



VISOKI UPRAVNI SUD REPUBLIKE HRVATSKE

HIGH ADMINISTRATIVE COURT OF THE REPUBLIC OF CROATIA

MECHANISMS OF COUNTERACTING CONFLICTING RULINGS FROM DIFFERENT DOMESTIC COURTS AND FROM THE CJEU AND ECtHR

The focus of the Finnish - Swedish presidency of the ACA 2023 - 2025 will be on the vertical dialogue between the Supreme administrative jurisdictions, the Courts of the European Union and the Council of Europe in its procedural dimension. Within this framework, the seminar organized by ACA and the High Administrative Court of the Republic of Croatia, which will be held in February 2024 in Zagreb, will feature the topic of existing mechanisms of counteracting conflicting rulings from different courts at the European and domestic level. Considering the jurisdiction of the courts - members of the ACA, the submitted questionnaire refers to administrative disputes.

The questionnaire contains questions about observing and studying the case law of the Court of Justice of the EU (hereinafter: CJEU) and the European Court of Human Rights (hereinafter: ECtHR). Questions related to the implementation of the decisions of the CJEU, its principled positions, are also raised, as well as the possibilities of counteracting conflicting final rulings from domestic courts and the CJEU.

In relation to the ECtHR, the issues primarily relate to the status and application of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: Convention) in the legal order of a particular country. Furthermore, the questions are related to the procedure in the specific administrative dispute in which the ECtHR ruling was made, but also to the application of the positions expressed in other cases, that is, to the possibility of counteracting the inconsistency of final rulings from domestic courts with the case law of the ECtHR. Questions were also raised about the status of Protocol No. 16 to the Convention and the possible role of advisory opinions in preventing conflicts between the case law of domestic courts and the case law of the ECtHR.

Further questions deal with the relationship of domestic courts and the domestic Constitutional Court (if there is any), as well as the harmonization of the case law of domestic courts with the case law of the Constitutional Court.

Finally, attention is paid to mutual dialogue between the domestic supreme courts and the possibility of counteracting conflicting case law of these courts.



I CJEU

1. How is the case law of the CJEU studied and observed at your Court? Do you have, e.g., a department for this purpose?

There is no Department nominated exclusively for the study and observance of the CJEU case law. The two Supreme Courts of the Republic (the Supreme Constitutional Court and the Supreme Court), have Legal Officers assigned to them. Legal Officers assist the Justices in both national and european legal research.

Meanwhile, the Legal Publication Department has an ancillary role in the observance of CJEU case law. The Department is responsible for the publication and summarisation of national court decisions which are issued by the Supreme Court, the Supreme Constitutional Court and the Court of Appeal. It is also responsible for the preparation of annual case law indices. Therefore, national decisions that cite CJEU case law are summarised, categorised and indexed accordingly.

1.1. If the answer to the previous question is affirmative, how many people are employed in that Department and what education have they completed? What is the role of the Department (e.g., advisory)?

At the moment six legal officers assist the Justices in the legal research and five Legal Officers are assigned to the Legal Publication Department. All Legal Officers are holders of a law degree, have passed the Cyprus bar exams and have experience in practising law.

The Legal Publication Department is supervised by a Justice of the Supreme Court. It is staffed with two clerical staff and five Legal Officers, as previously mentioned. Through the publication and summarisation of judgments and the compilation of indices, the Department assists in informing on CJEU jurisprudence and its developments.

2. Is there a possibility of repealing a final ruling made in an administrative dispute if the CJEU adopts a ruling in another case indicating that an earlier final ruling of a domestic court is erroneous? If there is such a procedure, in what formation (number of judges) does the administrative court adopt its decisions?

The reopening of final appeals is governed by the following rules:

*By virtue of rule 3 of **Appeals (Judicial Review/Revisional Jurisdiction) Rules of Procedure of 2023** the Court of Appeal when exercising its revisional jurisdiction applies the provisions of **Part 41 of the Civil Procedure Rules**. Rule 15 of Part 41 states that the Court of Appeal will not reopen a final determination of any appeal unless—*

- (a) it is necessary to do so in order to avoid real injustice;*
- (b) the circumstances are exceptional and make it appropriate to reopen the appeal; and*



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(c) there is no alternative effective remedy.

