CONSEIL D'ÉTAT

ACA EUROPE

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"The Judicial review of Regulatory Authorities"

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Answers to questionnaire: Cyprus

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ACA-Europe symposium
Disputes concerning acts by regulatory authorities

Regulatory authorities have gradually emerged as one of the new forms of State intervention. In addition to the Regal State or the State as a supplier of goods and services, the regulatory authorities, in the broad sense, cover a wide range of administrative activities: they may be authorities responsible, in a given sector or across the board, for correcting market imbalances in a context of opening up markets to competition, or for ensuring that free competition is reconciled with other general interest objectives; in the broadest sense, regulatory activities may refer to any administrative activity that seeks to reconcile interests that may be contradictory or to organise access to scarce resources in a manner consistent with general interest objectives. In this broadest sense, this notion can refer as much to the transversal authorities responsible for enforcing competition law (e.g. the French Competition Authority) as to sectoral authorities (electronic communications, transport, energy, etc.), including national data protection authorities or authorities responsible for the marketing or evaluation of health products.

The symposium planned for December 2021 should be an opportunity to examine the specific issues that disputes concerning acts taken by these regulatory authorities may raise in the administrative courts. These questions arise from certain characteristics of the acts of these authorities, characteristics over which they do not have a monopoly compared with other forms of administration, but which combine or take on a particular role. These characteristics are at least three in number: firstly, the use of a wide range of acts or intervention tools, from flexible laws and codes of conduct to more traditional regulatory acts or sanctions, via a variety of communication media (press releases, public statements, FAQs, etc.); secondly, the degree of expertise and technicality of the decisions taken in a given activity sector (energy, health, electronic communications, etc.) and/or a certain technological context (personal data protection, cyberspace, etc.); finally, integration into complex economic and social ecosystems, often with a significant European or even international dimension, and likely to have a high media profile.

In this context, from the particular object of study that is disputes concerning the acts of these regulatory authorities, the symposium planned for December 2021 will make it possible to address the important challenges that these appeals raise for the effectiveness and credibility of the court's intervention.

Courts with competence to hear disputes concerning regulatory authorities

1. Does your supreme administrative court have competence to hear appeals against acts by regulatory authorities? Yes/no (Yes)

The reason stems from the fact that, regulatory authorities are statutory bodies performing public functions (public law legal bodies), legally distinct from the government and functionally independent from it and from any other public or private body. Like public bodies, they have a mandate; to promote the ends of the law within their regulatory framework, which assigns to them a set of market surveillance or monitoring duties and powers to

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benefit consumers by fostering competition, investment, innovation and standards by providers.

In this context and pursuant to **Article 146 of the Constitution**, acts, decisions and omissions of regulatory authorities, emanating from the exercise of powers in the public domain, are amenable to judicial review, before the Administrative Court at first instance and before the Supreme Court on appeal.

Article 146.1 of the Constitution postulates, in terms of justiciability, every executory act or decision in the domain of public law issued in the exercise of executive or administrative power. The test to determine whether an act or decision is justiciable under Article 146 revolves around the primary object of the act or decision. If the decision is primarily aimed at promoting a public purpose, it falls in the domain of public law. Acts of regulatory authorities that emanate from the exercise of the powers in the private domain, are not amenable to judicial review.

If yes:

Without being exhaustive, could you present the main regulatory authorities in your country whose acts are brought before your supreme administrative court, specifying if these appeals are subject to several levels of jurisdiction? Please distinguish, if necessary, according to the nature of the acts concerned (in the event, for example, that individual acts taken by these authorities are subject to separate jurisdictions from their general acts, notably regulations).

A number of regulatory authorities exist in Cyprus to regulate a particular sector and to monitor compliance in accordance with the relevant legislation and regulations. They are, in that respect, empowered to initiate an investigate and decide upon its findings, either on its own motion or based on a complaint filed. Non-compliance with the law, may lead to the imposition and enforcement of administrative sanctions by the regulatory authority.

A non-exhaustive list of the main regulatory authorities in Cyprus, includes:

- the Commission for the Protection of Competition,
- the Office of the Commissioner of Electronic Communications and Postal Regulations,
- the Cyprus Energy Regulatory Authority,
- the Cyprus Securities and Exchange Commission,
- the Cyprus RadioTelevision Authority,
- the Cyprus Transmission System Operator,
- the Office of the Commissioner for Personal Data Protection,
- the Cyprus Gaming and Casino Supervision Commission.

The Ombudsman, who acts as a mediator between the citizen and the administrative authorities for the protection of citizens' rights and the fight against maladministration, has a number of investigatory powers. However, the Ombudsman issues reports, opinions and suggestions which are not amenable to judicial review by the competent Courts due to their non-executory nature.

Also, a distinction can be made between individual and general acts of regulatory authorities. Unlike individual acts, general ones, i.e. regulations, are not susceptible to judicial review. Regulations are of a legislative content. They contain rules of a general nature to be applied to existing and future cases. Their legality can only be tested when the competent court reviews the legality of an individual act, decision or omission. A decision based on an ultra vires regulation will be annulled by the court.

By virtue of **Article 146 of the Constitution** acts, decisions and omissions of regulatory authorities that emanate from the exercise of powers in the public domain, are amenable to judicial review before the Administrative Court at first instance and before the Supreme Court on appeal. On appeal, there are, currently, two judicial review benches at the Supreme Court. Each bench hears judicial review appeals on all areas of administrative law and against decisions, acts and omissions of all regulatory authorities. No area(s) of specialisation is assigned to each bench nor are they assigned different 'categories' of acts or different 'categories' of regulatory authorities.

2. In particular, can any of these authorities themselves impose sanctions (including fines)? Yes/no (Yes)
If yes:
is it possible to challenge them before your supreme administrative court?
Yes, all of the above stated regulatory authorities, listed in the non-exhaustive list, have statutory powers to impose administrative sanctions (including pecuniary sanctions) which can be challenged before the Administrative Court and on appeal before the Supreme Court.

3. Are any of these regulatory authorities subject to judicial review by civil courts, for some or all of their acts? Yes/no (No)
If yes:
Please give examples.
By virtue of **Article 146.1 of the Constitution** jurisdiction to review administrative action is vested exclusively in the Administrative Court at first instance and on appeal in the Supreme Court. No other court can assume

directly or indirectly jurisdiction to review acts, decisions or omissions of public and regulatory authorities.

In no circumstances will a civil or a criminal court, inquire into the validity/legality of an administrative decision issued by a public or regulatory authority. In this context, to whatever extent an administrative decision is relevant to a judicial pronouncement in the context of civil or criminal proceedings, the court will accept it and act upon it without delay. For example, in the prosecution of a person for failure to pay taxes due, the Criminal Court will not inquire into the validity of the administrative authority. Its jurisdiction is limited to ascertaining whether the decision was duly taken and communicated to the person affected and if so whether there was failure to comply with it. Such decisions can only be contested by filing a recourse under Article 146 of the Constitution and their validity can only be tested in this context[1]. The same applies to civil proceedings. In no circumstances will a Civil Court inquire into the validity of an administrative decision[2].

Damages on the other hand, can only be awarded by the civil courts. The Administrative Court cannot award damages. Therefore, if an aggrieved person has suffered damages on account of an annulled decision (there must be a direct nexus between the two), then, by virtue of **Article 146.6 of the Constitution**, he or she may seek compensation or another remedy and recover just and equitable damages to be assessed by a Civil Court or to be granted such other equitable remedy as the Civil Court is empowered to grant. The right to damages arises if the claim is not satisfied by the authority responsible for the annulled decision[3].

Lastly, acts, decisions or omissions of regulatory authorities falling within the domain of private law are not susceptible to judicial review. In such circumstances, a claim for civil liability can be lodged, claiming damages or other remedies before a civil court.

4. Are the courts with competence to hear the acts of regulatory authorities:
- specifically identified by the texts in force, by way of derogation from the normal rules of territorial or material competence? Yes/no (No, in view of the fact that competence is determined by the Constitution)

[1] Constitutionalism-Human Rights-Separation of Powers, Georghios M. Pikis, 2006, Page 115
[2] Takis P. Makrides v. Attorney General (1997) 1 C.L.R. 1424 (CA), Philippa estate Ltd a.o. v. Sewage Board Limassol Amathountos (2001) 1 C.L.R. 1026 (CA).
[3] Central Bank of Cyprus v. Theodorides (1993) 1 C.L.R. 429, 425, MKC CITY COLLEGE LTD v. Attorney General, Civil Appeal 389/12, 9.4.2021

- or do they result from the application of the general rules on the distribution of competences? Yes/no (Yes)

Under **Article 146.1 of the Constitution** administrative jurisdiction to review acts, decisions and omissions of authorities exercising executive or administrative powers is vested exclusively in the Administrative Court at first instance and on appeal in the Supreme Court. In light of this, the competent courts' powers and jurisdiction are determined by the Constitution.

In fact, the Constitution introduces judicial review of administrative action as a separate jurisdiction distinguishable from every other judicial process and has entrusted and confined the competence and jurisdiction to the Administrative and Supreme Court, preserving in this manner, the purity of the judicial process.

Is there any specific distinction in relation to the rules of competence applicable to equivalent acts of other administrative authorities in your country? Yes/no (No)

If yes:

Please explain.

Competence is laid down by the Constitution as stated above and it makes no such distinction. As long as the act, decision or omission emanates from the exercise of powers in the public domain, they are amenable to judicial review under Article 146 of the Constitution and can be challenged by recourse before the Administrative Court and on appeal before the Supreme Court.

5. Are the remedies available against the acts of these authorities of the same nature as those available against the equivalent or similar acts of other administrative authorities? Yes/no (Yes)

If no:

Please explain.

