“PREVENTING BACKLOG IN ADMINISTRATIVE JUSTICE”

ANSWERS TO QUESTIONAIRE

Speeding up of the administrative justice process

I. Techniques for limiting the number of appeals

(1) According to our Constitution a person who wishes to refer a matter to the Supreme Administrative Court (in Cyprus the Supreme Court of Cyprus) has a right to appoint for the purposes a lawyer but not an obligation. If he/she wishes, can present his/her case personally and in such a case the Regulations regarding the mode of pleading are not so strict as in the case that a lawyer is appointed. When the case is presented through a lawyer, the Application must comply with some rules of procedure, especially regarding the points of law on which the Application is based.

In view of the fact that the Administrative Court in Cyprus, is the Supreme Court of Cyprus, as provided for by Article 146 of the Constitution, in order to appear before the Court until 2006, a lawyer should have at least three (3) years practice of the legal profession. This provision was abolished by an amendment of the Advocates' Law in 2006, so that this requirement does not apply for the original jurisdiction of the Supreme Court. However in order to appear before the Supreme Court in its appellate revisional jurisdiction, a lawyer must have at least two years practice.

(2) The revisional jurisdiction of the Supreme Court of Cyprus is limited to examining the legality of the procedure that was followed in reaching the administrative act or decision. Once the appropriate organ, authority or person has complied with the legal requirements and the principles of administrative law, then the Supreme Court, in its revisional jurisdiction, will not examine and evaluate the facts of the case which is a matter falling within the competence of the appropriate organ. If the decision was reasonably open, the Court will not disturb same, even if, on the facts of the case, the Court

would arrive at a different conclusion. This applies with more force in cases where the facts are of a technical nature.

(3) The right of appeal to the Supreme Administrative Court (the Supreme Court of Cyprus which usually consists of at least 5 judges of the Court) is an absolute one. If the case involves a point of law which is of a great importance, then the appeal can be heard by the Full Bench of the Supreme Court, except the judge who gave the decision under appeal.

(4) There are no penalties for abuse of appeals e.g. fines, other than an order for the payment of costs by the appellant. Further, the Civil Procedure Rules, which apply to some extent, and to administrative law cases, give the Court power, in a proper case i.e. where costs have been incurred due to any mis-conduct or default of the counsel, to order the counsel to pay personally the costs, provided that before the making of such order the counsel is heard on the matter. This is demanded by the rules of natural justice and by our Constitution Article 12.5 and 30.3 (***Sivitanides v. Charambous (1993) 1 C.L.R. 179, 184).*** However this power is very rarely exercised.

This power can be exercised by the bench (usually 5 judges) who tries the case and the decision must be duly reasoned.

(5) In view of the fact that an appeal against the decision of a judge of the Supreme Court of Cyprus exercising his power to review the legality of an administrative act or decision is filed as of right, i.e. without any limitation or condition, there is no admission or authorization procedure. The party who is not satisfied with such decision, has the right to file an appeal which right he must exercise within 42 days (six weeks) from the delivery of the decision. Simply he pays some fees (stamp duties) upon the filing of the Appeal.

II **Techniques to speed up proceedings**

(1) With reference always to the exclusive jurisdiction of our Supreme Court to review an administrative act or decision, the procedure usually is the following:

The Application (Recourse) must be filed within 75 days from the date the act or decision was published in the Official Gazette, or if not so published, the date that same came to the knowledge of the applicant.

The Application is served on the organ, authority or person that took the sub-judice decision, who is called the **Respondent.**

If by the Application an appointment or promotion of another person to a post is challenged and asked to be annulled and declared void, then the Application must also be served on that person or persons as well. The same applies if the sub-judice decision concerns the granting of a license or permit (e.g. building permit) to another person so that the Application must also be served on that person. These persons are conveniently called as "**the Interested Party" or "Interested person".**

After the service of the Application, the Respondent must file his **Opposition** normally within 21 days from service, unless of course he does not intend to oppose the recourse (Application). The interested party (if there is any) has the right to file a separate **Opposition** and be defended by his own lawyer (advocate) i.e other than the counsel for the Respondent who, by supporting the legality of the sub-judice decision, in effect he defends the interested party as well.

After an Opposition is filed, the Court gives directions that the addresses of the parties be made in writing and filed at the Registry of the Supreme Court, Revisional Jurisdiction, within specified time. For example the Applicant within 6 weeks, the Respondent within 6 weeks from receiving the written address of the applicant and the applicant has the right to file his written reply within specified time after receiving the written address of the Respondent.

In cases we have an Interested Party, he has a right to file a separate (i.e. other than that of the Respondent) written address and the appropriate stage for this purpose, is after the filing of the written address of the respondent, so that the reply of the Applicant answers to both written addresses (i.e of the Respondent and the Interested Party).

