

# THE ADMINISTRATION OF JUSTICE IN CYPRUS

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Court of Cyprus  
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## A. GENERAL

### (i) Historical background

The island of Cyprus in the northeastern part of the Mediterranean lies forty miles away from Asia Minor, sixty miles away from Syria, about two hundred miles away from Egypt and the Greek island of Rhodes. This strategic location rendered Cyprus the envy of its neighbours which led to the continuous invasion and occupation of the island by various conquerors. This situation lasted up to the 19th century when Turkey ceded Cyprus to the English government and the island became eventually a British colony. Eighty years of British rule were terminated in 1960, when Cyprus became independent.

### (ii) The law applicable

As a result of the British rule from 1878 until 1960, the English legal system was introduced and many laws were enacted in an effort to transplant the doctrines of common law and equity in Cyprus. Clear examples of these are afforded by the adoption of the Criminal Code, the Contract Law and the Civil Wrongs Law. Practical and wider considerations advocated the preservation of the English legal system after 1960, when Cyprus became independent. So, by virtue of the provisions of s. 29(l)(b) of the Courts of Justice Law (14/60) all the Courts apply

(1) The Constitution of the Republic,

- (2) The laws which have been retained by virtue of Article 188 of the Constitution,
- (3) The principles of Common Law and Equity, and
- (4) The English Laws which were applicable in Cyprus before 1960.

### **(iii) The Judges**

#### **(a) Supreme Court**

The President and the other 12 Judges of the Supreme Court are appointed by the President of the Republic and they hold office until they attain the age of 68. A Judge of the Supreme Court shall be retired on account of such mental or physical incapacity or infirmity as would render him incapable to discharge his duties, and may be dismissed for misconduct. By virtue of a custom, before the President of the Republic makes an appointment to the Supreme Court, he seeks the views of the Supreme Court as to who should be appointed. The suggestions of the Supreme Court recommending the appointment from Judges of the first instance courts, are usually adopted. This practice was consistently followed.

#### **(b) First instance courts**

In order to qualify for appointment as a District Judge, one has to be a registered advocate with six years practice in the legal profession and of high moral standing. First instance judges are appointed, transferred, promoted by the Supreme Council of Judicature, which is composed of the members of the Supreme Court. First instance Judges hold office until they attain the age of 63.

## **B. THE SUPREME COURT**

The judicial system in Cyprus is based on the provisions of the Constitution of 1960 which established Cyprus as an independent state. The Constitution of Cyprus includes the relevant provisions of the European Convention of Human Rights and Fundamental Freedoms (which was adopted in Cyprus in 1962), including amongst others

- The right to life and corporal integrity,
- The prohibition of torture,
- The right to liberty and security of a person,
- The right to a public and fair trial,
- The right to freedom of thought, conscience and religion,
- The right to freedom of speech and expression,
- The right to property, and
- The right to equality before the law.

The Supreme Court has the following jurisdictions:

### **(i) Appellate Court**

The Supreme Court has jurisdiction to hear and determine all appeals from all inferior courts in civil and criminal matters. The Court can uphold, vary, set aside or order the retrial of a case as it may think fit. The Court can draw its own inferences from the facts drawn by the trial Court and in certain exceptional cases may receive further evidence.

**(ii) Administrative matters**

The Supreme Court as the only administrative court in the country, has exclusive jurisdiction to adjudicate on any recourse filed against a decision, act or omission of any organ, authority or person exercising any executive or administrative authority on the ground that it violates the provisions of the Constitution or any law or it is in excess or in abuse of any power vested in such organ, authority or person.

**(iii) Prerogative Orders**

The Supreme Court has exclusive jurisdiction to issue the prerogative orders of habeas corpus, mandamus, prohibition, quo warranto and certiorari.

**(iv) Admiralty**

The Supreme Court has jurisdiction to hear and determine admiralty cases. The original jurisdiction is exercised by a single judge and an appeal against his decision lies to the Full Bench of the Supreme Court.

**(v) Elections**

The Supreme Court as the Electoral Court has the power to hear and determine petitions concerning the interpretation and application of the Electoral Laws.

**(vi) Constitutional matters**

The Supreme Court has jurisdiction to adjudicate as to whether a law is compatible with the provisions of the Constitution or any conflict of power or competence which arises between any organs or authorities of the Republic. In addition the Supreme Court has jurisdiction to hear a recourse by the President of the Republic as to whether a law passed by the House of Representatives is repugnant or inconsistent with any provision of the Constitution.

**C. FIRST INSTANCE COURTS**

First Instance Courts include the District Courts, the Assize Courts, the Rent Control Tribunal, the Industrial Tribunal, the Military Court and the Family Courts.

**(i) The District Courts**

**Civil Jurisdiction**

There are six District Courts, one in each of the six towns of the island. Two of them (the Famagusta and the Kyrenia District Court) are since the Turkish invasion of the island in 1974, under Turkish occupation and their jurisdiction has been taken over by the Nicosia and Larnaca Court. Each District Court has jurisdiction to hear and determine all civil actions,

- (a) Where the cause of action has arisen wholly or in part within the limits of the district where the Court is established, or
- (b) Where the defendant at the time of the filing of the action resides or carries business within the limits of the Court.

