

Review Proceedings in the Supreme Court of Cyprus

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Abstract

This paper assesses the current review system of the Supreme Court of Cyprus and identifies existing challenges facing the appeal process in the Cypriot judicial system. It is argued that review procedures are an important public function of the appellate courts and through collective deliberation, the experience of justices, the exercise of review of material already evaluated by the trial court and of more targeted arguments by the advocates, can lead to better safeguards for quality assurance in the administration of justice. The continuous effort to restrict the right to appeal is criticized.

Keywords: civil procedure, right to appeal, review proceedings, stay of execution, legal points

Introduction

The aim of this paper is to analyse the current review system of the Supreme Court of Cyprus and to identify the existing challenges facing the appeal process in the Cypriot judicial system. Articles 135, 163 and 164 of the Constitution and section 17 of the Administration of Justice Law 33/64 explicitly authorize the Supreme Court to exclusively issue procedural rules.² The Civil Procedure Rules (CPR), however, were enacted in 1954 prior to Independence, and remain in force pursuant to Article 188 of the Constitution,³ albeit with amendments enacted by the Supreme Court.⁴ In view of the similarities between the CPR and the corresponding Rules that were in force in England prior to the 1960 Independence of Cyprus, Cypriot judges and advocates often refer to authorities which were applicable in England prior to 1960, such as the 1950's editions of the White Book. The White Book, *Bullen & Leake on Precedents of*

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2 *Kosmos Insurance Company Ltd v. Hatzisavva* [2001] 1 CLR 612 [in Greek].

3 *Krashias Shoe Factory Ltd v. Adidas Sportschuhfabriken Adi Dassier KG* [1989] 1 CLR 750 [in Greek], *E. Philippou Ltd v. Litner Hampton Ltd* [1984] 1 CLR 716.

4 See in general C. Satolias, *Judicial Practice* (Nicosia, 2014, in Greek), C. Louca, *Civil Procedure*, v. I-V (Limassol, 1992-1996, in Greek), C. Tsirides, *Pleadings and Questions Arising out of them* (Limassol, 2013, in Greek), A. Markides, *Lectures of Civil Procedure* (Nicosia, 2003, in Greek), N. Koulouris, *Cypriot Civil Procedure* (Athens: Nomiki Vivliothiki, 2017, in Greek), E. Odysseos, 'Civil Procedure in Cyprus', in *Symposium on Cypriot Juridical Issues* (Thessaloniki, 1974): 39-58 [in Greek], M. Nicolatos, 'Civil Procedure and Jurisdiction in Cyprus', *Cyprus and European Law Review*, Vol. 9 (2009): 435-444 [in Greek], S. Nathanael, 'An Overview of Civil Litigation as Practiced in Cyprus and Enforcement of Foreign Judgments', *Cyprus Law Review*, Vol. 26 (1989): 4034-4046.

Pleadings,⁵ as well as other English legal authorities, has proven to be quite influential for the evolution of Cypriot case-law. A substantial number of specific procedural rules have also been enacted with regards to diverse issues, including procedures before specialized courts, such as the Family Courts or the Industrial Dispute Tribunals, procedures before the Administrative Court or the Supreme Court itself, or procedures in specialized applications such as applications for bankruptcy or for contempt of court.

An extensive reform of Order 25 of the CPR, providing for amendments, and of Order 30, providing for Summons of Directions in 2015, which aimed to address delays, proved to be mostly a failure and was heavily opposed by the Cyprus Bar Association. The Ministry of Justice, Supreme Court and the Cyprus Bar Association have all agreed that a substantial reform of the CPR is required. In 2018 a committee under Lord Dyson was appointed in order to consider a revision of the Cypriot CPR and to submit proposals to the Supreme Court.⁶ The committee under Lord Dyson shall collaborate with a Rules Committee appointed by the Supreme Court and which comprises two judges of the Supreme Court, a President of the District Court, a Senior District Court Judge, a District Court Judge, three practicing advocates representing the Cyprus Bar Association, an advocate representing the Attorney-General's Office and a Registrar. In its progress report, the committee has made several recommendations.⁷

The power of the Supreme Court to make its own rules of Court in the form of procedural regulations is very wide. Such rules may be used in order to regulate the practice and procedure of the Supreme Court and of any other court established in accordance with the Constitution.⁸ They may relate to the regulation of the sittings of the courts and the selection of judges, the prescription of forms and fees in respect of proceedings in the courts and the regulation of costs of, and incidental to, any such proceedings, the prescription and regulation of the composition of the registries of the courts and the powers and duties of officers of the courts, the prescription of time within which any requirement of the Rules of Court is to be complied with, and the prescription of the practice and procedure to be followed by the Supreme Council of Judicature in the exercise of its competence with regard to disciplinary matters relating to judicial officers. Furthermore, the Supreme Court may provide in the Rules of Court for the summary determination of any appeal or other proceedings which appear to the Supreme Court or such other court before which such proceedings are

5 Now in its 18th edition (2017) as part of Sweet & Maxwell's Common Law Library.

6 The progress report is available at [http://www.supremecourt.gov.cy/Judicial/SC.nsf/All/C7CA0FB4CAEF03F0C22582B8001DD033/\\$file/Progress%20Report%2006.06.2018%20\(2\).pdf](http://www.supremecourt.gov.cy/Judicial/SC.nsf/All/C7CA0FB4CAEF03F0C22582B8001DD033/$file/Progress%20Report%2006.06.2018%20(2).pdf)

7 See also N. Kyriakides, 'Civil Procedure Reform in Cyprus. Looking to England and beyond' *Oxford University Commonwealth Law Journal*, Vol. 16, No. 2 (2016), 262-291.