Yes, the remedies are the same and they are stipulated by the Constitution. **Article 146.4 of the Constitution** lays down the remedies available. With its decision, the competent 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.

The role of the first and last instance court, in a recourse or appeal that challenges a decision of a regulatory authority or a decision of an administrative authority, is the same. It is limited to testing the legality and

not the correctness of the decisions from the point of view of the judiciary. The Court will not substitute itself for the decision maker nor will it amend the decision challenged before it. Amending a decision or act, either in whole or in part, subject to the provisions of the law, is only permitted if the decision or act concerns tax matters or international asylum procedures under European Union law.

The jurisdiction is, therefore, a 'revisional' one; the competent court acting under Article 146 of the Constitution has no power to annul the decision because it takes a different view of the merits of the decision. So long as the regulatory authority acts within the parameters of the law, in furtherance of its purposes and according to the principles of good administration, the authority trusted with the power to determine a given matter is the sole arbiter of its decisions. Any choice between alternative course rests entirely with it. The Court will only intervene if, after taking into account all the facts of the case, it concludes that the findings of the regulatory authority are not reasonably sustainable, or they are the result of an error of fact or law or are in excess of its discretionary powers[4] or has acted ultra vires or in an illegal manner[5].

Furthermore, under **Article 146.6 of the Constitution** an aggrieved person who has suffered damages on account of an annulled decision, may seek compensation or another remedy and recover just and equitable damages to be assessed by a Civil Court or to be granted such other equitable remedy as the Civil Court is empowered to grant. The right to damages arises if the claim is not satisfied by the authority responsible for the annulled decision[6].

Admissibility of appeals against regulatory acts

6. In your view, do disputes concerning "hard law" acts (regulatory acts, sanctions, individual authorisation decisions, etc.) of these authorities raise particular issues of admissibility? Yes/no (Please see response below)

If yes:

Please explain.

In the past, the imposition of pecuniary sanctions by these authorities had raised some issues in relation to their nature and more specifically whether they constituted criminal charges under **Article 12 of the Constitution** to be imposed by the competent court and not by an administrative/ regulatory

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

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

[6] Central Bank of Cyprus v. Theodorides (1993) 1 C.L.R. 429, 425, MKC CITY COLLEGE LTD v. Attorney General, Civil Appeal 389/12, 9.4.2021

authority. Settled precedent law has made it clear that the imposition of a pecuniary sanction is not a criminal charge under Article 12 of the Constitution but an administrative sanction imposed by a public or regulatory body for violations of the relevant statutory provisions.

Furthermore, the differences between regulatory acts (regulations) issued by a regulatory authority and acts determinative of the rights and obligations of persons under the law which bear the appearance of an order resolving matters affecting more than one person, can possibly raise some issues in relation to their admissibility; particularly when the question posed is whether the order constitutes a regulation or a multiple administrative act. This is because, regulations are not susceptible to judicial review due to their legislative content. They contain rules of a general nature to be applied to existing and future cases. They must however, be distinguished from multiple administrative acts issued by a regulatory authority which are in fact amenable to judicial review in the same manner that singular decisions may be impugned by the aggrieved. In other words, orders divisible into a multitude of individual acts or decisions may be impugned by the person affected thereby. This question would be decided preliminarily to any inquiry into the substance of the recourse/appeal in order to determine the justiciability of the subject matter of the proceedings.

Similarly, only executory acts which express the will of the authority determinative in itself of the rights and obligations of the subject(s) of the decision are subject to judicial review by the Courts. It derives from this that if the executory nature of a decision is lost that decision is no longer susceptible to judicial review. Executoriness can be lost when a self-contained act/decision becomes part of a compound, final one. Whilst the first act/decision was executory in nature before the issuance of the final decision, its executory nature is lost once the final decision is issued. Again, this would be decided by the Court preliminarily to any inquiry into the substance of the recourse/appeal in order to determine the justiciability of the subject matter of the proceedings.

Generally speaking, the admissibility of recourses and appeals against acts, decisions or omissions of regulatory authorities is reviewed in the same manner as any act, decision or omission of an administrative authority.
In particular:
Notwithstanding the fact that, no leave of the Supreme Court is required for the first instance judgment to be appealed, certain preconditions, must nevertheless be met, as stipulated in **Article 146 of the Constitution** and the provisions of the **Administrative Law Principles, Law of 1999**, for the

recourse/appeal to be deemed as admissible[7]. All of the preconditions are assessed by the Court ex proprio motu and at a preliminary stage. They relate to:

- Whether the Court has jurisdiction to hear the recourse/appeal,
- Whether the decision was taken by an organ, or authority or person exercising executive or administrative authority in the domain of public law.
- Whether the decision is one of an executory nature; that is an action expressive of the will of the administrative body.
- Whether the applicant has an existing and direct legitimate interest in the matter.
- Whether the strict time limit was met.

Also, public order grounds may be raised by the court on its own motion[8] at a preliminary stage and relate to the following:

- 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 authority.

7. Are "soft law" acts (opinions, recommendations, warnings, position papers) of these authorities and, more broadly, their various positions on the behaviour to be adopted by the actors in their field of intervention (whatever form they take: code of conduct, guidelines, etc.) liable to be the subject of a direct action for annulment? Yes/no (No)
If yes: under what conditions? Make any distinction you think useful according to the degree of normativeness of the acts.

[7] No *actio popularis* is available in Cyprus.
[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

For an act to be amenable to judicial review the authority must act unilaterally conferring rights or imposing obligations upon a person[9]. The unilateral imposition of the will of the authority is the determinative factor for the content of the decision; a species of imperium.

In contrast to acts determinative of the rights and obligations of persons affected under the law, or omissions importing similar consequences, decisions of regulatory authorities that do not generate legal consequences and are hence non-executory are not susceptible to judicial review. Only executory acts which express the will of the authority determinative in itself of the rights and obligations of the subject(s) of the decision are subject to judicial review by the Courts.

For this reason, acts of an informatory, advisory or confirmatory character, such as soft law instruments, i.e. opinions, circulars, recommendations, position papers, guidelines and codes of conduct etc are not susceptible to judicial review. In neither of these cases is the act conclusive about the rights or obligations of a person. On the contrary, they merely identify or define the approach of the authority to the exercise of its powers. They are not productive in themselves of legal consequences for the subject in the sense that they do not generate rights nor do they impose obligations but merely identify rights and obligations existing under the law for the better application of it.

Furthermore, such soft law instruments usually contain rules of a general nature to be applied to existing and future cases and are directed to an unidentified number of persons.

In light of the above, they are rendered as non-justiciable.

8. Can positions taken by these authorities, possibly with little or no formality (press release, website section, FAQ, etc.) be challenged in court? Yes/no (No)

For the exact same reasons mentioned above, this is not possible. Only acts and decisions definitive of the rights and obligations of the person affected are justiciable, or omissions importing similar consequences. In other words, only action or inaction productive of legal consequences can be subject to judicial review.

[9] By virtue of **Article 186 of the Constitution**, a "person" is defined as any company, partnership, association, society, institution or body of persons, corporate or unincorporated.

Like soft law instruments, press releases, online information and FAQs are of an informatory, advisory or confirmatory character and are, therefore, not susceptible to judicial review. First, they do not declare the unilateral imposition of the will of the authority. Neither do they generate legal consequences, conclusive of the rights or obligations of a person(s). They merely inform of the provisions of the law or identify or define the approach of the authority to the exercise of its powers or the rights and obligations existing under the law. Lastly, such informal positions are addressed to an unidentified group or number of persons which can be applied to existing and future cases.

9. Who can challenge the acts of regulatory authorities? Specify the criteria for assessing the interest in bringing proceedings, making any useful distinction according to the type of act (soft law act; individual decisions of a non-repressive nature; sanction; etc.).

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 a person 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.

In light of the above and bearing in mind the responses given to Questions 7 and 8, the type of the act/decision is of relevance in as far as its executory nature is concern (second pre-condition).

In relation to the third precondition and since no *actio popularis* is available in Cyprus[10], a recourse for judicial review may be filed by an aggrieved person, whose direct and existing legitimate interest, as a person or as a member of a community, has been adversely affected by an executory decision, act or omission of a regulatory authority. **Article 146.2 of the Constitution** restricts this right to persons prejudicially affected by the subject-matter of the act, decision or omission. By virtue of **Article 186 of the Constitution**, a "person" is defined as any company, partnership, association, society, institution or body of persons, corporate or unincorporated.

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

Interest is distinguishable from a right. Legitimate interest is not equated to a right of action accruing upon breach or violation of a person's rights known to the law. Surely, a person's rights tend to define what may be of interest to the person. For this reason, the interest necessary to justify a recourse to the Court is characterised as "legitimate", that is an interest originating or deriving from a person's rights. Moreover, interest may be of a financial or of a moral nature.

The interest can be itemised as follows:

- The pursuer must have an interest in the subject matter set down for judicial review, separate and distinct from the interest of the public or a section of it in the matter.
- The interest must be directly as opposed to indirectly prejudiced. For example, it must not be a reflection of prejudice to the interest of a third party.
- The interest must be extant at the time the decision is taken and must, as established by the case law, subsist throughout the crucial stages of the proceedings ((a) at the time the decision is taken, (b) when the recourse/appeal is lodged, (c) at the time the judgment is delivered).
- The interest of the pursuer must be adversely affected presently in contrast to future likely prejudice. The likelihood of suffering prejudice in the future will not suffice unless prejudice to a definable interest is certain to occur at a future date.

10. Please indicate any other particularities that you consider relevant to the admissibility of appeals against the acts of these authorities (interest in bringing proceedings, time limits for appeal, specific means of appeal open to State authorities, etc.).