There is therefore jurisdiction vested in the court to reopen a final appeal if the aforementioned conditions are satisfied. The case is heard by a bench of 3 Justices.

2.1. Are the parties authorized to initiate the reopening of a final ruling in the aforementioned case? Apart from the parties, is any other body (authority etc.) involved in such a procedure? Is there a deadline for submitting such a request?

*A party to the case may file an application to the court for the reopening of a final appeal by virtue of **Part 41.15(2) of the Civil Procedure Rules**. Permission is required to make an application under P41.15(2). The application for permission will be considered by a single judge. Once leave is granted, the application on whether to reopen the final appeal will be considered by a bench of 3 Justices. The Rules do not specify a specific deadline for lodging such a request, however, the application needs to be filed without delay and as soon as the party acquired relevant knowledge. The application must be filed in accordance with **Part 23 of the Civil Procedure Rules**.*

2.2. Is the administrative court authorized to react *ex officio* in the aforementioned case? Is there a prescribed deadline for such action?

It is not explicitly stated in the Rules that the court may reopen a final determination on its own motion. However, the court has an inherent jurisdiction to do so to avoid a real injustice being done where there is no alternative remedy.

2.3. In the case of conflict between a domestic court decision and a newer CJEU judgment, what kind of procedure is adopted for establishing that the earlier final ruling is not in accordance with the position of the CJEU? How are the positions of parties collected in such a procedure?

(a) Reopening of a final determination

*Provided that the Court of Appeal granted leave on an application made under **Part 41.15 of the Civil Procedure Rules** and determined the application by proclaiming the nullity of its previous decision, the appeal will be reopened and the case will be heard again by the Court of Appeal (rehearing/re-trial).*

(b) New judicial review appeal before the Court of Appeal

*One of the fundamental principles upon which the courts in Cyprus proceed is that of *stare decisis*. All lower courts are bound by the decisions of the higher court. The Court of Appeal while being bound by the judicial precedent of the Supreme Court and of the Supreme Constitutional Court, it is also bound by its own decisions.*



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*In addition, case law is a source of law in common law jurisdictions¹. The doctrine of precedent law is a fundamental pillar of law, interlinked with legal certainty (predictability) and the rule of law². When issues of divergence or deviation from precedent law arise, they are dealt with by an enlarged Bench or by the Full Bench of the Court of Appeal and not by a panel of special formation. The Plenary of the Court of Appeal may depart from its own earlier precedent if the decision was taken *per incuriam* or there have been material changes in circumstances in the application of the legal principle(s) in issue. The discretion for departure widens when constitutional or administrative law issues are concerned³.*

Therefore, if in a newer CJEU judgment, the CJEU established that an earlier domestic ruling is in conflict with the new CJEU judgment then the Court of Appeal in determining the new appeal before it will examine whether it needs to depart from its previous authority. If the court decides to depart then it will give detailed reasons, in its judgment, why its previous ruling will not be followed.

2.4 Is a legal remedy permitted against such a ruling?

Please see response to Q2.3.

2.5. If the aforementioned procedure exists, in approximately how many or what kinds of administrative disputes in the period 2012 - 2022 was the possibility of changing a final ruling that is not in accordance with the later position of the CJEU used?

Cyprus' court and judicial system went through recent reforms. The structure of the courts has moved from a two-tier structure to a third-tier one. The Court of Appeal has been established only recently, on 1.7.2023. Similarly, new Civil Procedure Rules have been adopted. The new rules came into force on 1.7.2023 in as far as the Court of Appeal is concerned. Part 41 (Appeals) applies to the revisional jurisdiction of the Court of Appeal (judicial review jurisdiction). Therefore, due to the contemporariness of the reforms no data is held.

3. Has the legislation been changed due to observed conflicts between the case law of domestic courts and the case law of the CJEU? In the affirmative, please provide an example!

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

² Ronald Watts and others v. Laouri and others, Civil Appeal 319/2008, 7/7/2014 (majority ruling), Republic and others v. Yiallourou and others (1995) 3 C.L.R. 363

³ Ronald Watts and others v. Yianni Laouri, Civil Appeal 319/2008, 7/7/2014 (Full Bench)



No, the legislation has not been changed due to the reasons mentioned in the question.

