 and assumed the originating jurisdiction assigned to the Supreme Court by Article 146 of the Constitution.

2. First of all it must be stated that, the role of both the Administrative Court and of the Supreme Court in a recourse for judicial review and appeal, respectively, is limited to testing the legality and not the correctness of administrative decisions. The Courts will not substitute themselves for the decision maker. Two exceptions exist, by virtue of the **Administrative Court's Law of 2015**. In asylum and tax cases, the Administrative Court has jurisdiction to review both the legality and the correctness of the decision, and to substitute the Administration's decision with its own.

Under Article 146.4 of the Constitution the Administrative Court may:

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

Judgments of the Administrative Court can be appealed to the Supreme Court on points of law only. The Supreme Court may uphold or set aside the first instance judgment and make an appropriate order as to the validity or nullity of the administrative decision, act or omission, as prescribed by Article 146.4 of the Constitution.

[29] Cyprus Administrative Law Manual, Nicos Charalambous, 3rd edition, 2016, Page 304-305

Furthermore, the judiciary does not step into the sphere of administration. The jurisdiction of the court under Article 146 is in accordance with the doctrine of the separation of state powers. The Court will only intervene if, after taking into account all the facts of the case, it concludes that the findings of the administrative organ are not reasonably sustainable, or they are the result of an error of fact or law or are in excess of its discretionary powers[30]. In essence, the court reviews the decision in order to ascertain whether:

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

b) As aforementioned, judgments of the Administrative Court can be appealed to the Supreme Court on points of law only. In an appeal against a decision of the Administrative Court where the legality of the decision was tested, the Supreme Court, in its appellate revisional jurisdiction will restrict its review of the first instance decision on points of law only. Having said that, the Supreme Court is not bound by the findings of the first instance court as to the facts of the case.

In an appeal where the Administrative Court has jurisdiction to review both the legality and the correctness of the decision, again the Supreme Court, in its appellate revisional jurisdiction will restrict its review of the first instance decision on points of law only. Findings of fact of the first instance Court can be reviewed by the Supreme Court when the findings of the Administrative Court as to the facts of the case where drawn based on a misinterpretation/misguidance of the law or they are in contrast to the evidence/content of the administrative file or of evidence heard during trial or the findings are not sustainable[31]. Again, the Supreme Court is not bound by the findings of fact of the first instance court.

3 a) and b) The 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 Administrative Court commenced its operation in January 2016 and assumed the originating jurisdiction assigned to the Supreme Court by Article 146 of the Constitution.

4. No leave of the Supreme Court is required for the first instance judgment to be appealed. The unimpeded access to the Court for the assertion of one's

[30] Republic v. Georghiades (1972) 3 C.L.R. 594, Yuri Kolomoets v. Republic (1999) 4 A C.L.R. 443
[31] Cyprus' Administrative Law Manual, Nicos Charalambous, 2016, 3rd edition, Page 53

rights is acknowledged by Article 30.1 of the Constitution as a fundamental right of the individual. Once a judicial review appeal is lodged, then the procedure is governed by the **Appeals (Pre-trial procedure, Written Skeleton arguments, Advocacy time limits and Summary procedure for striking out manifestly unfounded appeals) Procedure Rules of 1996.** 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.

Having said that, 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.

5. As explained above, in Cyprus' legal system no procedure of admittance/leave/permission of the Court is required for a party to file a judicial review appeal.

Judicial review appeals are conducted in a two-stage process. 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,** written submissions are filed first (pre-trial stage). Once that stage is completed, the Court will enter the appeal for hearing (oral hearing stage). Following the hearing, judgment is reserved by the Court.

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 however, an oral hearing will follow in all cases. By virtue of constitutional provisions, oral hearings are a sine qua non obligation for the fair determination of a 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*.

6. a) The common-law system, based on the principle of *stare decisis* means that the judiciary should assign similar outcomes to similar cases[32]. The doctrine of precedent law is a fundamental pillar of law, interlinked with *legal certainty* (predictability) and the *rule of law*[33].

In addition, a number of judicial review appeals may be joined and heard together by the Court, under the Court's inherent jurisdiction for the interest of justice, if all appeals have been filed against the same administrative decision or the judgment of the Court in one of them will affect the status of the other. In this instance, the Court will deliver one judgment for all co-joined appeals.

b) to c) One of the fundamental principles on which the courts in Cyprus proceed is that of *stare decisis*. All lower Courts are bound by the case law of the Supreme Court. The *ratio decidendi* of the judgment is binding, unlike *obiter dictum*. A refusal or omission, by a lower court, to apply precedent of the Supreme Court would result to an error of law, which would be subject to an appeal.

The doctrine of precedent law is a fundamental pillar of law, interlinked with *legal certainty* (predictability) and the *rule of law*[34]. 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

[32] 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

[33] 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

[34] 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

principle(s) in issue. The discretion for departure widens when constitutional or administrative law issues are concerned[35].

7. The courts in Cyprus proceed on the basis of *stare decisis*.

Panels of the Supreme Court are bound by the case law of an enlarged Bench of the Supreme Court and of the Full Bench of the Supreme Court.

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

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