If a case appears to be of an urgent nature, the court gives directions (this is usually requested by the parties) that the written addresses be filed within a much shorter period than that usually ordered.

At the conclusion of the written addresses the Court sets the case at a subsequent date for oral clarifications.

Where there are more than one applications challenging the same act or decision, they can be consolidated and tried together by one judge even though the cases were originally placed for trial before different judges.

(2) Under the provisions of the Appeals (Preliminary Examination) Outlines of Addresses, Limitation of the time of Oral Addresses and Summary Procedure for the Dismissal of Obviously Unfounded Appeals of 1996, the Court of Appeal (which in administrative appeals is composed of at least 5 judges of the Supreme Court) at the preliminary stage, can dismiss the appeal or cross-appeal, if same is considered to be inadmissible, impertinent or obviously unfounded or is considered that it was filed with the purpose of causing delay in the administration of justice. Before exercising this power the Court grants the opportunity to the appellant or cross-appelant (as the case may be) to be heard orally on the matter or by a written address.

(3) Normally an application (recourse) to the Supreme Court under Article 146 is tried by one judge with a right of appeal to a bench consisting of at least 5 judges. For this purpose we have 2 Benches of 5 judges trying revisional appeals. In the original revisional jurisdiction 12, out of the 13 judges are trying administrative law cases at first instance, (except the President of the Court). The decision of one judge is subject to appeal as aforesaid.

If the case is of great importance, or where there are conflicting decisions of two benches of judges, then the appeal is heard by the Full Bench.

Similarly the Full Bench (13 judges) has power to hear a recourse where it considers that the point involved is of great importance or where there are conflicting decisions of benches of 5 judges, in order to have certainty of law, or with intent to decide the case speedily and in a final manner since in such a case there is no right of appeal.

Another occasion, where a case is decided with an accelerated procedure, is where there is preliminary objection to the admissibility of the recourse. Such a matter is tried preliminarily and if the objection is sustained, the case comes to an end without delay.

(4) We have no sessions where appeals are heard by a single judge.

(5) Normally an Application (recourse) to the Supreme Court under Article 146 of the Constitution must set out the grounds of law and state the legal points on which the application is based, justifying same. If the Applicant appears in person then he is not obliged to comply strictly with this requirement. However if he alleges that a law or regulation is unconstitutional, he has a duty to raise this matter in the application, and give details why the relevant provision is unconstitutional.

In the case of an appeal (revisional appeal) the Notice of Appeal shall state all the grounds of appeal and set forth fully the reasons relied upon for the grounds stated. Each ground of appeal must be set out in a separate paragraph and after each ground the reasoning of it must be stated separately.

(6) Yes, this is possible. As we have already said, the hearing of an application (recourse) at first instance (by a single judge) is conducted by means of written addresses and the case is fixed for

clarifications, if any, at the conclusion of the written addresses. If the judge considers that the written addresses are adequate, and no clarifications are necessary, then he can reserve his judgment without oral clarifications.

(7) If a party does not comply with the directions of the Court to file his written address, then the Court can act as follows:

(a) If the applicant fails to file his written address within the specified period or within the extended period, then the Court can direct that the written address be filed within a new specified period, and that failure of the applicant to file his written address as directed by the Court, then he will be deemed that he is not interested to proceed with his application and same will automatically be dismissed with costs against him.

(b) If the Respondent fails to file his written address as aforesaid, the Court can proceed and examine the case by taking into account only the written address of the applicant i.e. without hearing the Respondent.

(8) The Court, acting under Article 146 of the Constitution, can go into certain matters, ex proprio motu. The court can raise on its own motion public order issues. These include lack of competence, illegality of the organ that took the decision, whether an act or decision of an organ or authority is of an executory nature or not, if the applicant has a legitimate interest and whether the recourse was filed within the prescribed period of 75 days.

In the case that the court raises such issues on its own motion, prior to the closing of the case, the parties are asked to present their arguments along with their other arguments. If the judgment has been reserved and the court when preparing the judgment is of the opinion that must examine a legal point ex proprio motu, it will then re-open the case and grant the parties the opportunity to advance their arguments on this point only.

(9) Yes this is possible and usually is ordered when the parties state that they can file their written address within a shorter period than that of six weeks that usually is requested by the parties. (see also II(1) above).

(10) Unfortunately this is not yet possible because we do not have the necessary technology installed for the purposes of e-justice.

(11) No, the directions of the Court about the periods within which statements, written addresses and documents must be filed, are not applied with strictness. The court, for good reasons, can extend the time originally granted. However if a party repeatedly fails to comply, then the Court can take one of the steps set out in para 7 above.