II ECtHR

1. How is the case law of the ECtHR studied and observed at your Court? Do you have, e.g., a department for this purpose?

Both the Supreme Constitutional Court and the Supreme Court have Legal Officers assigned to them. Legal Officers are holders of a law degree, have passed the Cypr's bar exams and have experience in practising law. They assist the Justices in legal research in relation to national and European law. One Legal Officer, is responsible for the dissemination of ECtHR case law to the President of each Court and subsequently to all the Justices of the Courts (Supreme Courts Network of the Council of Europe). The said Legal Officer is also responsible for preparing ECtHR case law summaries.

Meanwhile, there is, as already mentioned above, a Legal Publication Department. The Department is responsible for the summarisation of court decisions of the Supreme Court, the Supreme Constitutional Court and of the Court of Appeal. It is also responsible for the preparation of indices. In this respect, national decisions that cite ECtHR case law are categorised accordingly and the ECtHR case law is included in the relevant index/indices.

1.1. If the answer to the previous question is affirmative, how many people are employed in that Department and what education have they completed? What is the role of the Department (e.g., advisory)?

The Legal Publication Department is supervised by a Justice of the Supreme Court and a Justice of the Supreme Constitutional Court. It is staffed with two clerical staff and five Legal Officers. Like the Legal Officers assigned to the Justices of the two supreme courts, Legal Officers of the Department are holders of a law degree, have passed the Cyprus bar exams and have experience in practising law.

Through the publication of judgments, their summaries and the relevant indices the Department assists in knowledge sharing of ECtHR jurisprudence.

2. What is the hierarchical status of the Convention in the legal order of your member state?

*In the Republic of Cyprus, a Treaty, Convention and Covenant negotiated or signed under a decision of the Council of Ministers and ratified by a law of the House of Representatives acquires superior force to any national law (**Article 169.3 of the Constitution**). A ratifying law comes into operation on the date of its publication in the Official Gazette of the Republic, unless otherwise provided. Once ratified under **Article 169.3 of the Constitution**, the*



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international legal instrument becomes part of our Legal Order with superior force over any national law, both anterior and posterior, as from the date that it came into force under International Law.

When a Convention becomes an integral part of our Legal System, it takes primacy over domestic legislation, whether earlier or subsequent. In this respect, the hierarchy of the laws in Cyprus' Legal Order are as follows:

- *Union law takes supremacy over the Constitution (**Article 1A of the Constitution**) which is sovereign nevertheless (**Article 179.1 of the Constitution**),*
- *The Constitution under **Article 179.1** is the supreme law of the Republic.*
- *A Treaty or Convention is inferior to the Constitution, but as aforesaid is of higher hierarchical legal value than the Domestic Legislation. They certainly do not annul such legislation, but they displace it: A Convention does not *stricto sensu* repeal national law, but has only superior force to it, in the sense that it has precedence in its application resulting in the non-application of inferior law, enacted either prior or subsequent to the ratification of the International Convention.*
- *Domestic legislation.*
- *Case law.*

2.1. How does this status affect the application of the Convention in administrative disputes (is the Convention applied directly)?

Yes, the Convention is applied by the Courts directly.

2.2. Is there a specific body (court) that controls the application of the Convention in administrative disputes?

*The Constitution of the Republic of Cyprus, guarantees the protection of all basic human rights protected by the European Convention of Human Rights, and, in some instances, grants even higher protection, such as in the case of the right to property. The case law of the Supreme Court emphasises that respect for human rights must be uppermost in the mind of public bodies. Similarly, **Article 35 of the Constitution**, imposes a direct and positive obligation to all state powers to secure the “efficient application” of those rights, throughout the field of their action.*

The Administrative Court in reviewing an administrative decision under the principle of legality, will also examine whether the human rights guarantees, protected by the Constitution and the ECHR, were observed and applied by the



public authority. On a judicial review appeal, the Court of Appeal can determine whether the ECHR and its case law were applied correctly by the first instance court.