### **Criminal Jurisdiction**

A criminal offence may be tried by a President of the District Court, a Senior District Judge or a District Judge sitting alone or by an Assize Court. A single Judge has jurisdiction to try summarily all offences punishable with imprisonment for a term not exceeding five years or with a fine not exceeding €50.000 or both. In addition to the above a Judge may order a person who has been found guilty of a criminal offence to pay compensation not exceeding €3.000 to the person injured by the offence. It must be noted that a Judge with the consent of the Attorney-General can assume jurisdiction and try summarily any offence. In such a case the punishment to be imposed cannot exceed the punishment and compensation which he is otherwise empowered to impose.

#### **(ii) The Assize Court**

An Assize Court (there are now four Assize Courts) is composed of three Judges and has jurisdiction to try all the criminal offences which are punishable by the Criminal Code or any other law and has the power to impose the maximum sentence provided by the relevant law.

#### **(iii) The Rent Control Tribunal**

The Rent Control Tribunal (there are now three Rent Control Tribunals) has jurisdiction to try all the disputes which arise from the application of the Rent Control Laws, which include amongst other matters, the payment of rent and recovery of possession. A Rent Control Tribunal is composed of a President (who is a judicial officer) and two lay-members representing the tenants and the landlords

**(iv) The Industrial Tribunal**

The Industrial Tribunal (there are now three Industrial Tribunals) has jurisdiction to entertain applications by employees for unjustified dismissal and redundancy payments. It is composed of a President (who is a judicial officer) and two lay-members representing the employers and employees.

**(iv) The Military Court**

The Military Court has jurisdiction to try military offences under the Criminal Code and any other law committed by members of the armed forces. It is composed of a President (who is a judicial officer) and two assessors who are appointed by the Supreme Council of Judicature from a list of military officers.

**(v) The Family Courts**

The Family Court (there are three Family Courts) has jurisdiction to take up petitions concerning the dissolution of marriage as well as matters which relate to parental support, maintenance, adoption and property relations between spouses provided that the parties are residing in the Republic.

By virtue of the provisions of Article 111 of the Constitution family matters were adjudicated by ecclesiastical courts, in an effort to safeguard the rights of the Greek Orthodox Church and other religious groups like the Maronite and Latin Communities (which belong to the Catholic Church) and the Armenian Community (which belongs to the Armenian Church). Article 111 has been amended by the First Amendment of the Constitution Law (Law 95/89) which provides that every matter relating to those matters which belonged to the Greek Orthodox Church, is to be adjudicated now by the Family Court. The Family Court is composed of the President and two lawyers of high professional and

moral standing. The President is appointed by the Greek Orthodox Church and the other two members by the Supreme Court. As the Greek Orthodox Church, aggrieved by the removal of its jurisdiction to a civil court, failed and/or omitted to appoint the President of the Family Court, in accordance with the provisions of Law 95/89, the Supreme Court has appointed the President of the Family Court. The situation is rather delicate and various attempts to bridge the difference between the church and the state, have so far failed.

Jurisdiction to determine religious matters, divorce and judicial separation proceedings and matter affecting children (as for example legitimacy, maintenance and education) of the Turkish Cypriots was given to the Turkish Family Courts (Chapters 338 and 339). However, as a result of the Turkish invasion of Cyprus in 1974, the application of the relevant laws concerning Turkish Cypriots was suspended by various laws as long as the anomalous situation resulting from the Turkish invasion continues.

#### **D. THE ADMINISTRATIVE JURISDICTION OF THE SUPREME COURT**

By virtue of the provisions of Article 146 of the Constitution, the Supreme Court of Cyprus has exclusive jurisdiction to review judicially every administrative act, decision or omission. Such jurisdiction covers the whole area of governmental and administrative action in the public sphere, but excludes acts, decisions or omissions of public authorities relating to the private rights of individuals.

An application for the annulment of an administrative act will be entertained, provided that the following prerequisites are satisfied:

- (1) **The act is an executory one.** The administrative act must be an executory one productive of legal consequences affecting the rights or obligations of the subject. Preparatory acts, acts informing as to the state of the law and

acts confirmatory of earlier executory decisions cannot form the basis of review.

**(2) A legitimate interest is adversely affected.** A legitimate interest of the subject must be prejudicially affected directly by the act or omission. The concept of "interest" is not similar to the concept as applied in civil law. It must be concrete of a financial or moral nature. In this respect the subject's interest must be distinguished from the interests of the general public. No *actio populari* is allowed.

**(3) Proceedings are instituted within 75 days.** The proceedings for annulment must be taken within 75 days from the date when the decision challenged is published, or if not published, from the day when it comes to the knowledge of the applicant.

In the exercise of its administrative jurisdiction, the Supreme Court may confirm an administrative act or decision or declare it as null and void. In the case of omissions, it may declare that such omissions ought not to have taken place and that whatever has been omitted should have been performed. Any decision given is binding on all courts, organs or authority and must be acted upon by those concerned.

It must be noted that the jurisdiction of the Supreme Court is limited to the review of the legality of the act and cannot go into the merits of the decision under review and substitute the decision of the administrative organ with its own decision. Such an act would violate the strict separation of powers safeguarded by the Constitution. Decision making in the field of administration rests entirely within the province of the executive branch of the government.