(12) Yes, there are some limits in this sense. The written address has to be confined to the legal issues stated in the application or opposition. The only exception is where a legal issue is raised which concerns a point of public policy, such as the question whether the recourse was filed within the 75 days´ period provided for by Art. 146.3 of the Constitution, whether the applicant has a legitimate interest to file the recourse, etc. In these cases the legal point can be raised by the Court acting ex proprio motu and such a question usually is tried preliminarily to the main issues.

(13) No, this is not necessary.

(14) As we have already stated above, when the written addresses are concluded, the case is fixed for oral clarifications, if any. At this stage the respondent produces to the court as exhibits the relevant files or other documents on which the subjudice decision was based and which usually the applicant and the interested parties, if any, had already the opportunity to inspect at an earlier stage, in order to be able to prepare and file their written addresses.

(15) The answer to question 12 above, applies to this question as well.

(16) No, the appeal must be restricted to points of law raised in the Application (recourse) and decided by the Court at first instance. If the appeal succeeds on some grounds only (e.g. that it was wrongly dismissed as out of time), then the appellant has the right to ask the Appeal Court to proceed and examine the case with reference to the remaining legal issues which the Court at first instance, in view of its decision to dismiss the application (recourse) for some reasons, did not examine. The Appeal Court examines these issues by reference to the written addresses which were originally filed when the case was tried by a single judge.

On appeal, new arguments regarding matters of public policy can also be raised, as explained above, although same were not examined by the first instance judge.

(17) We do not have such appeal procedures in our system. However when an appeal is filed, the appellant can raise the argument that there was a breach of the right to a trial within reasonable time and if this is accepted by the Supreme Court then the appeal may succeed. Furthermore according to a Practice Direction of 2001 whenever it comes to the knowledge of the Supreme Court that there is delay in the trial of a case, it can order that the trial proceeds without interruptions.

It must be mentioned that a Bill is pending at the House of Representatives for the passing of a law (The Effective Remedies for the Violation of the Right of Determination of Civil Rights and Obligations within Reasonable Time) by which this situation will be remedied.

(18) According to the case law of the European Court of Human Rights, for a hearing to be considered as conducted within the “reasonable time” period provided for by Article 6 of the European Convention on Human Rights, depends on the circumstances of each particular case. We would say that such period, in ordinary cases, should not exceed four-five years, unless the special circumstances of the case may justify a longer period.

In Cyprus we had a number of cases regarding the violation of this article, all in civil law jurisdiction, where the European Court of Human Rights found a violation of this article. In criminal cases, as far as we are informed, there was only one such case.

In **administrative law,** which is our subject, we had only two cases where Cyprus has been found in violation of this article, the following: (a) **Serghides and Christoforou v. Cyprus, Application No. 44730/98 of 5/11/2002 (b) Josephides v. Cyprus, Application No. 33766/2002 of 6/12/07.**

In both above cases the European Court of Human Rights reiterated that the reasonableness of the length of the proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute. The court also recalled that article 6.1 of the Convention imposes on the Contracting States the duty to organize their judicial system in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time.

In **Serghides** case, the proceedings took 3 years and 2 months at first instance and nearly 5 years on appeal. On the facts of the case the European Court found a violation of the reasonable time period. We will state the facts of Serghides in some detail.

The Serghides case, concerned an application (recourse) to the Supreme Court of Cyprus under Article 146, first instance jurisdiction, challenging the legality of a decision of the Municipality of Nicosia and the Republic of Cyprus (Land Registry Office) to take away 2,060 square feet of the land of the applicants and declare it as a part of a public road. The application was filed on 17/11/89 and fixed for directions on 22/1/90. On 23/1/90 the Republic filed its opposition and the case was adjourned on 16/3/90 for the Municipality to file its opposition. The Municipality asked various extensions for this purpose to which request applicants´ lawyer did not object. Finally the Municipality filed the opposition on 20/6/90. The parties´ observations (written addresses) due to repeated requests from both

parties (which were granted by the court), were concluded at the end of 1991. On 22/1/92 the court reserved its judgment which was delivered on 2/2/93, i.e. after 13 months. On 9/3/93 the applicant filed an appeal. On 5/9/96 the parties were informed by the Court Registry that the appeal was fixed for hearing on 12/12/96. On that date the lawyer for the Municipality asked for an adjournment to which applicants´ lawyer did not object. The case was fixed for hearing on 20/1/97 but on that date was adjourned by the court for want of time and the case was fixed again for hearing on 3/4/97. The hearing commenced on that date but was not completed. It was fixed for continuation on 15/5/97 and then 1/7/97 but adjourned on application of both lawyers i.e. for the appellants and the Municipality. The hearing was concluded on 19/9/97 and the decision was reserved. It was delivered on 27/2/98 and the appeal was dismissed on a procedural point (i.e. that the appellants had no locus standi) without examining the merits of the case.