*In addition, the Supreme Constitutional Court has jurisdiction to decide on the constitutionality and ECHR compatibility of any law, on references made by any court of the Republic under **Article 144 of the Constitution**. A reference to the Supreme Constitutional Court can be made at any stage of the proceedings.*

3. According to the domestic law (or case law), is a violation of Convention or a deviation from the ECtHR case law, determined by a domestic court (e.g. court of appeal), a possible reason for repealing the ruling of a lower court that committed the violation? If the answer is affirmative, which legal remedies or instruments are available and what is the procedure like?

Yes, the first instance decision can be overturned on appeal on the ground of ECHR violation. For example, if the Court of Appeal finds that an Article of the Convention has been violated, the first instance decision will be overturned on appeal by the Court of Appeal. The decision of the Court of Appeal is final.

4. What are the procedural possibilities of a party whose administrative dispute has been concluded, and in relation to which the ECtHR found that a violation of the Convention has been committed?

*By virtue of rule 3 of **Appeals (Judicial Review / Revisional Jurisdiction) Rules of Procedure of 2023**, the Court of Appeal when exercising its revisional jurisdiction applies the provisions of **Part 41 of the Civil Procedure Rules**.*

***Rule 15 of Part 41** on reopening of final appeals states that the Court of Appeal will not reopen a final determination of any appeal unless—*

(a) it is necessary to do so in order to avoid real injustice;

(b) the circumstances are exceptional and make it appropriate to reopen the appeal; and

(c) there is no alternative effective remedy.

There is therefore an inherent jurisdiction of the court to reopen a final appeal if the aforementioned conditions are satisfied. In examining an application for the reopening of a final appeal the court sits in formation of 3 Justices.

*A party to the case may file an application to the court for the reopening of a final appeal by virtue of **Part 41.15(2) of the Civil Procedure Rules**. Permission is needed to make an application under 41.15(2). The application for permission will be considered by a single judge. Once leave is granted, the application on whether to reopen the final appeal will be considered by a bench of 3 Justices. The Rules do not specify a specific deadline for lodging such a request, however, the application needs to be filed without delay and as soon as the party acquired relevant knowledge. The application must be filed in accordance with **Part 23 of the Civil Procedure Rules**.*



4.1. Must the party react within a prescribed deadline?

There is no prescribed deadline, however, the party must act as soon as he or she has acquired relevant knowledge. Extensive delays can be taken into account by the court.

4.2. If the party has not submitted a request to change the final ruling (that is, for example, to renew the dispute), is the administrative court authorized to react *ex officio*?

Yes, the Court can act on its own motion on the basis of its inherent jurisdiction, e.g. violation of the principle of natural justice (audi alteram partem), Article 6 of the Convention – the right to a fair trial. In such case, the Court of Appeal will declare its decision null and order the rehearing of the appeal.

4.3. In what formation (number of judges) does the administrative court adopt its decisions on amending the final ruling?

The Court of Appeal will sit in a formation of three (3) Justices.

4.4. In the case of conflict between a domestic court decision and a newer ECtHR judgment, what kind of procedure is adopted for establishing that the earlier final ruling is not in accordance with the position of the ECtHR? Is there a special procedure adopted establishing that the earlier final ruling is not in accordance with the position of the ECtHR? Are the parties from other administrative disputes authorized to request the change of their final rulings based on the decision of the ECtHR made in another case? Is there a deadline for submitting such a request? How are the positions of parties collected in such a procedure? Is a legal remedy permitted against a ruling of the domestic court deciding the case?

(a) Reopening of a final determination

*Upon an application made under **Part 41.15 of the Civil Procedure Rules** where leave was granted and the Court of Appeal has determined the application by proclaiming the nullity of its previous decision, the appeal will be reopened and the case will be heard again by the Court of Appeal (rehearing/re-trial) (**Nicholas v. Cyprus Airways Civil Appeal 43/2007, 24.2.2022 (majority judgment)**).*

(b) New judicial review recourse before the Court of Appeal

One of the fundamental principles upon which the courts in Cyprus proceed is that of stare decisis. All lower courts are bound by the decisions of the higher court. The Court of Appeal while being bound by the judicial precedent of the Supreme Court and of the Supreme Constitutional Court, it is also bound by its own decisions.