8 With the exception of communal courts, which, however, do not function in practice.

pending to be frivolous or vexatious or to have been instituted for the purpose of delaying the course of justice. A procedural regulation, or an amendment in the CPR, unless otherwise provided, has retrospective effect.⁹

The Supreme Court and its Power to Issue Procedural Rules

The Constitution of Cyprus provides for the establishment of a Supreme Constitutional Court and a High Court. In accordance with Article 133 of the Constitution, the Supreme Constitutional Court was to be composed of a Greek Cypriot, a Turkish Cypriot and a neutral judge who would act as the President of the Court, whereas the High Court was to be composed of two Greek Cypriots, a Turkish Cypriot and a neutral judge (not a subject or citizen of the Republic of Cyprus, Greece, Turkey or the United Kingdom and its Colonies) who would act as the President of the Court. However, as already explained, there was a constitutional breakdown in 1963. As a result, the neutral Presidents of the Supreme Constitutional Court and of the High Court decided to leave Cyprus and the courts could not function. Furthermore, the administration of justice, as well as the very existence of the Republic of Cyprus, was in immediate danger.¹⁰

In view of the aforementioned problems, the House of Representatives enacted the Administration of Justice (Miscellaneous Provisions) Law 33/1964, according to the provisions of which a newly established Supreme Court would exercise the jurisdiction and powers of the Supreme Constitutional Court and the High Court ‘until such time as the people of Cyprus may determine such matters’.¹¹ The remaining five members of the two former highest tribunals of the Republic (three Greek Cypriots and two Turkish Cypriots) would constitute the Supreme Court, with a Turkish Cypriot, Judge Zekia, holding the position of the President of the Court. Law 33/64 was held to be constitutional by virtue of the doctrine of necessity.¹² Ever since 1964, the Supreme Court exercises any jurisdiction which is conferred by the Constitution to the Supreme Constitutional Court and the High Court. The seat of the Supreme Court is in Nicosia. The Supreme Court is currently composed of 13 Greek Cypriot judges, one of whom is appointed as the President of the Court.

The Supreme Court is the highest appellate court in the Republic and has jurisdiction to hear and determine all civil and criminal appeals from any court (with the exception of the Family Courts), as well as all administrative appeals. In civil and criminal appeals the Supreme Court is composed of three judges, unless it is decided

9 *Panayiotis Georgiou Catering Ltd v. Republic* [1996] 3 CLR 323 [in Greek].

10 See, inter alia, *The Attorney-General of the Republic v. Ibrahim* [1964] CLR 195.

11 Preamble of Law 33/64.

12 *Attorney-General v. Ibrahim* [1964] CLR 195. See also *Charalambides and another v. Republic and another, Administrative App. 99/2016*, Judgment of 4 April 2018 [in Greek].

that the case should be reviewed by the Full Bench of the Court. In addition, the Supreme Court exercises its original jurisdiction in cases of maritime law; one single judge may exercise such original jurisdiction. The Supreme Court further has exclusive jurisdiction to adjudicate finally on any election petition with regard to the elections of the President, or of members of the House of Representatives or of any Communal Chamber, to determine any conflict between the original Greek and Turkish texts of the Constitution and to interpret the Constitution in case of ambiguity, to hear and determine recourses filed by virtue of Articles 137–139 and 143 of the Constitution, references for opinion filed by virtue of Articles 141–142 of the Constitution and motions in accordance with Article 147 of the Constitution. It also has the power to grant the prerogative orders of habeas corpus, mandamus, prohibition, quo warranto and certiorari,¹³ which have their origin in English common law; the jurisdiction of the Supreme Court to issue the prerogative writs is a significant one, since it enables the Court to review the action of lower courts or organs.

Articles 134 and 154 of the Constitution stipulate that the sittings of the Supreme Court for the hearing of all proceedings shall be public, but the Court may hear any proceedings in the presence only of the parties, if any, and the officers of the Court if it considers that such a course will be in the interest of the orderly conduct of the proceedings or if the security of the Republic or public morals so require. An exception is provided in Article 134 section 2 in that, where a recourse filed before the Supreme Court, while exercising its powers as the Supreme Constitutional Court of the Republic, appears to be *prima facie* frivolous, the Court may, after hearing arguments by or on behalf of the parties concerned, dismiss such recourse without a public hearing if satisfied that such recourse is in fact frivolous. This is also reiterated in rules of procedure enacted by the Supreme Court. In practice the Supreme Court does not often use its powers to dismiss recourses as frivolous without a public hearing.

Article 162 of the Constitution provides that the Supreme Court shall have jurisdiction to punish for any contempt of itself, and any other court of the Republic shall have power to commit any person disobeying a judgment or order of such court to prison until such person complies with such judgment or order and in any event for a period not exceeding 12 months. The power of the Court to punish any person disobeying its judgments or orders has always been regarded as an inherent and significant power of the courts. The notion of contempt is further expanded in Article 44 of the Courts of Justice Law 14/60 where, *inter alia*, acts of disrespect, obstruction

13 P. Artemis, *Prerogative Orders* (Larnaca 2004, in Greek); C. Clerides, 'Prerogative Orders', *Cyprus Law Tribune* Vol. 3 (1994), 297–312 [in Greek]; L. Clerides, 'Prerogative Writs', *Cyprus Law Review* 14 (1986): 2195–2208 [in Greek]; C. Tornaritis, *The Prerogative Orders under the Constitution and the Law of the Republic of Cyprus*, in T. Papadopoulos and G. Ioannides (eds.), *Proceedings of the Second International Cyprological Conference* (Nicosia: Society of Cyprus Studies, 1987), 641–650.