As previously mentioned, the executory nature of an act/decision is important to the admissibility of the recourse/appeal before the competent Court. If the executory nature of a decision is lost that decision is no longer susceptible to judicial review. Executoriness may be lost when a self-contained act/decision becomes part of or is absorbed by a compound, final one. While the first act/decision was executory in nature before the final decision was issued, its executory nature is lost with the issuance of the latter. Regulatory authorities, like public authorities, often base their final decisions on previous decisions they have taken. For example, the Cyprus Competition Authority in examining a cartel complain may decide to conduct a sudden search on its own motion and then proceed to impose a fine (final decision), based on its findings. While the decision to conduct a search was a self-contained decision amenable to judicial review, its executoriness is lost once the final decision is issued. This would be decided by the Court

preliminarily to any inquiry into the substance of the recourse/appeal in order to determine the justiciability of the subject matter of the proceedings.

Another particularity that can been identified relates to the admissibility of a recourse at first instance and not to the admissibility of an appeal. Specifically, it is often the case that by virtue of relevant statutory provisions, the decisions of certain administrative authorities, can first be challenged before a higher administrative authority, by way of a hierarchical recourse. This can be done before instituting judicial proceedings. This procedure is not final or conclusive; an aggrieved person may then contest the decision of the Higher Administrative Authority before the Administrative Court at first instance and before the Supreme Court on appeal. Usually, the hierarchical recourse is not a prerequisite before lodging a recourse to the Administrative Court but in certain instances, the relevant piece of legislation, makes it a precondition[11]. Such course of action can not apply to regulatory authorities mainly because of their independent and autonomous, from the central government, character. They are not under any Ministry nor are they under any hierarchical supervision or review from the central government. On the contrary, they are independent and hold no obligation of obedience to state authorities.

Moreover, another type of recourse is available to these authorities under **Article 139 of the Constitution**. Article 139 stipulates that the Supreme Court has exclusive jurisdiction to adjudicate finally on a recourse made in connection with any matter relating to any conflict or contest of power or competence arising between the House of Representatives and the Communal Chambers or any one of them and between any organs of, or authorities in, the Republic.

Generally speaking, the following are relevant to the admissibility of all judicial review appeals and not just to judicial review appeals against acts/decisions of regulatory authorities:

- Within Cyprus' legal framework, for an administrative or executive act to be challenged, leave of the court is not required. Similarly, no leave of the Supreme Court is required for the first instance judgment to be appealed. Nevertheless, only persons adversely affected by the decision or the omission prescribed in **Article 146.1. of the Constitution** are

[11] Robertos Vrahimis v. Central Agency for Equal Distribution of Burdens, Case No. 289/2004, 7.9.2005

legitimised to file a judicial review recourse/appeal, as explained in the response above. No *actio popularis* is available in Cyprus[12].

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

11. Can the general acts of a regulatory authority, whether "hard law" or "soft law", be challenged by way of exception in an appeal against an individual decision (sanction, follow-up to a complaint, etc.) taken by that same authority and applying that general act (for example, if a sanction imposed on an economic operator refers to previously issued guidelines or recommendations to set out the applicable legal rules and the authority's interpretation of the texts in force)? Yes/no (<u>Please see response below</u>)

If yes, to what extent? Will the plea of illegality against this general act, if upheld, lead to the (retroactive) annulment of this act?

A justiciable act, decision or omission will be invalidated and declared null by the Court if it is contrary to the provisions of the Constitution or of any law or is made in excess or in abuse of powers vested in the authority (revisional jurisdiction of legality). In this respect, if the decision taken by the regulatory authority is held to be contrary to the law (that is contrary to primary and subsidiary legislation; regulations) the decision is liable to be annulled by the Court.

At the same time, if the decision was based on a law found to be unconstitutional or on a regulation found to be ultra vires or unconstitutional then, again, the decision will be annulled by the Court. More specifically, a justiciable act or decision, founded on legislation disputed unconstitutional, may be challenged by reference to the unconstitutionality of the law wherefrom it derives. The same is true for omissions occurring as a result of failure to carry out a duty associated with the exercise of administrative authority. Consequently, an act founded on an unconstitutional piece of legislation is tainted by unconstitutionality and must on that account be annulled.

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

In the case of **Cyprus Broadcasting Corporation v. Karagiorghis a.o. (1991) 3 C.L.R 159**, the plenary of the Supreme Court in a majority ruling held that a particular piece of legislation in relation to the composition of a number of councils violated **Article 28 of the Constitution** which enshrines the right against discrimination. On that account, the council in question was non-existent and its decisions had no legal consequences and were, therefore, null and void.

The law, found to be unconstitutional, will be treated by the court as inapplicable to the determination of the case in hand. It does not expunge the law from the statute book[13].

Similarly, when the court examines a piece of legislation it also examines if it is contrary to any provision(s) of EU law or of ratified international treaties.

Subsidiary legislation (regulations) too must conform to the Constitution and to the enabling law. Subsidiary legislation must derive from the authorisation given by the law and be fashioned within its framework. Overstepping these limits will render subsidiary legislation ultra vires. In the case of **Malachtou v. Attorney General (1981) 1 C.L.R. 543** the court ruled that:

> "The power for the enactment of subsidiary legislation must … emanate strictly from the provisions of the enabling law. … They cannot infer the existence to legislate, other than that expressly conferred by law, and must therefore confine themselves within the four corners of the law".

In addition, misconception of the law materially affecting a decision also exposes the decision to annulment.

Lastly, by virtue of **section 44 of the General Principles of Administrative Law Law of 1999**, an authority is legally obliged to exercise its discretionary powers. In doing so, it cannot be substituted nor guided by another body, nor can it decide in advance in a general manner the way its discretion will be exercised in future cases. Nonetheless, the authority may follow criteria, guidelines, circulars, handbooks etc, prescribed by it, if they are consistent with the law while taking into account that each case is decided on its own merits. Nonetheless, such 'soft law' instruments do not generate legal obligations. They are issued with the purpose of providing guidance on the law at hand, to subordinate personnel, for the correct implementation of the

[13] A. Efthymiou Enterprise Ltd a.o. v. Holy Archbishopric of Cyprus (1998) 1 C.L.R. 1596

law and do not induce legal obligations to third parties nor do they create legal rights[14].

In light of what has been stated above, a decision must conform to the law and the review of it is primarily directed to ascertaining whether the decision was taken within the proper legal framework.

12. Where the actions of these authorities have harmful consequences, should liability claims be brought:
- against these authorities? Yes/no
- or against the State on whose behalf they may have acted? Yes/no
(Please see response below)

An aggrieved person has actionable rights against the State under **Articles 146.6** and **172 of the Constitution**.

A. Damages on account of an annulled decision

If an aggrieved person has suffered damages on account of an annulled decision (there must be a direct nexus between the two), then, by virtue of **Article 146.6 of the Constitution**, he or she may seek compensation or another remedy and recover just and equitable damages to be assessed by a Civil Court or to be granted such other equitable remedy as the Civil Court is empowered to grant.

By virtue of settled precedent law, the right to damages arises if the claim is not satisfied by the authority responsible for the annulled decision[15].

The liability of the State under Article 146.6 is interwoven with the duty of the State to restore legality upon the annulment of an illegal act, decision or omission. The voidance alone or the renunciation of an omission does not confer a right to damages per se. The right to compensation arises whenever, despite the restoration of the status quo ante, there is a residue of damage.

B. Public and private liability

Furthermore, regulatory authorities, like public authorities, can be exposed to public and private liability.

[14] Vijayakumary v. Republic, Case No. 5736/2013, 29.3.2016
[15] Central Bank of Cyprus v. Theodorides (1993) 1 C.L.R. 429, 425, MKC CITY COLLEGE LTD v. Attorney General, Civil Appeal 389/12, 9.4.2021

Article 172 of the Constitution defines the liability of the State in contract and tort. Article 172 provides:

> "The Republic shall be liable for any unjust (wrongful) act or omission causing damage committed in the exercise or purported exercise of the duties of officers or authorities of the Republic. A law shall regulate such liability."

The matter was regulated by the **Courts of Justice Law of 1960, L. 14/60**. **Article 57** of the said statute provides:

> "Claims from or against the Republic shall be lodged in the name of the Attorney-General, unless otherwise provided by another law. Such claims are tried in the same manner as the claims between private parties."

In the case of **Symeon Georghiou v. Attorney-General of the Republic (1982) 1 C.L.R 938** the Supreme Court held that the notion of "exercise of duty" in Article 172:

- involves the execution of duties ordained by law, and covers cases of damage arising from the wrongful execution of their lawful duties whether intentional or accidental; that purported exercise of duty encompasses wrongful acts in the sense of Article 172, committed by officers or authorities of the Republic while professing or claiming to carry out duties associated with their office but not so in fact or law, in other words a case of abuse of office.
- that injurious act or omission is one that causes damage or produces adverse effects to the rights of the person affected thereby; that for the injurious act or omission to be actionable, it must be unjust (wrongful). "Unjust" or "wrongful" in the context of Article 172, signifies an act committed without authority or justification in law; that the authority of officers of the State emanates from the law or laws setting up their office, defining their duties and regulating their discharge subject, always, to the fundamental provisions of the Constitution and notions of good administration; that Abuse of authority or office lies at the root of the liability of the Republic for acts or omissions of its officers, both in the field of public as well as private law.
- that Article 172 lays down that the Republic is liable for the injury caused by the officer's wrongful act; "injury" in this sense, suggests loss and damage remediable by an appropriate award of damages restoratory of the rights of the injured party; that this is achieved by awarding compensation sufficient to achieve the above end; that the concept of exemplary damages imports an element of punishment directed against the wrong doer; that there is, in principle, little room

for punishing anyone for the unconstitutional acts of his employees; that if anything, the employer is himself the victim of such conduct by having to compensate those injured thereby; that only when the employer encourages the unlawful could one justify exemplary damages against one for the acts of his servant.