Moreover, case law is a source of law in common law jurisdictions⁴. The doctrine of precedent law is a fundamental pillar of law, interlinked with legal certainty (predictability) and the rule of law⁵. When issues of divergence or deviation from precedent law arise, they are dealt with by an enlarged Bench or by the Full Bench of the Court of Appeal and not by a panel of special formation. The Plenary of the Court of Appeal may depart from its own earlier precedent if the decision was taken *per incuriam* or there have been material changes in circumstances in the application of the legal principle(s) in issue. The discretion for departure widens when constitutional or administrative law issues are concerned⁶.

Therefore, if in a newer ECtHR judgment, the ECtHR established that an earlier domestic ruling is in conflict with the new ECtHR judgment then the Court of Appeal in determining the new appeal before it will examine whether it needs to depart from its previous authority. If the court decides to depart, then it will explain in detail, in its judgment, why its previous ruling will not be followed.

4.5. In approximately how many or what kinds of administrative disputes in the period 2012 - 2022 was a request for changing the final ruling submitted due to it being conflicting with the position of the ECtHR?

Cyprus' court and judicial system went through recent reforms. The court structure has moved from a two-tier structure to a third-tier one. The Court of Appeal has been established only recently, on 1.7.2023. Similarly, new Civil Procedure Rules have been adopted. The new rules came into force on 1.7.2023. Part 41 (Appeals) applies to the revisional jurisdiction of the Court of Appeal (judicial review jurisdiction). Therefore, due to the contemporariness of the reforms no data is held.

However, with the previous court system the most common ground for the reopening of a final appeal was an Article 6 of the Convention violation.

5. In what types of administrative disputes are violations of Convention rights most often established? Can you provide a reason therefor?

Four judgments of the ECtHR on applications against the Republic of Cyprus were handed down by the Court in 2022. In two (2) of those a violation of

⁴ Ronald Watts and others v. Laouri and others, Civil Appeal 319/2008, 7/7/2014 (majority ruling), Republic v. Demetriades (1977) 3 C.L.R. 213, 263-264, Nicolaou and others v. Nicolaou and others (No. 2) (1992) 1B C.L.R. 1338, 1405-1406, Republic and others v. Yiallourou and others (1995) 3 C.L.R. 363, 373-374, Mavrogenis v. House of Representatives and others (No. 3) (1996) 1 C.L.R. 315, 332-337, Koulounti and others v. House of Representatives and others (1997) 1B C.L.R. 1026, 1105, Vironas v. Republic (1999) 3 C.L.R. 77, 85, Christos Hadjikyriakou Properties Ltd v. Republic (2001) 3B C.L.R. 901, 905, Antenna TV Ltd and others v. CY.T.A. and others (2002) 3 C.L.R. 793, 809-811, Panayides Contracting Ltd v. Charalambous (2004) 1A C.L.R. 416, 488 and Investylia Public Company Ltd v. Tseriotis, Civil Appeal 9/2009 and 10/2009, 13/3/2013

⁵ Ronald Watts and others v. Laouri and others, Civil Appeal 319/2008, 7/7/2014 (majority ruling), Republic and others v. Yiallourou and others (1995) 3 C.L.R. 363

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



Convention rights were established by the Court. One concerned violation of Article 6 and the other one of Article 10.

In as far as administrative disputes is concerned, we have not detected a specific type of cases where a violation of Convention rights incurred.

6. Is there a special body in your country responsible for the execution of ECtHR rulings (apart from the Government as regards just satisfaction afforded in judgments by the ECtHR) and what is its name? If there is such body, what is its composition and its powers (which instruments does it apply to prevent case law of domestic courts from conflicting with the case law of the ECtHR)?

The Department of Human Rights of the Law Office of the Republic is responsible, inter alia, for observing closely the practice and procedures of the Committee of Ministers for the execution of ECtHR judgments against the Republic of Cyprus. The Law Office of the Republic (Attorney-General's Office) is an independent authority of the Republic.

7. Has the legislation been changed due to observed conflicts between the case law of domestic courts and the case law of the ECtHR? Please, provide an example!

Yes, in a number of cases the legislation and the case law have been changed due to the above conflict.