or disturbance of any judicial proceedings, including publications which are capable of prejudicing the fair trial of such proceedings, witness tampering or dismissing an employee for giving evidence in judicial proceedings, are penalized and wrongdoers are liable to imprisonment up to six months.¹⁴

The Appellate Family Court, provided for in Article 111 section 4 of the Constitution, has jurisdiction to hear and determine all appeals from the Family Courts (section 21 of Law 23/1990) and the Family Courts of Religious Groups (section 25 of Law 87(I)/1994) on family law matters.¹⁵ Appeals are heard by a panel of three Supreme Court judges who are appointed by the Supreme Court as members of the Appellate Family Court for a period of two years. It has been held that the Appellate Family Court is not identical to the Supreme Court, despite the fact it is composed of Supreme Court justices.¹⁶ Consequently, a family law appeal addressed to the Supreme Court of Cyprus may not be considered as a proper one, since the Appellate Family Court is not related to the Supreme Court.¹⁷

The Supreme Court further exercises a supervisory role over all inferior courts of the Republic. However, whereas the Supreme Court has repeatedly stressed that justice delayed is justice denied and that the timely administration of justice constitutes an element of justice itself,¹⁸ in practice there is a significant delay in the trial of cases. Successive reports of the Supreme Court had made suggestions about amendments so as to address delays.¹⁹ The House of Representatives has adopted the Law Providing for Effective Remedies for Exceeding the Reasonable Time Requirement for the Determination of Civil Rights and Obligations (Law 2(I) 2010). Law 2(I)/10 provides that individuals who consider that their right to determination of civil rights and

14 See in general A. Emilianides, 'Contempt in the Face of the Court and the Right to a Fair Trial', *European Journal of Crime, Criminal Law & Criminal Justice*, Vol. 13 (2005), 401–412, idem, 'Reflections on the Law of Contempt in Light of Recent Cypriot Jurisprudence', *Cyprus Human Rights Law Review*, Vol. 2 (2012), 221–226, K. Ebeku, 'Revisiting the Acquittal of 10 Policemen: Issues of Judicial Independence, Trial by Media and Fair Trial in Cyprus', *European Journal of Crime, Criminal Law & Criminal Justice*, Vol. 18 (2010): 1–42, S. Stavrinides, 'Contempt of Court in Cyprus', *Cyprus Law Tribune*, Vol. 2 (1991): 167–178 [in Greek]. See also *Kyprianou v. Cyprus*, Judgment of 15 Dec. 2005, Loukis Loucaides Advocate [2011] 1 CLR 875 [in Greek].

15 See in detail A. Emilianides, *Family and Succession Law in Cyprus* 2nd ed, (The Hague: Kluwer, 2018).

16 Nicolaou [1991] 1 CLR 1045 [in Greek].

17 *Theodorou v. Theodorou* [1995] 1 CLR 200 [in Greek], *Christodoulou v. Christodoulou* [1996] 1 CLR 1244 [in Greek].

18 *Paparis v. National Bank of Greece* [1986] 1 CLR 578, *Victoros v. Christodoulou* [1992] 1 CLR 512 [in Greek].

19 G. Pikis, *Report of the Committee on the Study of the Function of District and other First Instance Courts* (1999, in Greek), A. Kramvis, E. Papadopoulou and G. Erotocritou, *Report of the Supreme Court on the Functional Needs of Courts and other related issues* (Nicosia: Supreme Court, 2012, in Greek), G. Erotocritou, D. Michaelidou and A. Liatsos, *Report of the Supreme Court on the Functional Needs of Courts and other related issues* (Nicosia: Supreme Court, 2016, in Greek).

obligations within a reasonable time has been violated may file a complaint either when the relevant proceedings have been concluded with a court judgment or while they are still pending. If it is held that there is unreasonable delay, the applicant may have a right to receive compensation for the violation of his rights. In criminal trials unreasonable delay may lead to the quashing of a conviction, if the delay has hindered the fairness of the trial.²⁰

The Review Proceedings

Decisions Subject to Appeal

The question of what decisions are subject to appeal has proved to be a highly polarizing one. Section 25 of the Courts of Justice Law 14/60 used to provide that any judgment shall be subject to appeal. However, the majority of the Full Bench of the Supreme Court held in *Harous* that only interlocutory judgments which are decisive or declaratory of the rights of the parties are subject to appeal.²¹ On the basis of such distinction, a decision of the Court accepting an application for summary judgment is subject to appeal, whereas a decision rejecting such an application for summary judgment is not subject to appeal since it is not decisive or declaratory for the rights of the plaintiff. Even if no summary judgment has been granted, the plaintiff shall have the opportunity to prove his case and to be given a judgment in his favour when the action shall be finally adjudicated. Accordingly, most types of interlocutory judgments were declared as not being subject to a separate right to appeal. Such interlocutory judgments could be challenged, where appropriate, as part of the appeal filed against the final judgment.

The House of Representatives amended section 25 of Law 14/60 by Law 118(I)/2008. The amended section 25 provided that any interlocutory decision or order of the Court shall be subject to appeal, whether it is decisive or declaratory for the rights of the parties or not. However, this did not last either. Law 109(I)/2017 amended section 25 of Law 14/60 so that it is now provided that the following are subject to appeal: i) any final judgment or order, ii) interim or final prohibitive or mandatory orders or orders appointing a receiver, iii) interlocutory judgments which are absolutely decisive as to their effect for the rights of the parties. A party who has not filed a separate appeal for any interlocutory judgment reserves the right to raise any issues regarding such interlocutory judgment during the appeal against the final decision. It is further provided, pursuant to an amendment effected by Law

20 *Christopoulos v. Police* [2001] 2 CLR 100 [in Greek], *Efstathiou v. Police* [1990] 2 CLR 294 [in Greek].

