

## QUESTIONNAIRE CYPRUS

The answers given below are referring solely to the jurisdiction of the Administrative Court of Cyprus. The Administrative Court is the first instance court in Cyprus on recourses against decisions, acts or omissions of any organ or authority exercising executive or administrative functions.

Judicial review proceedings are inquisitorial. The inquiry extends, into every aspect of the decision, the background thereto 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.

This court's procedure is governed by the Procedural Rules 3/1962 of the Supreme Court of Cyprus and the more recent ones of 2015. Under Rule 18 of the 1962 Procedural Rules, the Civil Procedure Rules are applicable at the Administrative Court, *mutatis mutandis*.

The procedure is initiated by the applicant filing a recourse stating the therapy sought and after it has been served on the respondent by an opposition. In some cases, the recourse should also be served to the party who is favoured by the administrative act which the applicant is seeking to annul. This party is called the "interested party". Unless directed otherwise by the Court, the applicant then the respondent and then the interested party (if one exists) file their legal arguments in writing in the form of written addresses. The applicant has the right to file an additional written address in order to reply to legal arguments stated by the respondent or the interested party that had not been dealt with in his first written address. When all written addresses are

complete, the case is fixed for clarifications. During this procedure, the respondent should present and file to the court as exhibits the administrative files. These files serve as evidence and the Court can examine and base its judgment on their contents.

### **1) Mandate of the court to review techno-scientific matters**

Rule 10(2) of the 1962 Procedural Rules empowers the Court to issue such directions relating to evidence, including sworn statements, which serve as proof of the facts.

Rule 11 of the 1962 Procedural Rules empowers the Court to summon any person to give evidence or present documents. Under the same Rule, the Court may appoint an expert to perform examination or any other form of investigation necessary for the Court to reach a judgment.

Rule 11(2) of the 2015 Procedural Rules empowers the Court in cases relating to taxation matters to issue directions with regard to written or oral evidence.

Due to the special character of the administrative trial and the inquisitorial system in general, the submission of evidence and facts that were not before the public body and are hence not part of the administrative file, is not allowed, only in very exceptional circumstances<sup>1</sup>. For the 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<sup>2</sup> as to aid the court in administering justice<sup>3</sup>. It is for this reason that the administrative file or files that disclose and make the case are unswervingly accepted as evidence<sup>4</sup>.

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<sup>1</sup> Iacovides v. Public Service Commission (1997) 3 C.L.R. 28

<sup>2</sup> 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

<sup>3</sup> Tasni Enviro Ltd and Telmen Ltd v. Republic, Case No. 862/2005, Date 26/6/2008

<sup>4</sup> Constantinou v. Water Board Council (No. 1) (1992) 4 C.L.R. 3330

Any decision of the Administrative Court is subject to appeal at the Supreme Court of Cyprus. Under section 13 of Law 131(I)/2015, appeals can be filed only on points of law.

## **2) When do you gather expert advice**

Expert advice is necessary when technical or scientific issues are directly relevant to the legal arguments that have to be resolved notwithstanding the limitation explained in paragraph 1 above vis a vis the contents of the administrative files.

Gathering of scientific evidence is not mandatory under domestic law but is a matter of the Court's discretion.

Ex officio investigation of the scientific dimensions of a case is allowed within the framework of investigating the legal arguments of a case, for example whether the respondent has performed adequate investigation or whether the reasoning of the sub judice decision is adequate.

## **3) Rules of expert appointment**

Although thoughts have been made on the drafting of a catalogue of experts, especially on taxation matters, the issue is still pending.

Broadly speaking, when it is the Court that will appoint an expert it is usually asked by the professional bodies of the particular field to provide the Court with a list of competent experts on the issue at hand and the Court can select one. It is preferable if the parties also agree to the appointment of a particular expert in order to avoid challenges at a later stage as to the competency of the expert.

Nevertheless, the appointment of an expert cannot be challenged as such. What can be challenged is the competency of the expert which is usually done through cross examination.

As explained in matter 1 above, admission of expert evidence is permitted in order to assist the Court determine and decide upon the points of law raised by the parties. The procedure to be followed is decided by the Court.

#### **4) Evidentiary issues: standard and burden of proof**

Since in judicial review proceedings further evidence, which does not already form part of the administrative file, is allowed provided it is relevant to the issues of the case and with the ultimate goal to assist the Court in administering justice, the standard of proof lies upon the party seeking to present such evidence.

#### **5) Rules of evaluating expert evidence: standard (intensity) of review**

In order to choose between two conflicting pieces of expert evidence one would have to carefully assess the merits of the evidence given a factor subject to the challenges mentioned under 6 below.

#### **6) The role of science and technology in the courtroom – an overall assessment**

The major challenge is to comprehend and understand the details and all parameters of scientific evidence and how these affect or not the legality of the sub judice decision. Another challenge for the Court is to take account of the possibility of honest errors but also the possibility that various types of biases could be expressed through the evidence provided.

As already mentioned, the Court is empowered to summon expert witness if it deems appropriate. This combined with the inquisitorial system of justice that allows the

Court to ask the expert witness questions provides, in my view, adequate control. However, my view would not be the same had it been the adversarial system of justice.

Training in order to enhance the scientific competence of judges is always a good step forward.

## **7) Case study**

a) The main legal point that arises out of this case is whether the administrative authority responsible for granting the permit did actually perform due diligence examining all aspects of the project. The Court cannot intervene and substitute the administrative authority's decision if this appears to be reasonable. Assuming that the administrative files include all scientific studies and reports that have been taken into account in order to reach the decision to grant the permit, it is then a matter for the applicant to request leave from the Court in order to present expert evidence with the purpose of proving the fact that the administrative authority ought to have examined other important aspects but did not. The applicant will have to convince the Court that the aspects not taken into consideration by the respondent equal to the non-performance of due diligence on behalf of the respondent.