*Example: On 9.1.2018, the ECtHR in the judgment of **Nicholas v. Cyprus, Application no. 63246/2010** ruled that there was a violation of Article 6.1 of the Convention due to the absence of objective impartiality of the Supreme Court in the adjudication of the applicant's appeal (with reference to a specific Justice of the Supreme Court). The Court ruled that the Judge's in-law relationship with the lawyer who appeared for the defendant, sufficed to objectively justify the applicant's fears as to the judge's impartiality.*

*Hence, on 11.2.2019, the **Judicial Practice Direction** of 17th March 1988, was amended by the Supreme Court. By virtue of the amendment a Judge has no discretion but to recuse himself/herself if a family member or a colleague or the employer or an employee or a partner of the family member, appears before him/her. The amendment gave a broad meaning to the term "judge's family" so as to exclude any conflict of interest and to avoid the fairness of the proceedings from being questioned.*

8. Has your country ratified Protocol No. 16 to the Convention (which provides for the possibility of seeking advisory opinions)?

The Republic of Cyprus has not ratified Protocol No. 16 of the Convention.

8.1. Do you believe that an advisory opinion could prevent the adoption of a ruling by a domestic court that would not be in accordance with ECtHR case law? Explain your answer.



An advisory opinion procedure can serve as a medium to avoid discrepancies between the judgments of domestic courts and the ECtHR.

8.2. Do you have practical experience with seeking an advisory opinion provided for in Protocol No. 16 to the Convention? Provide an example.

Cyprus has no such experience because the Protocol has not been ratified by the Republic.

III CONSTITUTIONAL COURT

1. Is there a Constitutional Court in your country?

By virtue of the Constitution, the Supreme Constitutional Court is the Constitutional Court of the Republic of Cyprus.

1.2. If the answer to the question is affirmative, what are the powers of the Constitutional Court?

The Supreme Constitutional Court has all the powers and jurisdictions conferred to it by the Constitution and include the following:

- (a) The Supreme Constitutional Court is the constitutional court of the land. Under **Article 144 of the Constitution**, the Supreme Constitutional Court has jurisdiction to decide on the constitutionality and ECHR compatibility of any law referred to it by any court of the Republic. A reference to the Supreme Constitutional Court can be made at any stage of the proceedings.*
- (b) It adjudicates on appeals against decisions of the Administrative Court which have been referred to it by the Court of Appeal, on points of public law or on points of utmost public interest or of general public importance or on the consistency of law on conflicting or contrasting decisions of the Court of Appeal.*
- (c) With the leave of the Court, the Supreme Constitutional Court decides, at third and last instance, on applications filed, by the Attorney-General or by a party, provided that judicial review appeal proceedings on points of law preceded in the court below. The points of law must emanate from the decision of the Court of Appeal and relate to the differentiation of settled case law or to the correct interpretation of material, primary or secondary, legal provisions, or to matters of utmost public interest or of general public importance or on the consistency of law on conflicting or contrasting decisions of the Court of Appeal of judicial review jurisdiction.*
- (d) It is the appellate Supreme Council of Judicature deciding on applications against decisions of the Supreme Council of Judicature.*

2. Does the Supreme administrative jurisdiction have powers similar to those of the Constitutional Court? Please describe the competence/jurisdiction of these two jurisdictions!



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*In so far as constitutionality matters are concerned, the Court of Appeal and the Supreme Constitutional Court do not have similar jurisdictions. The Court of Appeal in its appellate judicial review jurisdiction adjudicates, at second instance, on the legality of an administrative act. If a matter of constitutionality arises in an appeal before the Court of Appeal, the Court will refer the matter to the Supreme Constitutional Court for a decision under **Article 144 of the Constitution**. By virtue of the Constitution, the Supreme Constitutional Court is the competent Court to decide on the constitutionality of a law. If the Supreme Constitutional Court finds that the law is unconstitutional then the administrative act founded on an unconstitutional piece of legislation is tainted by unconstitutionality and must on that account be annulled by the Court of Appeal.*

In so far as the appellate judicial review jurisdiction is concerned, the two Courts have similar jurisdictions in the sense that the Court of Appeal may refer an appeal filed against a decision of the Administrative Court to be adjudicated by the Supreme Constitutional Court because it raises points of public law or on points of utmost public interest or of general public importance or on the consistency of law on conflicting or contrasting decisions of the Court of Appeal. This is a type of leapfrog appeal. The Supreme Constitutional Court, however, may reject the referral if the Court is of the opinion that the referral is not justified. In such case the appeal will be heard by the Court of Appeal.