21 *Harous v. Harous* [2003] 1 CLR 1530, adopting the ratio of *Hasikos and others v. Charalambides* [1990] 1 CLR 389 [in Greek] and holding that the different conclusion of *Price v. Gray* [2002] 1 CLR 424 [in Greek] had been reached per incuriam.

129(I)/2009, that any decision for preliminary reference to the CJEU or that rejects an application for preliminary reference is not subject to appeal. Law 109(I)/2017 effectively reverted to the *Harous* judgment whereby most types of interlocutory judgments are not subject to appeal.²² There does not seem to be any other justification for this new amendment other than the intention to reduce the number of appeals. It is submitted that this should not on its own constitute a convincing reasoning for such a restriction of the rights of parties to appeal.²³

Period Within Which to Appeal

Pursuant to Order 35 of the CPR, an appeal against a final judgment may be filed within a period of six weeks, whereas any appeal against an interlocutory order has to be filed within a period of 14 days, unless the trial Court or the Supreme Court have extended the time accordingly. However, where an *ex parte* application has been refused by the trial Court, an appeal should be brought within four days from the date of the refusal of the Court below, or within such extended time as the Court may allow.²⁴ An appeal against any order, either final or interlocutory, in any matter not being an action, shall be brought within 14 days.²⁵ In distinguishing between final and interlocutory applications, the Supreme Court has applied the application approach as opposed to the order approach. The crucial factor is therefore not the nature of the order subject to appeal, but the nature of the application that has led to the judgment or order subject to appeal. It is not the nature of the order, but the nature of the application within which the order was issued that is of significance for the purposes of the distinction between final and interlocutory judgments.²⁶ Pursuant to the above, an order shall be deemed to be a final one if it was issued on the basis of an application that would have disposed the action on its merits, irrespective of who would be the successful party.

Accordingly, the period for filing an appeal for all interlocutory applications is 14 days, irrespective of the effect the order might have. A decision for summary judgment is an interlocutory order despite the fact that an order for summary judgment would dispose the action on its merits, because the application is an interlocutory one and it would not have disposed the action on its merits if the application for summary

22 *Oneworld Ltd v. OJSC Bank of Moscow*, Civil App. E50/2018, Judgment of 13 Dec. 2018 [in Greek].

23 See also M. Kyriakides, 'Judicial Decisions of Civil Jurisdiction under Appeal in light of the recent Cypriot Case-Law', *Cyprus and European Law Review*, Vol. 1 (2006): 53-66 [in Greek].

24 *Cyprus Sulphur and Copper Co Ltd and others v. Pararlama Ltd and others* [1990] 1 CLR 1040 [in Greek].

25 *Papachrysostomou v. Sidera* [1992] 1 CLR 379 [in Greek].

26 *Wortham and others v. Tsimon and others* [2001] 1 CLR 1442 [in Greek], *G & Z Engineers Ltd v. Ameron Ltd* [2009] 1 CLR 1106 [in Greek], *Ioannidou v. Charilaos Dikeos and another* [1970] 1 CLR 241, *The Cyprus Asbestos Mines Co Ltd v. Sykopetritis Ltd* [1989] 1 CLR 832, *Spitaliotis and others v. Liberty Life Insurance Ltd* [2002] 1 CLR 1140 [in Greek], *Kotsonia v. Antoniou* [2002] 1 CLR 975 [in Greek].

judgment had been rejected.²⁷ On the contrary, orders for execution of judgments are not interlocutory since the applications are not made as interlocutory within the action, but as principal applications pursuant to the Civil Procedure Law, Cap. 6.²⁸ By way of exception to the general rule, if the trial has been split in an appropriate case, then such division of the trial would not affect the nature of the preliminary order issued. Accordingly, if an issue has been preliminarily disposed of, pursuant to Order 27 of the CPR, either party may file the appeal within a period of six weeks. If Order 27 had not applied, then the preliminary issue would have been adjudicated at the trial and the decision would have been a final one, irrespective of who would be the successful party.²⁹

With regards to extension of time to file an appeal, it has been held that the finality of litigation is a cardinal rule of public policy, which aims to ensure certainty of legal rights and uphold social order, and accordingly, it should not be disturbed except in the face of cogent reasons which justify departure from the time limits provided in the CPR.³⁰ The Court should not refuse to exercise its discretion and to extend the time for the purpose of doing justice if the party has shown diligence and has not unnecessarily delayed in submitting the application;³¹ the non-availability of the text of the judgment and the need of time to consider whether to appeal are grounds which should favour granting an extension.³² Failure of the advocate of a party to take the necessary steps in order to submit an appeal within the prescribed period may be considered, depending on the circumstances of the case, not to excuse non-compliance with time provisions for appeal.³³ However, it may justify an extension of time if such failure was not the result of inexcusable negligence or indifference.³⁴ Whereas the Court may consider whether there is *prima facie* a likelihood of the appeal succeeding, such likelihood is only one of the factors to be taken into account and if there are solid grounds for granting an extension, the probability of success might

27 *Spitaliotis and others v. Liberty Life Insurance Ltd* [2002] 1 CLR 1140 [in Greek], *G & Z Engineers Ltd v. Ameron Ltd* [2009] 1 CLR 1106 [in Greek].

28 *Kitalides v. Bank of Cyprus Ltd and others* [2000] 1 CLR 1759 [in Greek], *Ioakeim v. Cyprus Popular Bank Ltd* [2003] 1 CLR 198 [in Greek], *Charalambous v. Charalambous*, Civil App. 311/2012, Judgment of 15 Jan. 2015 [in Greek].