In the case of **Andromachi Costa Alexandrou v. The Attorney-General (1983) 1 C.L.R 41**, the Supreme Court reiterated the following:

> "Liability under Art. 172, is a species of public law liability, irrespective of whether the acts giving rise to injury were committed in the domain of private law. The liability of the State is not necessarily dependent on the commission of a civil wrong under the Civil Wrongs Law, Cap. 148, or on the application of the concept of vicarious liability of a master for acts of his servants as encountered in Cap. 148 or any other law. The liability of the State under Art. 172 is in no way correlated to liability of the master in private law or dependent on the commission of a tort at civil law.
>
> Article 172 defines the prerequisites for liability of the State for acts of its servants as well as the ambit of such liability. What may be regulated by law are matters secondary thereto. For the Republic to be held liable there must in the first place be an unjust act or omission. An unjust act is one committed without authority in law. Where the doing of an act is sanctioned by law, no liability can conceivably attach to the Republic. Secondly, the unjust act or omission must be productive of damage. Thirdly, the injurious act, in the sense above defined, must have been committed in the exercise or purported exercise of the duties of the officers or authorities of the State. The State is liable for acts committed in the exercise of an officer's duties when the latter deviates, exceeds or abuses his authority while carrying out his duties. "Purported exercise of duty" encompasses cases where the officer, while apparently engaged in the process of carrying out his duties, he is not so acting as a matter of law or fact. It was pointed out in the case of **Georghiou** (supra) that abuse of authority or office lies at the root of liability of the State under Art. 172."

Bearing this in mind, the following can be said in relation to an injurious act or omission (referred to in Article 172), which is executory in nature as to fall within the ambit of Article 146 of the Constitution. In that case an actionable right exists, to be challenged before the Administrative Court and not before

a civil court. If the decision is annulled by the Administrative Court (and if appealed by the Supreme Court) and damages have been suffered on account of the annulled decision, then, by virtue of **Article 146.6 of the Constitution**, the aggrieved can seek compensation or another remedy and recover just and equitable damages to be assessed by a Civil Court. The aggrieved cannot claim redress under Article 146 and Article 172 of the Constitution at the same time.

Similarly, liability may arise for negligence where a duty of care is owed to avoid negligent acts subject to harm being foreseeable or for misfeasance in public office. Misfeasance in public office is a tort. The tort is invoked where a public officer has exercised (or failed to exercise) their power as a public officer in bad faith, knowing that the act in question would probably cause harm. The rationale behind the tort is that our society and legal system are based on the rule of law and that executive or administrative power should only be exercised for the public good, not for improper purposes. The tort of misfeasance in public office is available to help to rein in the abuse of administrative or executive power. In this case, a claim would be brought against the authority itself.

Although a regulatory authority has various public functions, not everything it does, and not all of its legal relationships, will be public in nature. For example, when a regulatory authority breaches health and safety laws and regulations at its premises and one of its employees is injured as a result, then, at the material time, it was carrying out what was essentially a private, rather than public, act. In these circumstances, although the defendant is a public law legal body, its status as such is unlikely to be of any real significance to the conduct of the claim. The cause of action will be the same as for a private body. In this case, a claim would be brought against the authority itself.

Internal organisation of the courts and hearing of appeals

13. Are cases concerning these authorities assigned, within the courts and more particularly within the supreme administrative court, to panels specifically dedicated (to the authority concerned, or more generally to regulatory litigation), in order to allow for an increase in the level of competence or a critical mass of cases? Yes/no (No)

If yes: please explain and give examples.

- Or is it a distributed dispute with no particular allocation rule? Yes/no (Yes, please see response below)

Please indicate, in a more general way, any notable particularities in the internal organisation of your courts that may be relevant.

Currently, there are two administrative law benches (judicial review appeals benches) at the Supreme Court. Each bench hears judicial review appeals on all areas of administrative law and does not deal exclusively with a particular regulatory authority or 'category' of them or with regulatory litigation in general. At the same time, the benches do not deal with separate areas of law, i.e. commercial law or competition law etc. There are no different areas or categories of specialisation for the review of different kinds of administrative authorities or different areas of administrative law.

14. What investigative or examination techniques can you use in particular in the examination of particularly technical cases:
- oral inquiry hearing in the presence of the parties,
- expert's report,
- amicus curiae,
- solicitation of a reference expert administration,
- other?
Please explain, where applicable by giving some examples from your experience.
Do you feel that these regulatory cases require a particular method? Yes/no
If yes:
Please explain.

An oral hearing, is always conducted after the written submissions have been submitted. The oral arguments/clarifications hearing stage may become decisive for the fair resolution of the case. In order to determine the validity of the complaint, the Court inquires into the administrative process leading to the decision and the reasons supporting it. The object of the inquiry is to examine the legality of the action and is limited to testing only that and not the correctness of the authorities' decisions [16]. The inquiry extends into every aspect of the decision, the background and its reasoning. Its inquisitorial character provides a contrast to the adversarial character of civil and criminal trials where the submittal of evidence burdens the parties. In the inquisitorial system, such initiative lies upon the Judge who may order the submission of evidence, call witnesses and set trial issues[17]. Nevertheless, the submission of evidence and facts that were not before the public body/regulatory body and are hence not part of the administrative file, is not allowed but only in very exceptional circumstances[18] and only when the matter relates to asylum cases before the Administrative Court[19]. For the

[16] Two exceptions exist. 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.
[17] Cyprus Administrative Law Manual, Nicos Charalambous, 3rd edition, 2016, Page 39
[18] Iacovides v. Public Service Commission (1997) 3 C.L.R. 28
[19] Section 11(3) of 131(I)/2015 Law

submittal of evidence which do not form part of the administrative file, leave of the court is required, conditional to the fact that evidence is relevant to the issues of the case[20] as to aid the court in administering justice[21]. It is for this reason that the administrative file or files that disclose and make the case are unswervingly accepted as evidence[22].

Furthermore, the Court, when reviewing the legality of a decision, examines whether the authority has exercised its discretionary powers, within lawful limits. Its jurisdiction, however, does not extend to issues of technical nature or issues that require specialised knowledge[23]. When such issues are raised, the authority in question is the sole arbiter of its decision and the Court will only intervene if either misconception of fact, or abuse of power or failure to conduct a due enquiry[24], is proved.

The following can be observed from the case law of appeals against decisions of the Commission for the Protection of Competition (CPC), which can shed some light to the extent of the court's inquiry:

- The Supreme Court does not examine the merits of the contested competition decision, such examination is considered to fall outside the role of its review jurisdiction. The court reviews the legality of the authority's decision[25].
- It follows that it does not have jurisdiction to amend or substitute the findings of the competition authority.

[20] Petrolina Ltd and others v. Cyprus Port Authority, Case No. 223/2000, Date 4/4/2002, Zarvos v. Republic (1989) 3(B) A.A.Δ. 106, Kyriakides v. Republic, 1 RSCC 66
[21] Tasni Enviro Ltd and Telmen Ltd v. Republic, Case No. 862/2005, Date 26/6/2008
[22] Constantinou v. Water Board Council (No. 1) (1992) 4 C.L.R. 3330
[23] 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
[24] Republic v. Lefkou Georgiade (1972) 3 C.L.R. 594, 692-693, Nicolas v. Republic and others (1989) 3 C.L.R. 228, 236, Republic v. Matthew (1990) 3 C.L.R. 2452, Westpark v. Republic (1990) 3 C.L.R. 915, 921, Holy Archbishop of Cyprus and others v. Republic (1990) 3 C.L.R. 1175, 1185, Civil Servants Commission v. Andreas Anastasiades (1991) 3 C.L.R. 1, 10, Cyprus Broadcasting Corporation and others v. Sisel Holdings Ltd and others (2013) 3 C.L.R. 326, Podium engineering Ltd v. Republic (2008) 3 C.L.R. 430, Charalambos Christou Chomatenos v. Republic (2009) 3 C.L.R. 120, Logicom Public Ltd v. Tenders Review Authority and others, A.E. 153/2009, 14/1/2014
[25] P.O.A. Public Ltd v. Commission for the Protection of Competition, Case No. 1023/2012, 30.11.2012, Stylianou v. Commission for the Protection of Competition, Case No. 1782/2012, 30.06.2014

- Provided that the CPC's investigation is considered proper, thorough and sufficient under the circumstances, the Supreme Court does not question the findings on the primary facts of the case[26].
- On 'technical' issues, (e.g. market definition and analysis) the Supreme Court relies on the CPC's findings.
- In assessing whether the CPC's decision is a result of an error of law or fact, the Supreme Court will examine whether the legal and factual grounds on which the authority's decision was based, appear clearly in the decision[27].
- Provided the conclusions of the regulatory authority's assessment of evidence and facts are reasonable, there is no manifest error. In this light, the court confines itself to determining whether any finding made by the CPC, regardless of whether this involves the merits of the case or the imposition of a fine or any other measure, was 'reasonable'[28], safe for a manifest of error in law or facts. Outside this framework the Court will not intervene.

Lastly, although not a party to the proceedings, permission to act as an *amicus curiae* may be granted to the Attorney-General under certain circumstances. Leave is granted when the Attorney-General should be heard and express his arguments on the issues concerned from the public's point of view. However, an interested party to the proceedings, cannot be heard as an *amicus curiae*[29]. In **Theodossiadou and Others v. The Republic (1986) 3 C.L.R. 178** it was pointed out that the procedure for appearance in the capacity of amicus curiae is no substitute for the right to appear as an interested party in proceedings of judicial review of administrative action (please see response to Q.15 on the topic).