Similarly, with the leave of the Court, the Supreme Constitutional Court is competent to decide, at third and last instance, on applications filed, by the Attorney-General or by a party, provided that judicial review appeal proceedings on points of law preceded in the court below. The points of law must emanate from the decision of the Court of Appeal and relate to the differentiation of settled case law or to the correct interpretation of material, primary or secondary, legal provisions, or to matters of utmost public interest or of general public importance or on the consistency of law on conflicting or contrasting decisions of the Court of Appeal of judicial review jurisdiction.

3. In the event that the Supreme administrative jurisdiction deems that a provision of the law to be applied in a specific case is unconstitutional, must it initiate appropriate proceedings before the Constitutional Court, or is it authorized to interpret the contested provision taking the Constitution into consideration?

*When issues of constitutionality of primary and/or secondary legislation arise before the Court of Appeal, the CoA must refer the matter to the Supreme Constitutional Court under **Article 144 of the Constitution**, as explained above.*

Secondary/Subsidiary legislation (by-laws, 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 the light of the decision of the Supreme Constitutional Court, the Court of Appeal will apply the SCC decision to the administrative dispute before it.

4. What are the possibilities of the parties in an administrative dispute to request the repeal of the final rulings that were made on the basis of a regulation that the Constitutional Court found unconstitutional (in the process of abstract review of constitutionality)? Is there a prescribed deadline for such action?

*As aforementioned, if a matter of constitutionality arises in an appeal before the Court of Appeal, the CoA will refer the matter to the Supreme Constitutional Court for a decision under **Article 144 of the Constitution**. By virtue of the Constitution, the Supreme Constitutional Court is the competent Court to decide on the constitutionality of an act of legislation. If the Supreme Constitutional Court finds that the law is unconstitutional then the administrative act founded on an unconstitutional act of legislation is tainted by unconstitutionality and will on that account be annulled by the Court of Appeal.*

In light of the above, the proceedings before the Court of Appeal will be stayed awaiting the Supreme Constitutional Court's judgment. Hence, when the Court of Appeal determines the appeal, the CoA has the Supreme Constitutional Court's judgment at hand to be applied.

5. What are the possibilities of the parties in an administrative dispute to request the repeal of the final rulings that are not in accordance with the ruling of the Constitutional Court made in the constitutional action of another person? Is there a prescribed deadline for such action?

Please see response to Q4 above.

IV RELATIONSHIP OF THE DOMESTIC SUPREME ADMINISTRATIVE JURISDICTION WITH ANOTHER DOMESTIC SUPREME COURT

1. Is there another supreme jurisdiction in your system?

By virtue of the Constitution, the Supreme Court is the supreme court of third and last instance in civil and criminal jurisdiction and the Supreme Constitutional Court is the supreme court on constitutional matters and administrative cases.

2. Please describe the competence/jurisdiction of the two supreme jurisdictions.



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The Supreme Court's powers and jurisdictions lie in civil and criminal jurisdictions and are as follows:

- (a) The Supreme Court has all the powers and jurisdictions conferred to it by the Constitution; including the exclusive jurisdiction to issue the prerogative orders of Habeas Corpus, Mandamus, Certiorari, Quo Warranto and Prohibition.*
- (b) Following a reference from the Court of Appeal, the Supreme Court adjudicates on appeals against decisions of first instance civil and criminal courts, including courts of specialised jurisdiction, on points of utmost public interest or of general public importance or on the consistency of law on conflicting or contrasting decisions of the Court of Appeal.*
- (c) With the leave of the Court, the Supreme Court decides, at third and last instance, on applications filed, by the Attorney-General or by a party, provided that civil or criminal appeal proceedings on points of law preceded in the court below. The points of law must emanate from the decision of the Court of Appeal and relate to the differentiation of settled case law or to the correct interpretation of material, primary or secondary, legal provisions, or to matters of utmost public interest or of general public importance or on the consistency of law on conflicting or contrasting decisions of the Court of Appeal of civil or criminal jurisdiction.*
- (d) The Supreme Court decides on a re-hearing, by the Court of Appeal or by the first instance criminal court, as the case may be, of an adjudicated criminal case where a guilty verdict was handed down either by the first instance court and the decision has become final (res judicata) or on appeal, on the basis of new evidence or facts that in the opinion of the Court may result in the decision being overturned, either wholly or partially.*
- (e) The Supreme Court deals with applications for the recusal of a Judge sitting at any court other than the Supreme Constitutional Court provided that such application was dismissed by the lower court.*
- (f) The Supreme Court deals with second instance civil cases filed prior to 31/12/2017.*
- (g) The Supreme Court exercises admiralty jurisdiction, at first and second instance.*