29 *Wortham and others v. Tsimon and others* [2001] 1 CLR 1442 [in Greek].

30 *Michaelides v. Christou* [1996] 1 CLR 1190 [in Greek], *Athanasiaides v. Alexandrou* [1991] 1 CLR 945 [in Greek].

31 *Hjimichael v. Karamichael and others* [1967] 1 CLR 61, *Courtis v. Iasonides* [1972] 1 CLR 56, *Ioannidou v. Dikeos and another* [1970] 1 CLR 241.

32 *The Turkish Co-operative Carob Marketing Society Ltd v. Kiamil and another* [1973] 1 CLR 1, *Kyriakides v. Kyriakides* [1969] 1 CLR 373.

33 *Samanis v. Symillides* [1985] 1 CLR 187, *Charalambous v. Charalambides Dairies Ltd* [1984] 1 CLR 19, *Loizou v. Konteatis* [1968] 1 CLR 291.

34 *Georghiou v. Republic* [1968] 1 CLR 411, *Hoppis v. Panayi* [1993] 1 CLR 140 [in Greek].

not be an important factor.³⁵ As a matter of practice the applicant should attach to the application, where possible, a statement of the proposed grounds of appeal; however, this shall not be an obstacle in deciding whether an extension of time should be granted.³⁶

Notice of Appeal and Cross-Appeal

An appeal is brought by written notice of appeal, which is filed within the appropriate period with the Registrar of the Court appealed from, together with a copy of the judgment or order of which the complaint is made. The appellant may, by his notice, appeal from the whole or any part of any judgment or order, and in the latter case shall specify such part. The notice shall also state all the grounds of appeal and set forth fully the reasons relied upon for the grounds stated. Any ground of appeal should be stated separately as well as its justification.³⁷ Any notice of appeal may be amended at any time as the Supreme Court may think fit. The notice of appeal determines the *sub judice* issues, and accordingly, the findings of the trial Court may not be challenged or questioned other than with the notice of appeal, or cross-appeal.³⁸ It is further provided that the parties may not raise on appeal issues which had never been raised before the trial Court.³⁹

The notice of appeal shall be served upon all parties directly affected by the appeal, irrespective of whether they appeared in the first instance proceedings or not. The Court may direct notice of the appeal to be served on any other persons, either parties to the action or not, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties.⁴⁰ If the respondent contends that the decision of the trial Court should be varied, he should give a written notice of his intention, specifying in what respects he argues that the decision should be varied. Such notice shall set forth fully the respondent's grounds and reasons therefor for seeking to have the decision

35 *The Turkish Co-operative Carob Marketing Society Ltd v. Kiamil and another* [1973] 1 CLR 1.

36 *The Turkish Co-operative Carob Marketing Society Ltd v. Kiamil and another* [1973] 1 CLR 1. *Lanitis Brothers v. The Municipal Corporation of Limassol* [1972] 1 CLR 100.

37 *Loizias v. Loizias & Sons Contracting Building Overseas Ltd and others*, Civil App. 13/2010, Judgment of 17 July 2014 [in Greek].

38 *Demosthenous v. Georgiou* [2000] 1 CLR 1541 [in Greek], *Kakoullou v. Pobouzouri* [1992] 1 CLR 1143 [in Greek].

39 *Nisis v. Republic* [1967] 3 CLR 671, *Attorney-General v. Pentaliotis & Papapetrou Estates Ltd* [1998] 1 CLR 1931 [in Greek], *Zampas v. A. & G. Tsiarkezos Constructions Ltd and another* [1998] 1 CLR 820 [in Greek].

40 *Cyprus Sulphur and Copper Co Ltd and others v. Pararlama Ltd and others* [1990] 1 CLR 1040 [in Greek], *Johnson v. Pole* [1987] 1 CLR 311, *Georghios Tsappis Isorropimene Zootrofe Ltd v. Kaloudes* [1988] 1 CLR 45, *Papastratis v. Petrides* [1979] 1 CLR 231.

varied on appeal and shall be filed with the record of the appeal. The notice should be given within four weeks from the service of the appeal.

Order 35 of the CPR explicitly states that the omission of the respondent to give notice shall not diminish the powers of the Supreme Court to make any judgment or order necessary for the interests of justice, notwithstanding that the notice of appeal may be that only a part of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision.⁴¹ However, despite the express powers granted to the Court by Order 35, there has been case-law where the Supreme Court has held that it is not possible to set aside any part of the first instance judgment against which no appeal or cross-appeal has been filed.⁴² There is further case-law where the Court has drawn a distinction between the notice for cross-appeal provided in Order 35 and the notion of a ‘cross-appeal’ which, pursuant to the Court, is not defined in the CPR.⁴³ It was accordingly held that the cross-appeal should be filed within the same limits as a notice of appeal, which is admittedly rather confusing, since if an appeal is filed on the last day of the 42-day period, there shall simply be no time available to file a cross-appeal.

Procedure

The Appeals (pre-trial stage, skeleton arguments, limitation of the time of oral addresses and summary procedure for dismissing flagrantly unfounded appeals) Procedural Rule 4/1996 provides for a stage of pre-trial. The Supreme Court reserves, however, the right in rare cases to set an appeal for hearing without a pre-trial stage. At the pre-trial stage the Supreme Court may summarily dismiss, on hearing the appellant, any flagrantly unfounded appeals, examines whether the appeal has been filed in a manner consistent with the CPR and may address any requests for remedying procedural irregularities, preliminarily reviews the grounds of appeal and, if the latter are sufficiently justified, issues directions for the submission of written skeleton arguments by the parties. If the appellant does not appear at the pre-trial stage, the appeal may be dismissed, whereas, if the defendant does not appear, the appeal may be heard in his absence. The Court reserves, however, the right to postpone the case for another date prior to dismissing it, or hearing it, depending on the case. An appeal may be reinstated pursuant to an application by summons if the Supreme Court considers it just.