15. What is the role of the traditional administrations (especially when the act of an independent administrative authority, distinct from the ministry concerned, is at issue) in the examination of appeals against regulatory authorities:
- are they invited to comment? Yes/no (No)
- or do they remain outside the case? Yes/no (Yes, please see explanation below on interested parties and amicus curiae)

[26] CYTA v. Commission for the Protection of Competition, Case No. 2004/2012, 29.09.2015
[27] CYTA v. Commission for the Protection of Competition, Case No. 1/2019, 18.2.2011
[28] CYTA v. Commission for the Protection of Competition, Case No. 322/2003, 18.11.2004
[29] Theodossiadou and Others v. Republic (1985) 3 C.L.R., Graham Thomas Peece v. ESTIA Anonymous Insurance & Counter-Insurance Company (1990) 1 C.L.R. 695, and President of the Republic v. House of Representatives (Referral No. 4/90 – interlocutory judgment - 16/11/1990, (Full Bench)

In a judicial review recourse, the applicant is the aggrieved and the respondent the authority that issued the challenged decision. In an appeal, the appellant can either be the aggrieved or the authority depending against whom the first instance judgment was delivered. An interested party to the proceedings is a person who is directly interested in the proceedings and can only be a party to the proceedings for the purpose of supporting the validity of the challenged decision and not in support of its the annulment. Since regulatory authorities are independent and autonomous from the central government (Ministry), the general rule is that the central government is not made part of the proceedings, either as a respondent or an interested party or as a friend of the court (amicus curiae).

A person, not made an interested party in the proceedings, may file an application claiming a right of audience in the matter. The applicant or the respondent(s) to the recourse/appeal may raise objections to the application[30]. Whether leave to appear as an interested party will be granted, depends on a number of factors. A series of decisions of the Supreme Court in the exercise of its revisional jurisdiction acknowledge a right to every party directly interested in the outcome of a case to take part in the proceedings in such manner as the justice of the case requires. In **Vorkas and Others v. The Republic (1984) 3 C L.R. 87** the case law on the subject was reviewed and the right of a party directly interested in the proceedings to take part thereto, was acknowledged. In the same case reference was made to the nature of the interest necessary to justify the participation of the third party, whereas in a subsequent decision of the Supreme Court notably the **Republic v. Nissiotou (1985) 3 C.L.R. 943** it was affirmed that the intervention of a third party can only be for the purpose of supporting the decision and not in support of the annulment of an administrative decision which relates to him and which is the subject-matter of the recourse or appeal. Rightly so for any other approach to the matter might lead to by-passing the mandatory provisions of paragraph 3 of Article 146 that enjoins that challenge to administrative action can only be mounted within 75 days from its communication. The intervener (interested third party) must have an interest in the decision taken akin, though not necessarily identical, to that of the applicant; arguably a more flexible test is applied in the intervener's case. But the interest of the intervener in the decision must be separate and distinct from that of the general public.

[30] The Institute of Certified Public Accountants of Cyprus and others v. The Republic of Cyprus, through the Central Bank of Cyprus (1987) 3A C.L.R. 445

Lastly, in **Theodossiadou and Others v. The Republic (1986) 3 C.L.R. 178** it was pointed out that the procedure for appearance in the capacity of amicus curiae is no substitute for the right to appear as an interested party in proceedings of judicial review of administrative action. Permission to act as an *amicus curiae* may be granted to the Attorney-General, despite not being a party to the proceedings, under certain circumstances and only when, he ought to be heard and express his arguments on the issues concerned, from the public's point of view.

16. More generally, when examining appeals against acts with a high socio-economic impact issued by these authorities, in particular those in charge of a field of economic regulation, does the court collect (on the initiative of the court or the interested organisations) observations from other stakeholders? Yes/no (No)

If yes:

Please explain.

Proceedings are confined to the parties (applicant/appellant and respondent(s)), the interested party(ies) (third party(ies) directly interested in the outcome of the case) and to the amicus curiae, if, in a particular case, leave to act as a friend of the court was granted by the court.

17. What role does orality play, even before the hearing, in the investigation of complex cases, in particular those involving regulatory acts?

Judicial review proceedings are conducted in two stages:

(a) the pre-trial stage where written submissions/statements are filed.

(b) the trial stage where after the filing of written submissions, an oral hearing follows in all cases. The oral arguments/clarifications hearing may become decisive for the fair resolution of the case.

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. This is because the Constitution safeguards that hearings of all courts must be held in public:

- **Articles 134.1 and 154 of the Constitution** stipulate that court sessions of the Supreme Court for all proceedings are public. 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**.

18. Do you have, in one form or another (specialisation of magistrates, continuing education, expert decision support unit to assist magistrates, etc.) internal resources in your courts enabling you, if necessary, to familiarise yourself with or master sectoral but also transversal expert subjects (technologies protecting privacy, communication technologies in the case of audiovisual or electronic communications regulators, role and architecture of social networks, etc.)? Yes/no
(Please see response below)
If yes:
Please explain and give examples.
The Justices of the Supreme Court as well as Legal Assistants undergo training on a number of topics that relate to regulatory authorities. Continuing training is undertaken by the Judicial Training School of the Supreme Court which was established in January 2017. The School is responsible for the development and delivery of training to judges in all Courts across Cyprus as well as to Legal Assistants and a number of programmes have been realised to that effect.

Furthermore, about five Legal Assistants, specialising in administrative law are currently attached to the judicial review appeal benches of the Supreme Court, to assist the Court as the Justices deem fit.

Mainly because of the plethora of jurisdictions vested in the Supreme Court, its Justices do not 'specialise' in a particular jurisdiction or topic(s). The Supreme Court, inter alia, is the Constitutional Court of the land, the Appellate Court of last instance empowered to hear Civil and Criminal appeals, it is the Appellate Revisional Court, the Electoral Court, the Appellate Family Court and also hears Admiralty cases both at first and last instance, has power to issue prerogative orders and sits as a Council in impeachment cases of the Highest Officials of the State. In as far as appellate revisional jurisdiction is concern, the Supreme Court sits in two Benches, composed of three Justices each. The Justices sit on a rota basis, with each period of rotation usually lasting for about a year. Essentially what this means, is that all Justices of the Supreme Court will at some point be sitting at a judicial review bench.

Lastly, judicial review appeals are limited to testing the legality of the decision and not its correctness. Technical issues or issues that require specialised knowledge fall outside the scope of the Supreme Court's revisional jurisdiction.

The extent of the judge's control, the court decision

19. What are the main categories of grounds that can be invoked and relied upon against the acts of regulatory authorities? Based on your experience and the case law of your country, do you find that appeals against acts of independent authorities raise particular problems (real independence in decision-making, impartiality, etc.) compared with disputes concerning acts taken by other administrative authorities? Please share any relevant analysis you may have

A. Category of grounds

Paragraph 1 of Article 146 sets out four grounds upon which annulment is justified: (i) failure to comply with the Constitution, (ii) failure to comply with the Law, (iii) acting in excess of or (iv) abuse of powers. Challenges for annulment under the first three headings include, inter alia, lack of competence or jurisdiction, errors or misconception of law or fact, lack of proper enquiry – that is, failure to ascertain the facts properly –, lack of due reasoning and failure to comply with the rules of natural justice and good administration. Challenges under the fourth head include the use of legal power to achieve a purpose not contemplated by the law. Should the recourse succeed, the power of the court is confined to declaring an act or decision null or void, or, in the case of an omission, that it ought not to have occurred, so that what had not been done should now be done (Article 146.4).

Furthermore, the **General Principles of Administrative Law, Law of 1999** codified the case law of the Supreme Court into a statute with the primary aim to safeguard decision-making, by the provision of rules. The statute incorporates the principles of fairness, competence, proper administration-bona fide and proportionality, legality, representation, natural justice-impartiality and right to be heard, equality, right to judicial review and to an appeal. The principles envisaged in the statute are briefly:

- Legality: A public authority does not act unlimitedly nor does it act as it pleases. Its powers and activities derive from statute and are hence determined explicitly and limited to the extent such a statute provides (Section 8). The principle of legality is the most substantive and essential one to a democratic state which respects the rule of law and acts primarily for the public interest.

- Competence: A public authority's competence is determined by the Constitution or by Statute or Statutory Instruments/Regulations, enacted in accordance with the law (Sections 15 and 17).
- Proper administration:
  1. *Principle of bona fide/ good faith*: A public authority must act in good faith. Measures conflict good faith if taken in bad faith, or in a contradictory or deceiving manner (Section 51).
  2. *Proportionality*: The principle of proportionality requires that a public authority's measures including imposition of sanctions must be proportionate (Section 52). Adverse effects cannot be disproportionate to the measure taken.
- Natural justice is regarded highly in administrative law. It is enshrined in **Article 30.2 of the Constitution**, which is identical to Article 6(1) of 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.

As a general rule, the proceedings are, confined to the legal grounds raised in the notice of appeal (statement) and written submissions[31] with the

[31] First, 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.
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. 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.

exception of public order grounds that may be raised by the Court on its own motion[32]. 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 at a preliminary stage 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:

- 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).

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 scrutiny[31]. In the case of ***Anthousi v. Republic*** 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.

[32] 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

- Unlawful composition of the administrative authority.