The Supreme Constitutional Court has all the powers and jurisdictions conferred to it by the Constitution and include the following:

- (a) The Supreme Constitutional Court is the constitutional court of the land. Under **Article 144 of the Constitution**, the Supreme Constitutional Court has jurisdiction to decide on the constitutionality and ECHR*



compatibility of any law referred to it by any court of the Republic. A reference to the Supreme Constitutional Court can be made at any stage of the proceedings.

- (b) It adjudicates on appeals against decisions of the Administrative Court which have been referred to it by the Court of Appeal, on points of public law or on points of utmost public interest or of general public importance or on the consistency of law on conflicting or contrasting decisions of the Court of Appeal.*
- (c) With the leave of the Court, the Supreme Constitutional Court decides, at third and last instance, on applications filed, by the Attorney-General or by a party, provided that judicial review appeal proceedings on points of law preceded in the court below. The points of law must emanate from the decision of the Court of Appeal and relate to the differentiation of settled case law or to the correct interpretation of material, primary or secondary, legal provisions, or to matters of utmost public interest or of general public importance or on the consistency of law on conflicting or contrasting decisions of the Court of Appeal of judicial review jurisdiction.*
- (d) It is the appellate Supreme Council of Judicature deciding on applications against decisions of the Supreme Council of Judicature.*

Please note that the Court of Appeal is the court of second instance. It sits in panels of civil, criminal and judicial review / revisional jurisdiction. Decisions of the Court of Appeal in civil and criminal jurisdiction can be appealed, on points of law and under certain circumstances, to the Supreme Court. Decisions of the Court of Appeal in Judicial review / revisional jurisdiction can be appealed, on points of law and under certain circumstances, to the Supreme Constitutional Court.

3. In general, how is the conflict of different rulings of domestic courts counteracted in your legal system? How is a possible conflict of positions between the (two supreme) jurisdictions counteracted?

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. The Supreme Court is similarly, bound by its own case law. Departure from established case-law warrants greater justification.

With the leave of the Court, the Supreme Constitutional Court decides, at third and last instance, on applications filed, by the Attorney-General or by a party, provided that judicial review appeal proceedings on points of law preceded in the court below. The points of law must emanate from the decision of the Court of Appeal and relate to the differentiation of settled case law or to the correct interpretation of material, primary or secondary, legal provisions, or to matters of utmost public interest or of general public importance or on the consistency of law on conflicting or contrasting decisions of the Court of Appeal of judicial review jurisdiction.



Similarly, with the leave of the Court, the Supreme Court decides, at third and last instance, on applications filed, by the Attorney-General or by a party, provided that civil or criminal appeal proceedings on points of law preceded in the court below. The points of law must emanate from the decision of the Court of Appeal and relate to the differentiation of settled case law or to the correct interpretation of material, primary or secondary, legal provisions, or to matters of utmost public interest or of general public importance or on the consistency of law on conflicting or contrasting decisions of the Court of Appeal of civil or criminal jurisdiction.

4. In your opinion, is conflict prevention possible?

According to the doctrine of judicial precedent, courts adhere to precedent in making their decisions. The principle of stare decisis is a fundamental pillar of our law, it ensures legal certainty and is interlinked with the rule of law.

At the same time, while case law is a source of law it is also dynamic and ever-evolving. There are cases that establish precedent. Others might overturn it.

The two supreme courts of the country, each within its sphere of jurisdiction and power, are competent to adjudicate on points of law that relate to the differentiation of settled case law or to the correct interpretation of material, primary or secondary, legal provisions, or to matters of utmost public interest or of general public importance or on the consistency of law on conflicting or contrasting decisions of the Court of Appeal, in order to ensure and secure legal certainty.