41 *Holiday Tours Ltd v. Kouta and another* [1993] 1 CLR 766 [in Greek], *Avraam v. Nicolaou* [1996] 1 CLR 656 [in Greek], *Demetriou and another v. Sidorenko* [2011] 1 CLR 1095 [in Greek].

42 *Minerva Finance & Investment Ltd v. Georgiades* [1998] 1 CLR 2173 [in Greek], *Kakoullou v. Pobouzouri and another* [1992] 1 CLR 1503 [in Greek]. See also *Polytropo Advertising Ltd v. Adboard Ltd* [2003] 1 CLR 1486 [in Greek], *Sarika v. Michaelides* [2008] 1 CLR 54 [in Greek].

43 *Philippou v. Yiannitai and others* [1996] 1 CLR 1229, *Stroj – Invest Ltd v. NL Nova Trade Offshore Ltd and another* [2007] 1 CLR 524 [in Greek].

Unless otherwise directed, the appellant should submit his skeleton argument within a period of 45 days, and the respondent should subsequently submit his own skeleton argument within an additional period of 45 days. If there is a cross-appeal, the respondent should cover also the grounds of cross-appeal in his skeleton arguments, and the appellant has a right to reply to the cross-appeal with a second skeleton argument within 21 days. The skeleton arguments should succinctly incorporate the argumentation of each party without unnecessary repetitions.⁴⁴ The argumentation for each ground of appeal should be developed separately and there should be precise reference to the parts of the evidence, minutes of the first instance proceedings, legal provisions and authorities which support the arguments. Each party should attach copies of the relevant authorities and underline the substantial extracts from decisions. The appellant should further include a chronological table, sketching the development of the procedure.

When a party fails to submit his skeleton arguments during the appeal, the Court may grant an extension of time.⁴⁵ If the appellant fails to submit his skeleton arguments, the appeal is dismissed. If the respondent fails to submit his skeleton arguments, then the respondent shall not have a right to be heard at the hearing. However, the Court might order reinstatement. Whereas, the Court is more reluctant to revive an appeal that has been already dismissed by extending *ex posteriori* the time limits for submitting the skeleton arguments,⁴⁶ such a reinstatement may be ordered in the appropriate case and if the Court is satisfied that the failure to submit within the time was not the result of indifference or negligence. There can be no inflexible rules which restrict the exercise of the discretion of the Court on this matter.⁴⁷

After the submission of the skeleton arguments, the appeal and cross-appeal shall be set for hearing. Unless otherwise directed, both the appeal and cross-appeal are heard simultaneously. The appellant addresses the Court first for no longer than 30 minutes, and the respondent then shall address the Court also for no longer than 30 minutes. If there is a cross-appeal, the time is extended to 40 minutes. The appellant may then reply for no longer than 10 minutes, but if there is a cross-appeal, the time is extended for 20 minutes. The time spent for replying to questions submitted by the Court is not calculated as part of the allotted time. The addresses should focus on the main points and should avoid reading extracts from judgments. The time allotted

44 *Efthymion v. Demetrios* [2001] 1 CLR 1721 [in Greek], *Loizias v. Loizias & Sons Contracting Building Overseas Ltd and others*, Civil App. 13/2010, Judgment of 17 July 2014 [in Greek].

45 *Kollatou v. Panayiotou* [2003] 1 CLR 895 [in Greek], *Pissouriou v. Golden Hand Co Ltd* [1999] 1 CLR 257 [in Greek].

46 *Vardianos v. Richards* [1998] 1 CLR 698 [in Greek], *Archbishop Chrysostomos v. Christoforou* [1993] 1 CLR 470 [in Greek], *Royal Insurance Ltd. v. Δημου Λεμεσού* [1995] 1 CLR 185 [in Greek].

47 *Adboard Ltd and another v. Municipality of Strovolos* [2013] 1 CLR 1085 [in Greek], *Miaris and others v. Cyprus Popular Bank* [2009] 1 CLR 435 [in Greek].

for the addresses may be extended if the Court considers it necessary. The appellant may at any time abandon his appeal with the respondent's written consent by giving notice to that effect in writing to the Registrar and thereupon the appeal is subject to dismissal. The respondent shall be entitled, if he so wishes, to tax in his favour any costs reasonably incurred by him up to the receipt of such notice.

Powers of the Court

Section 25 § 3 of Law 14/60 provides that the Supreme Court, on appeal, shall not be bound by any determination of facts by the trial Court and shall have the power to review the admitted evidence, reach its own conclusions, admit further evidence and, where necessary, re-hear witnesses that the trial Court has already heard, and may issue any judgment or order necessary, including an order to set aside the judgment and have it retried by either the trial Court or another competent Court. Order 35 also provides that the Court shall have discretionary power to admit further evidence upon questions of fact, either by oral examination or by affidavit. It is provided that such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment, after trial or hearing, of any cause or matter upon the merits, such further evidence, save as to matters subsequent to the hearing, shall be admitted on special grounds only, and not without special leave of the Court. It is further provided that the Court has the power to draw inferences of fact and to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require.