B. Specific issues on independence and impartiality

1. A common issue, often raised in the judicial review proceedings of regulatory authorities, is whether the proceedings of such authorities i.e. the Cyprus Competition Authority, the Cyprus RadioTelevision Authority etc., satisfy the procedural requirements of Article 6 of the ECHR and of Article 30 of the Constitution of the Republic, since they combine both investigatory/prosecutorial and adjudicative functions. The jurisprudence of the European Court of Human Rights on this issue is consistent that an administrative body that combines the roles of investigation, prosecution, adjudication and the imposition of penalties cannot be 'independent and impartial' within the meaning of Article 6 of ECHR. The applicant could reasonably believe that it was the same persons who prosecuted and judged it. The case law, however, establishes that this defect can be cured where the parties have the right to appeal decisions of such bodies/authorities to judicial bodies, with full jurisdiction or power to exercise sufficient review, including the power to quash on questions of fact and law, the challenged decision and can render the proceedings as a whole compatible with Article 6 of the ECHR and Article 30 of the Constitution.

It is hereby reminded that, the jurisdiction of the Supreme Court under Article 146 is limited to the review of the legality of the act, decision or omission in question on the basis of the facts and circumstances existing at the time the act, decision or omission occurred. The Supreme Court when reviewing a decision, will not go into the merits of the decision and substitute the decision of the administrative authority or organ concerned with its own decision; it will not decide the matter afresh. If the Supreme Court annuls the act or decision in question, the matter is automatically remitted to the appropriate authority or organ for re-examination[33].

[33] Papakyriakou v. the Public Service Commission, (1999) 3 C.L.R 720; Yiannis Koursaros v. the Cyprus Ports Authority (1999) 3 CLR 345; Vrahimis Hatzihannas v. the Republic (1999) 3 CLR 216; Andreas Kamenos v. the Republic (1998) 3 C.L.R. 25; Stavros Loizides v. the Minister of Foreign Affairs (1995) 3 CLR 233; Eleourghia Pettemeridi Ltd v. the Republic (1994) 3 C.L.R.199; the Republic v. Theodolou Pantazi (1991) 3 C.L.R 47; G.& L. Galibers Ltd v. the Republic (1990) 3 C.L.R 533; Damianos and Another v. the CyBC (1987) 3 C.L.R. 848; Constantinos Ioannides v. the Republic (1972) 3 C.L.R 318; Pancyprian Federation of Labour v. the Board of Cinematograph Films Censors and the Minister of Interior (1965) 3 CLR 27; Yiallourides v. the Republic (1969) 3 CLR 379; Constantinou v. the Republic (1966) 3 CLR 793; Costas M. Pikis v. the Republic (1965) 3 C.L.R. 131; Morsis v. the Republic (1965) 3 C.L.R. 1; Photos Photiades and Co. v. the Republic (1964) C.L.R. 102; Stavros Rallis

In **Sigma Radio Television Ltd v. Cyprus, nos. 32181/04 and 35122/05, 21 July 2011,** the ECtHR found that the combination of different functions of the Cyprus RadioTelevision Authority ('CRTA') gave rise, in the Court's view, to legitimate concerns that the CRTA lacked the necessary structural impartiality to comply with the requirements of Article 6. Nonetheless, the ECtHR reiterated that no violation of the Convention could be found if the proceedings before that body (that does not comply with Article 6.1 in some respect), are "subject to subsequent control by a judicial body that has "full" jurisdiction and does provide the guarantees of Article 6.1. The ECtHR held that while the power of review of the Supreme Court under Article 146 of the Constitution was not capable of embracing all aspects of the CRTA's decisions, the domestic Court could annul the decisions on a number of grounds, including if the decision had been reached on the basis of a misconception of fact or law, there had been no proper enquiry or a lack of due reasoning, or on procedural grounds. It held that the judgment of the Supreme Court gave extensive reasoning and examined all the above issues, point by point, without refusing to deal with any of them and gave clear reasons for the dismissal of the applicant's points. In light of this, it held that the scope of the review of the Supreme Court in the judicial review proceedings in the said case was sufficient to comply with Article 6 of the Convention. (Please see response in Q. 20 for further analysis).

2. Moreover, regulatory authorities enjoy significant structural protections to ensure their independence from all forms of power. In that respect, the independence and impartiality of the appointed Chairman and Members is often raised as a ground against acts and decisions of these authorities, for their possible political involvement. The main argument centres around the ground of unlawful formation and composition, in violation of the doctrine of separation of state powers.

The separation of state powers is eminent in the structure of the Constitution of Cyprus and precludes the direct or indirect or in any form inter-institutional mixture of powers **(Cyprus Broadcasting Corporation and others v. Karageorghey and others (1991) 3 C.L.R. 159).** The Constitution makes a further distinction in that political or state power and administration are kept separate (*entrenched principle*)[34] to ensure administration's efficiency independent of government-elect **(Frangoulides (No. 2) v. The republic (1966) 3 C.L.R 676)**.

v. the Greek Communal Chamber, 5 R.S.C.C.1; Argiris Mikrommatis v. the Republic 2 R.S.C.C. 123

[34] President of the Republic v. House of Representatives (2011) 3B C.L.R. 777

In the case of **CYTA v. Republic through the Commission for the Protection of Competition (2007) 3 C.L.R 560,** the Supreme Court overruled the first instance judgment and held that the appointment of a mayor or municipal member in the formation of the Commission's Board was illegal. The challenged decision was annulled and in light of the court's judgment, the Commission revoked all its decisions taken with the participation of that particular Member.

In the case of the **Commission for the Protection of Competition v. CYTA and others, Appeal No. 2/2016 and 7/2016, 3.3.2017**, the plenary of the Supreme Court in its majority ruling made a distinction between political officials and persons involved in politics, reiterating that the latter does not make a person part of the political or state power. Although intertwined, the two concepts are distinct.

Another important distinction to make is that between the notions of formation and composition. While the former refers to the formation of a body in accordance with the law, the latter, refers to the composition of the body in every single case presented before it to be decided. Bad composition allegations are assessed on a case-by-case basis based on the merits of each case and the participation of a person with personal or financial or other interest or relations, in the decision-making process, capable of affecting his/her judgement is reviewed by the court in correlation with the merits of the particular case at hand. There is an obligation on the person itself to abstain from taking part in the decision-making process of a particular case as well as a right of the interested party (with the required legitimate interest) to request his/her disqualification if the interest is such as to cast doubt in as far as his/her impartiality is concern. Therefore, a body whose formation is lawful may not be lawfully composed if a person who ought not to have taken part in the decision-making process of a particular case(s), did nevertheless.

The case law has settled that the same principles and rules that have been entrenched for years now and relate to the composition and formation of administrative authorities apply to regulatory authorities as well, notwithstanding the institutional importance of each authority.

20. Does your court consider itself bound by the technical or economic assessments made by the regulator? Or does it feel entitled to control them? In the latter case, is this control complete or only limited to the manifest error of assessment?)

When reviewing the legality of a decision (revisional jurisdiction), the Court examines whether the authority concerned has exercised its discretionary powers, within lawful limits and hence its jurisdiction does not extend to issues of technical nature or issues that require specialised knowledge[35]. For example, the market assessment (economic assessment) conducted by a regulatory authority has been ruled by settled precedent law to be a technical issue[36].

When such issues are raised, regulatory authorities are the sole arbiters of their decisions, and the Court will only intervene if either misconception of fact, or abuse of power or failure to conduct a due enquiry[37], is proved. More specifically, the Court will only intervene if, after taking into account all the facts of the case, it concludes that the findings of the regulatory authority are not reasonably sustainable, or they are the result of an error of fact or law or are in excess of its discretionary powers[38]. 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.

Hence, it can be derived from the above that the review of the Court is not an unlimited one or one of 'full jurisdiction'. The jurisdiction of the Supreme Court under Article 146 is limited to reviewing the legality of the act, decision or omission in question on the basis of the facts and circumstances existing

[35] 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, CYTA v. Digicom Ltd (2011) 3A 9, Philippou Ltd v. Republic (2004) 3 C.L.R 389, Pieride v. Republic (No.2) (2007) 3 C.L.R. 543, Storey v. Republic (2008) 3 C.L.R. 113

[36] Akis Ioannou v. Commission for the Protection of Competition, Case no. 612/2009, 23/9/2010

[37] Republic v. Lefkou Georgiade (1972) 3 C.L.R. 594, 692-693, Nicolas v. Republic and others (1989) 3 C.L.R. 228, 236, Republic v. Matthew (1990) 3 C.L.R. 2452, Westpark v. Republic (1990) 3 C.L.R. 915, 921, Holy Archbishop of Cyprus and others v. Republic (1990) 3 C.L.R. 1175, 1185, Civil Servants Commission v. Andreas Anastasiades (1991) 3 C.L.R. 1, 10, Cyprus Broadcasting Corporation and others v. Sisel Holdings Ltd and others (2013) 3 C.L.R. 326, Podium engineering Ltd v. Republic (2008) 3 C.L.R. 430, Charalambos Christou Chomatenos v. Republic (2009) 3 C.L.R. 120, Logicom Public Ltd v. Tenders Review Authority and others, A.E. 153/2009, 14/1/2014

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

at the time the act, decision or omission occurred. The Supreme Court will not go into the merits of the decision and substitute the decision of the authority or organ concerned with its own decision; it will not decide the matter afresh. If the Supreme Court annuls the act or decision in question, the matter is automatically remitted to the appropriate administrative / regulatory authority or organ for re-examination (see **Sigma Radio Television Ltd v. Cyprus, nos. 32181/04 and 35122/05, § 73, 21 July 2011**).