On the above facts, the European Court of Human Rights found, as already said, a violation of Article 6.1 with respect to the length of proceedings.

The **Josephides case** above**,** concerned the applicant´s application to be appointed in the civil service to the post of First Officer of the Town Planning. The Public Service Commission decided to appoint the applicant to this post, but before the decision was communicated to him, on 14/8/90 he was informed that the Public Service Commission decided to withdraw the proposal for the filling of the post. He filed an application (797/90) before the Supreme Court, first instance administrative jurisdiction, for the annulment of the above decision and on 3/12/92 the Supreme Court declared the decision of the Public Servive Commission as null and void.

The Republic of Cyprus lodged an appeal (Revisional Appeal) which was dismissed on 5/10/94. On 5/10/96 the Public Service Commission appointed the applicant to the post but other candidates filed recourses seeking the annulment of this decision. The applicant took part in the proceedings as an interested party. The procedure that followed is a complicated one and we content ourselves to say that it came into an end on 31/1/01 when the court of appeal gave its

judgment and annulled the decision of the Public Service Commission to appoint the appellant.

In **Gavrielides and others v. Cyprus, Application no. 38884/06 of 16/10/08,** the E.C.H.R. decided that although a period of 5 ½ years in one level jurisdiction may prima facie considered to be outside the reasonable time period, on the facts of that case, where the behaviour of the applicants contributed substantially to the delay, there was no violation of article 6.1.

In **Mylonas v. Cyprus, application no. 14790/06 of 11/12/08 (a case of the Family Court)** the procedure at the first instance court lasted just over 8 years and it was decided by the E.C.H.R. that there was a violation of article 6.1 regarding the reasonable time period.

In **Charalambides v. Cyprus, application n. 37885/04 of 15/1/09 (a criminal case regarding fraudulent behaviour),** the proceedings lasted approximately 6 years for two levels of jurisdiction. The E.C.H.R. held that "notwithstanding the applicant´s conduct, the domestic authorities were required to organize the trial efficiently and ensure that the Convention guarantees were fully respected in the proceedings. Having regard to the circumstances of the instant case and to its case-law on the subject, the Court considers that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement."

III **Performance criteria**

(1) There are only quantitive criteria for measuring the "performance" of Court activity in the sense that are kept statistics of how many cases were tried at first instance and on appeal, and the number of cases that were tried by each judge. These statistics are prepared by the Registry of the Supreme Court.

(2) Yes, these statistical data are kept. According to information given by the Registry of the Supreme Court, an administrative case

takes average 1-1 ½ years to be tried at first instance and a revisional appeal approximately 2 ½ - 3 years.

(3) Yes, there are such differences in the length of procedures which depend on the nature of the case. Complicated cases, where difficult questions of law and/or facts have to be examined, usually take more time to be tried, than other cases.

(4) In view of the fact that the revisional jurisdiction under Article 146 of the Constitution is exercised exclusively by Judges of the Supreme Court, there is no such procedure.

(5) As already stated 12 judges of the Supreme Court are trying administrative law cases at first instance, each judge sitting alone. The President of the Supreme Court, by an internal arrangement, does not try this type of cases at first instance, but sits on appeal. Usually he presides the one of the two 5 members Appeal Court.

The number of cases settled each year is approximately 840 so the ration for each judge is in average 70. With the word "settled" we mean the cases that after some arrangement between the parties, are withdrawn. The average number of cases decided after full hearing is approximately 70 each year by each judge.

Therefore, if the word "settled" has the meaning of the total number of cases disposed of each year, either by hearing or as withdrawn, the average number for each judge is 140 cases in each year. It must be clarified that the judges of the Supreme Court of Cyprus have jurisdiction in many other matters i.e. as a constitutional court, civil and criminal appeals, in prerogative orders, electoral court, admiralty court e.t.c.

(6) Under the relevant scheme of service each judge has his own legal assistant. However, in practice there are 13 judges and only 9 legal assistants.

(7) In our Supreme Administrative Court there are no specialized judges. All judges, sitting alone, try all kinds of cases (appointments and promotions in civil service, the police force, asylum cases, all kinds of tax or custom cases, cases regarding decisions of the Commission for the Protection of Competition, public tenders etc).

………………….

/KAs

The answers to the Questionaire were prepared by Judge M. Fotiou and Natasa Papanicolaou, legal assistant in January 2010.