Whereas, the powers of the Court seem sufficiently wide, in interpreting the relevant provisions, the Supreme Court has confined itself to a review of legal issues and whether the trial Court has acted within its discretion. In effect, the Supreme Court has held that section 25 § 3 of Law 14/60 and Order 35 of the CPR should be interpreted in a manner inconsistent with their literal interpretation. It has repeatedly been held that the evaluation of conflicting evidence is within the discretion of the trial Court and that accordingly the Supreme Court will not interfere with the exercise of the discretion of the trial judge, unless it is satisfied that such discretion was wrongly exercised, the presumption being that the trial judge has correctly exercised his discretion.⁴⁸ The trial Court shall further dismiss the appeal if, due to subsequent developments, it has been deprived of its subject-matter.⁴⁹

48 *Kotsapas & Sons Ltd v. Titan Construction and Engineering Company* [1961] CLR 317, *Papbittis v. Bonifacio* [1978] 1 CLR 127, *Yiallourou v. Cyprus Popular Bank Ltd and another* [2011] 1 CLR 1635 [in Greek], *Syphire Finance Ltd v. Papamichael* [2011] 1 CLR 1649 [in Greek], *Hadjithanassiou v. Parperides and others* [1975] 1 CLR 401,

49 *Mavronicolas and another v. Finioti and others* [1997] 1 CLR 1659 [in Greek].

Admission of further evidence before the Supreme Court has been held to be an exceptional measure, rarely allowed and not easily reconcilable with the role of an appellate Court.⁵⁰ Further evidence shall only be allowed where: i) it could not have reasonably been secured in order to be admitted during the trial proceedings by the party concerned, because for instance he did not know it existed, or he could not find such evidence despite reasonable efforts, ii) if such evidence had been admitted before the trial Court, it is likely that it would have substantially affected the outcome of the case; it need not have been decisive, however and iii) such evidence seems trustworthy, although it need not be undisputed.⁵¹ Furthermore, the evidence that is sought to be admitted should be relevant to the notice of appeal, since the primary role of an appeal is to review the judgment of the trial Court. Admission of evidence which did not exist during the hearing before the trial Court cannot be relevant to the determination of the appeal.⁵²

The Supreme Court does not have the power to reopen a case before it after a judgment has been issued. In *Korellis* the applicant filed an originating summons to the Full Bench of the Supreme Court, requesting that they set aside their own judgment and claiming that one of the judges had previously participated in the investigations against the applicant and that accordingly the Full Bench had been improperly constituted due to a violation of the principles of natural justice. The applicant cited in particular the *Pinochet* judgment of the House of Lords in England.⁵³ The majority of the Supreme Court confirmed previous case-law and held that the Supreme Court does not have the power to set aside its own judgments on any grounds. It was further held that the inherent powers that the Court may exercise cannot extend the jurisdiction or the powers of the Court, but are those that are implied by the nature of the judicial functions in order to effectively exercise the Court's powers and prevent abuse of procedure. Accordingly, once a judgment has been delivered, there is no possibility for the Court that has delivered it to rehear argument and to change its decision or set it aside, except to the extent that there has been an error in the judgment under the slip rule.⁵⁴

50 *Pernell v. Republic* [1998] 2 CLR 177 [in Greek], *Andreou v. Psaras Shipping Agencies Ltd* [1996] 1 CLR 1379 [in Greek], *Athinis v. Republic* [1989] 2 CLR 214 [in Greek], *Demosthenous v. Georgiou* [2000] 1 CLR 15 [in Greek].

51 *Martin v. Republic* [1994] 2 CLR 29 [in Greek], *Demosthenous v. Georgiou* [2000] 1 CLR 1541 [in Greek], *Blachin v. Aristeidou* [1997] 1 CLR 195 [in Greek], *Trifonides v. Alban (Taki Bros)* [1987] 1 CLR 479, *Symeon v. Georgiou*, Civil App. 394/2011, Judgment of 15 Jan. 2018 [in Greek].

52 *Michaelides v. Pourgourides* [2000] 1 CLR 328 [in Greek], *Compagnie Gervais Danone v. Charalambides Dairies Ltd and another*, Civil App. 115/2010, Judgment of 25 Feb. 2014 [in Greek], *Pernell v. Republic* [1998] 2 CLR 177 [in Greek], *Egiazaryan and others v. Denoro Investments Ltd and others* [2013] 1 CLR 409 [in Greek].

53 *R. v. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte* [1999] 1 All ER 577.

54 *Korellis* [1999] 1 CLR 1122 [in Greek], *Antonion v. Republic* [1998] 3 CLR 339 [in Greek], *Orphanides*

Stay of Execution

An appeal shall not operate as a stay of execution or of proceedings. However, the Court appealed from or the Supreme Court may so order. Before any order staying execution is entered, the person obtaining the order shall furnish such security as may have been directed. If the security is to be given by means of a bond, the bond shall be made to the party in whose favour the decision under appeal was given. The discretion of the Court to grant a stay should take into account on the one hand the right of the successful party to execute the judgment in his favour and on the other hand the right of the unsuccessful party to file an appeal in order to reverse the first instance judgment. The Court should accordingly consider the effect that the decision to suspend the action might have on each party's expectations.⁵⁵ A stay of execution shall not be ordered, unless there are special or exceptional circumstances that justify it.⁵⁶ Financial inability of the judgment debtor is not on its own considered as special circumstances that justify suspension of the first instance judgment.⁵⁷ The likelihood of success of the appeal shall not ordinarily be a decisive factor, since the Court is not expected at this stage to finally assess the merits of the appeal. However, the likelihood of success might be a decisive factor where the Court may predict with some certainty whether the appeal shall be successful or not.⁵⁸

The power to stay the execution refers to a stay of a positive obligation imposed on the person requesting suspension of the said order. It does not give the power to the Supreme Court to grant an order pending the determination of the appeal. Accordingly, if the trial Court has dismissed an application for an interim order, the Supreme Court does not have jurisdiction to grant such interim order pending the determination of the appeal.⁵⁹ However, it would seem that the trial Court itself would have jurisdiction to grant such interim order pending the determination of the appeal

v. Michaelides [1968] 1 CLR 295, *Agathocleous v. Edaxyl Wood Company Ltd and another* [1997] 1 CLR 302 [in Greek].