As the ECtHR has pointed out, it is often the case in administrative law appeals in the Member States of the Council of Europe, that the scope of judicial review over the facts of a case is limited and that the nature of the proceedings is that the reviewing authority reviews the previous proceedings, rather than taking factual decisions. It can be derived from the relevant case-law that it is not the role of Article 6 of the Convention to give access to a level of jurisdiction which can substitute its opinion for that of the administrative authorities. In this regard, particular emphasis has been placed on the respect which must be accorded to decisions taken by the administrative authorities on grounds of "expediency" and which often involve specialised areas of law (for example, planning – *Zumtobel, §§ 31 and 32, and Bryan, § 47; environmental protection – Alatulkkila and Others v. Finland, no. 33538/96, § 52, 28 July 2005; regulation of gaming – Kingsley v. the United Kingdom [GC], no. 35605/97, § 32, ECHR 2002-IV*).

The ECtHR in **Sigma Radio** cited above, found that notwithstanding the existence of a number of procedural guarantees in the proceedings before the Cyprus RadioTelevision Authority ('CRTA'), the combination of different functions of the CRTA and, in particular, the fact that all fines were deposited in its own fund for its own use, gave rise, in the Court's view, to legitimate concerns that the CRTA lacked the necessary structural impartiality to comply with the requirements of Article 6. Nonetheless, the ECtHR reiterated that even where an adjudicatory body, including an administrative one as in the present case, which determines disputes over "civil rights and obligations" does not comply with Article 6 § 1 in some respect, no violation of the Convention can be found if the proceedings before that body are "subject to subsequent control by a judicial body that has "full" jurisdiction and does provide the guarantees of Article 6 § 1 (see *Albert and Le Compte, § 29*).

Both the European Commission and the ECtHR have acknowledged in their case-law that the requirement that a court or tribunal should have "full jurisdiction" will be satisfied where it is found that the judicial body in

question has exercised "sufficient jurisdiction" or provided "sufficient review" in the proceedings before it (see *Zumtobel v. Austria, 21 September 1993, § §§ 31-32, Series A no. 268-A; Bryan, §§ 43-47; Müller and others v. Austria (dec.), no. 26507/95, 23 November 1999; and Crompton v. the United Kingdom, no. 42509/05, §§ 71 and 79, 27 October 2009*).

In assessing the sufficiency of a judicial review available to an applicant, the ECtHR has regard to the powers of the judicial body in question (see for example, *Gradinger, § 44, and Bryan, §§ 44-45; Potocka and Others v. Poland, no. 33776/96, § 55, ECHR 2001-X; and Kingsley, § 32*), and to such factors as:

(a) the subject-matter of the decision appealed against, in particular, whether or not it concerned a specialised issue requiring professional knowledge or experience and whether it involved the exercise of administrative discretion and if, so, to what extent;

(b) the manner in which that decision was arrived at, in particular, the procedural guarantees available in the proceedings before the adjudicatory body; and

(c) the content of the dispute, including the desired and actual grounds of appeal (see, inter alia, *Bryan, §§ 44, 45 and 47, and Crompton §§ 71-73 and 77*).

The ECtHR has held in a number of cases, where the court in question did not have full jurisdiction but examined the issues raised before it concerning the adjudicatory body's decision, that the judicial review in the case was sufficient and that the proceedings complied with Article 6 § 1 of the Convention. This has been the case, for example, where upon judicial review the applicants' submissions on their merits or grounds of appeal were examined point by point, without the court having to decline jurisdiction in replying to them or in ascertaining various facts (see inter alia, *Zumtobel, § 32, cited above; Fischer v. Austria, 26 April 1995, § 34, Series A no. 312; and Bryan, § 47, Müller and Potocka, §§ 56-58, cited above; see also the Commission decisions in Kristavcnik – Reutterer v. Austria, no. 22475/93, 10 September 1993; ISKCON and 8 others v. the United Kingdom, no. 20490/92, 8 March 1994; Stefan v. the United Kingdom, no. 29419/95, 9 December 1997; Wickramsinghe v. the United Kingdom, 9 December 1997 no. 31503/96; and X. v. the United Kingdom, no. 28530/95, 19 January 1998).* Similarly, in the case of *Crompton (§§ 78-80*) the ECtHR held that there had been no

violation of Article 6 § 1 as the High Court had examined the central issue in the case before it.

In light of the above, the ECtHR in **Sigma Radio** (cited above) held that the scope of the review of the Supreme Court in the judicial review proceedings in the said case was sufficient to comply with Article 6 of the Convention notwithstanding the fact that the power of review of the Supreme Court under Article 146 of the Constitution was not capable of embracing all aspects of the CRTA's decisions. In particular, as is usually the case in the systems of judicial control of administrative decisions found throughout the Council of Europe's Member States (see Bryan, § 44), the Supreme Court could not substitute its own decision for that of the CRTA and its jurisdiction over the facts was limited. Notwithstanding, it could have annulled the decisions on a number of grounds, including if the decision had been reached on the basis of a misconception of fact or law, there had been no proper enquiry or a lack of due reasoning, or on procedural grounds. The ECtHR further found that the extensive reasoning in its judgment reflected the fact that the Supreme Court examined all the above issues, point by point, without refusing to deal with any of them. It gave clear reasons for the dismissal of the applicant's points.

21. If you receive an application against an act of a regulatory authority or against a sanction imposed by it, is your court only competent to annul the act or sanction or can it also modify the sanction imposed?

The Court's powers are limited to testing the legality and not the correctness of decisions, acts, omissions and of administrative sanctions from the point of view of the judiciary; nor will it modify or substitute the decision or sanction of the regulatory authority with its own. The Court will not substitute itself for the decision maker. The jurisdiction is 'revisional' and not an unlimited one.

Under **Article 146.4 of the Constitution** the competent 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

(Amending a decision or act, either in whole or in part, subject to the provisions of the law, is only possible provided that the decision or act concerns tax matters or international asylum procedures under European Union law).

Furthermore, the competent court acting under Article 146 of the Constitution has no power to annul the decision because it takes a different view of the merits of the decision. So long as the regulatory authorities act within the parameters of the law, in furtherance of its purposes and according to the principles of good administration, the authority trusted with the power to determine a given matter is the sole arbiter of its decisions. Any choice between alternative course rests entirely with it. The Court will only intervene if, after taking into account all the facts of the case, it concludes that the findings of the regulatory authority are not reasonably sustainable, or they are the result of an error of fact or law or are in excess of its discretionary powers[39] or has acted ultra vires or in an illegal manner[40].

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

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

Therefore, the court reviews whether the public/regulatory organ has abused its discretionary powers or acted ultra vires or in an illegal manner[42].

It is often the case in relation to administrative law appeals in the Member States of the Council of Europe, that the scope of judicial review over the facts of a case is limited and that it is the nature of review proceedings that the reviewing authority reviews the previous proceedings, rather than taking factual decisions. It can be derived from the relevant case-law of the ECtHR

[39] Republic v. Georghiades (1972) 3 C.L.R. 594, Yuri Kolomoets v. Republic (1999) 4 A C.L.R. 443
[40] Cyprus Administrative Law Manual, Nicos Charalambous, 3rd edition, 2016, Page 304-305
[41] Republic v. Georghiades (1972) 3 C.L.R. 594, Yuri Kolomoets v. Republic (1999) 4 A C.L.R. 443
[42] Cyprus Administrative Law Manual, Nicos Charalambous, 3rd edition, 2016, Page 304-305

that it is not the role of Article 6 of the Convention to give access to a level of jurisdiction which can substitute its opinion for that of the administrative authorities (**Sigma Radio Television Ltd v. Cyprus, nos. 32181/04 and 35122/05, 21 July 2011, § 153)**.

22. Have you been confronted with the problem of an independent authority in your country taking into account a foreign element such as an opinion given by an authority in another country or a decision by a European authority (for example, in the context of the mechanisms set up by the GDPR between the European data protection authorities, which lead these authorities to submit some of their decisions to the European Data Protection Committee for approval)? Yes/no
If yes: what kind of legal treatment? Please explain and give examples.
It is a fundamental principle of administrative law that competence should always be exercised by the body vested in by the law. Accordingly, pursuant to **section 44 of the General Principles of Administrative Law, Law of 1999**, a public authority charged with discretion is legally obliged to exercise it. In doing so, it cannot be substituted nor guided by another body (i.e. another national or foreign body). Failure to do so is regarded as an act of wilful abstinence which is contrary to the law. Nonetheless, a public authority may be guided by circulars or guidelines of a general nature issued by a hierarchically superior authority, provided that they are not in conflict with the law. The same, mutatis mutandis, can apply to independent authorities. For example, in as far as data protection is concern, the Cyprus Office of the Commissioner for the Personal Data Protection (national Supervisory Authority) takes into account the general guidance, guidelines and best practices issued by the independent European Data Protection Board.

Similarly, adopting an opinion of an independent European body would not be regarded as forfeiting discretion (i.e. adopting the opinion of the European Data Protection Board addressed to the national Supervisory Authority). In a rather similar context, in the case of **Kalisperas v. Republic (1986) 3C.L.R 771**, which concerned a public authority, the Court held that the fact that the opinion of the Attorney-General of the State was taken into account by the competent authority in reaching its decision did not render that decision void on the ground of discretion forfeiting. The Attorney-General of the Republic is the independent Legal Adviser of the State under Article 113 of the Constitution. His opinions are handed down on legal issues and they provide guidance to state authorities addressed to, in order to exercise their powers correctly, within the bounds of legality and good administration. The competent court, however, can review the content of the opinion given and may declare, the authority's decision, null and void, if the Court finds that there is manifest of error in law or fact. Similarly, the European Data

Protection Board adopts opinions addressed to the national Supervisory Authorities to ensure consistency of the activities of national Supervisory Authorities on cross border matters (Article 64 of the GDPR) as well as the correct and consistent application of the GDPR in individual cases and in actual fact, if a national authority fails to respect an opinion a binding decision may be adopted.

The GDPR, places mutual assistance, between Supervisory Authorities, at its epicentre in order to implement and apply the Regulation in a consistent manner. As a matter of fact, mutual assistance extends even further, to the drafting of the decision, when a number of Supervisory Authorities are involved with one being the leading one. More specifically, the leading Supervisory Authority submits a draft decision to the other Supervisory Authorities concerned for the opinion of the other Supervisory Authorities which can express a relevant and reasoned objection to the draft decision (Article 61 of the GDPR). If the leading Supervisory Authority does not follow the relevant and reasoned objection or is of the opinion that the objection is not relevant or reasoned, it must submit the matter to the consistency mechanism referred to in Article 63, for the European Data Protection Board to adopt a binding decision addressed to the national Supervisory Authorities and settle the dispute between, with the purpose of ensuring the correct and consistent application of the GDPR. It becomes apparent from the above that, the model on which the GDPR is based is that of mutual cooperation and consistency, where the non-national, European element, be it an opinion, objection etc., is central to it.

23. Are these cases a particular field of preliminary questions to the Court of Justice of the European Union? Yes/no
If yes:
Please explain and give examples.
None known. So far, there hasn't been any request from the Supreme Court of Cyprus for a preliminary ruling by the CJEU in relation to judicial review appeals lodged by or against decisions of regulatory authorities.

24. Does the drafting of court decisions raise particular issues related to the technical nature or media exposure of some of these cases? Yes/no (No)
If yes:
Please explain and give examples.
In administrative proceedings the task of the Court is to ascertain, with the participation of the parties, whether the authority against which a judicial review appeal is directed has acted within the premises of the law and in accordance with the principles of proper/good administration. An inquiry is

held into the propriety of the contested decision. Its jurisdiction, however, does not extend to issues of technical nature or issues that require specialised knowledge.

In light of what has been stated above, the judgment of the court must reflect the findings of such inquiry and 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 case law provides guidance as to the elements of a well-reasoned judgment. In ***Investment Group of "Lefkonikou" Co-Operative Ltd v. Lofiti***[43], the Court highlighted the key elements of a well-reasoned judgment. This entails the correct determination and consideration of trial issues, a summary of substantive evidence, its correlation with the findings and conclusions drawn as well as the with the verdict of the Court[44]. A judgment is read in its entirety. It is the Court's obligation to evaluate all evidence admitted and to draw conclusions on all contested issues, in order for the judgment to include the necessary juridical thought on all disputed issues[45]. In Administrative proceedings, the judgment of the Court must include the legal principles the administrative decision does not comply with.

Furthermore, a Justice draws guidance from the relevant case law for the determination of the legal principles raised in each case at hand. Since one of the fundamental principles on which the courts in Cyprus proceed is that of *stare decisis*, all the lower courts are bound by the case law of the Supreme Court and draw guidance from it. The Supreme Court is similarly, bound by its case law. Departure from established case-law warrants greater justification.

In that respect, the drafting of the judgment, however complicated the case might be, does not in itself pose problems. What may complicate the task and, in a sense, stand in the way of an effective judicial review is the matter of multiplicity that is often envisaged in the decisions of these type of authorities. For example, for the imposition of a regulatory measure (e.g

[43] Civil Appeal 42/2011, 7/7/2017
[44] Kannaourou and others v. Stadioti and others (1990) 1 C.L.R. 35
[45] Christodoulou v. Aristodemou (1996) 1 C.L.R. 552

sanction), the regulatory authority must define, first, the relevant market, then conduct a market analysis (assessment of the market) and conclude that there is lack of effective competition in that particular market. Lastly, it finds that a person or persons has a dominant position in the said market. This entails three, distinct decisions to be made by the regulatory authority, of a consecutive nature, with clear justification for each one. In other words, the decision on dominant position depends on the determination of the previous decision on market analysis. A clear distinction between them is required in order for the court to be able to review the legality of the final decision (i.e. the imposition of an administrative sanction).

In the case of **Office of Electronic Communications and Postal Regulations v. CYTA, Revisional Appeal 15/2010, 4/3/2016**, the Supreme Court found that the integration of those three, distinct decisions into one which by virtue of the statutory provisions, had to be taken in three, separate stages of the decision-making process, made it difficult for the court to ascertain the justification for each decision. The Court added that "in such technical issues that require the interpretation of complex statutory provisions, multiplicity adds to the degree of complexity and makes it even more difficult for the court to diagnose the justification for each separate decision as well as complicates the conduction of an effective judicial review by the court". In addition, the court noted that the separation of decisions, as the statute provides, upholds the transparency of the decision-making process and safeguards the rights of those aggrieved by the decision of the regulatory authority.

The judge in the regulatory ecosystem

25. Are judgments on such appeals subject to any particular publicity or accompanying measures (press release)? Yes/no (No)

If yes:

Please specify.

It is not the practice for the Supreme Court to issue press releases. Even for handed down judgments that attract wide media exposure, press releases are not issued. The court communicates through its judgments. A judgment is the end product of the proceedings and all aspects of a judgment are subject to due reasoning. It pronounces the Judge's conclusion over the issues brought before him/her and every aspect of it is addressed with brevity and clarity. It is the means by which the Judge communicates his/her decision to the parties primarily and to others (i.e. the legal profession, other judges, the public in general etc). Every judgment, therefore, is a self-contained document.

26. Are regulatory authorities entitled to challenge acts or decisions taken by other public persons on the grounds that they impinge on their competence?

First, competence is determined by the Constitution or by Statute or Statutory Instruments/Regulations, enacted in accordance with the law. If a challenged decision or act was taken by a non-competent authority, the court must on that account annul it.

Also, under **Article 139 of the Constitution**, the Supreme Court has exclusive jurisdiction to adjudicate finally on a recourse made in connection with any matter relating to any conflict or contest of power or competence arising between the House of Representatives and the Communal Chambers or any one of them and between any organs of, or authorities in, the Republic. (**Yeroskipou Municipal Council v. Council of Ministers (1996) 3 C.L.R. 389, Municipality of Saint Athanasiou v. Council of Ministers a.o. (2004) 3 C.L.R 98, Municipality of Larnaca v. Council of Ministers a.o. (2013) 3 C.L.R. 579, CYTA v. 1. Office of the Commissioner of Electronic Communications and Postal Regulations a.o. (2005) 3 C.L.R. 20**).

27. Independently of a particular case, do your court or its members regularly participate in general exchanges bringing together professionals (regulatory authorities, operators, doctrine, ministries, etc.) from the regulatory sectors concerned? Yes/no (No)

If yes:

Please specify.

There is a constitutionally entrenched Separation of Powers principle between the three State Powers in our Republic; and the separation has been stressed in many judgments of the Supreme Court. Great emphasis is laid on the independence and separateness of the judiciary from the other powers of the State. The separation of state powers eminent in the structure of the Constitution of Cyprus precludes the direct or indirect or in any form inter-institutional mixture of legislative, executive and judicial powers. **(Cyprus Broadcasting Corporation and others v. Karageorghey and others (1991) 3 C.L.R. 159).** In this respect, the mere 'meddling' of one state power into another, under any disguise, is unacceptable[46]. Against this background, the judiciary must be seen to be independent of the legislative and executive powers, both as individuals and as a whole.

Moreover, the principle of judicial independence extends beyond the constitutionally entrenched doctrine of Separation of State Powers and

[46] President of the Republic v. House of Representatives (1985) 3 C.L.R. 2165, President of the Republic v. House of Representatives (1986) 3 C.L.R. 1159, President of the Republic v. House of Representatives (No.3) (1992) 3 C.L.R. 458, President of the Republic v. House of Representatives (No.1) (2000) 3 C.L.R. 157

requires that a judge and the body as a whole, be and be seen to be, independent of all sources of power, interest or influence in society, including the media and political and commercial interests.
The Guide to Judicial Conduct upholds and exemplifies judicial independence in both its individual and institutional aspects. The guidelines on judicial independence give an insight as to how it is applied in practice:

- Judicial independence is not a personal judicial privilege but a right of the citizen. It is the cornerstone of a democratic society and a safeguard of the freedom and rights of the citizen under the rule of law.
- The judiciary must be seen to be independent of the legislative and executive arms of government and also, be seen to be, independent of all other sources of power or influence in society, including the media and commercial interests.
- A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
- A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.
- A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.
- In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.
- A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
- A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

28. Are the judges in your courts, or more generally the staff of your investigating and registry departments, sometimes led in their careers to take up activities in regulatory authorities, and are such careers encouraged where appropriate? Yes/no
If yes:
Please explain.

A change of career is highly unlikely particularly for judicial officeholders. They are permanent member of the judiciary (**Articles 133.7, 153.7 of the Constitution, section 7 of the Courts of Justice Law, L. 14/1960,**

section 6 of the Administration of Justice Law of 1964, L. 33/194, section 5(1) of the Establishment of the Administrative Court Law, L. 131(I)/2015). Similarly, Legal Assistants and Registrars are permanent civil servants in status appointed in accordance with the **Civil Service Law, L. 1/1990**.

Quantitative data

29. What is the number of cases concerning regulatory authorities registered before your supreme administrative court in 2020?

For the time being no such data are held.

30. What is the number of cases concerning regulatory authorities settled by your supreme administrative court in 2020?

For the time being no such data are held.

31. What is your estimate of the percentage of cases concerning regulatory authorities in the total number of cases registered before your supreme administrative court in 2020?

For the time being no such data are held.

32. What is your estimate of the percentage of cases concerning regulatory authorities in the total number of cases settled by your supreme administrative court in 2020?

For the time being no such data are held.

33. What percentage of applications against the acts of regulatory authorities were annulled, in whole or in part, by your supreme administrative court in 2020?

For the time being no such data are held.

Mr Justice Leonidas Parparinos, Supreme Court of Cyprus