55 *Georgios Fragkis Restaurants Ltd v. Holy Archdiocese of Cyprus*, Civil App. E398/2016, Judgment of 26 Oct. 2017 [in Greek], *Patsalosarvis v. Director of Department of Internal Revenue* [1989] 1 CLR 45 [in Greek], *Neofytou v. Demetriou* [1989] 1 CLR 592 [in Greek], *Iosifakis v. Aristodemou* [1990] 1 CLR 284 [in Greek], *The Governor and the Company of the Bank of Scotland v. S.S. Sapphire Seas* [2001] 1 CLR 955 [in Greek].

56 *Hatzienangelou v. Dorami Marine Ltd and others* [1991] 1 CLR 172 [in Greek], *Aristidou v. Aristidou* [1985] 1 CLR 649, *Xenidou v. Economides*, App. 28/2014, Judgment of 7 Apr. 2015 [in Greek], *Charlaambous v. A. Panayides Contracting Ltd* [2001] 1 CLR 1978 [in Greek].

57 *Maritime Club of Paphos v. Cyprus Ports Authority* [1991] 1 CLR 1147 [in Greek], *Voyiatzanou v. Attorney-General* [1997] 1 CLR 591 [in Greek], *Constantinides v. Komodromou*, Civil App. 283/2015, Judgment of 23 Mar. 2016 [in Greek].

58 *Papa v. Economidou and others* [2010] 1 CLR 58 [in Greek], *Maritime Club of Paphos v. Cyprus Ports Authority* [1991] 1 CLR 1147 [in Greek].

59 *Bank of Cyprus Public Company Ltd and others* [2005] 1 CLR 1255 [in Greek], *Thanos Club Hotels Ltd v. Cyprus Popular Bank and another* [2003] 1 CLR 312 [in Greek].

in exceptional circumstances.⁶⁰ Whereas it can be appreciated that maintaining the subject matter of the appeal is of undeniable significance, it would admittedly be extremely peculiar for the trial Court to grant to the applicant an interim order merely because he has filed an appeal against the judgment of the same Court that dismissed the application for such an interim order.

Appeal on Legal Points Only

An appeal against a decision of the Industrial Disputes Tribunal may be filed only on points of law.⁶¹ The Supreme Court is thus not vested with jurisdiction to make its own findings of fact, either contrary or supplementary to those made by the IDT.⁶² Whenever an issue refers to the application of the law to given facts, it raises a pure question of law. Accordingly, so long as the facts to which the court is required to apply the law are not disputed by the appellant, the point is a legal one, raising questions on the construction and scope of the law. The exploration of the ambit of the law is therefore always considered as a question of law and not as a question of fact.⁶³ Acting on no evidence, or acting on evidence which ought to have been rejected, or failing to take into consideration evidence which ought to have been considered, or proceeding to findings which are clearly inconsistent with, or not supported by, the evidence presented,⁶⁴ are considered as matters of law and not of fact.⁶⁵

A distinction should be made between primary facts and the conclusions arising from such facts. Primary facts are those which are observed by witnesses and proved by oral testimony, or facts proved by the production of a thing itself, such as a document. Their determination is essentially a question of fact and the only question of law that can arise on them is whether there was any evidence to support the finding. The conclusions from primary facts are, however, inferences deduced by a process of reasoning from them. Insofar as the correct conclusion to be drawn from primary facts requires, for its correctness, determination by a lawyer and not a layman, because, for instance, it involves the interpretation of documents, or because the law and facts cannot be separated, the conclusion is one of law on which the appellate court is

60 *Aspis Liberty Life Insurance Public Co Ltd v. Siakatidou* [2011] 1 CLR 1816 [in Greek], *Ocean Corporation Ltd v. Novorossiyskiybprom Co Ltd* [1996] 1 CLR 1154 [in Greek].

61 *Christou v. Fairways Larnaca Ltd* [2005] 1 CLR 300 [in Greek], *Crown Resorts Ltd v. Kallis* [2011] 1 CLR 1369 [in Greek], *Economou Architects and Mechanics and others v. Demetriou* [2000] 1 CLR 853 [in Greek], *Zertali v. Redundancy Fund* [2003] 1 CLR 178 [in Greek], *Savvides v. SSP Catering Cyprus Ltd and others* [2012] 1 CLR 2096 [in Greek].

62 *Alouet Clothing Manufacturers Ltd v. Athanasion and another* [1988] 1 CLR 626, *Tryfonos v. Takis Vashiotis Ltd* [1999] 1 CLR 1953 [in Greek].

63 *HjiCostas* [1984] 1 CLR 513, *Stylianides v. Paschalidou* [1985] 1 CLR 49.

64 *Christodoulou v. P.L. Cacoyiannis and Co and another* [2001] 1 CLR 188 [in Greek].

65 *Louis Tourist Agency Ltd* [1988] 1 CLR 454, *A.C.T. Textiles Ltd v. Zodiatis* [1986] 1 CLR 89, *Kyriakides* [1992] 1 CLR 26 [in Greek], *Loizou v. Stylson Engineering Co Ltd* [1998] 1 CLR 2077 [in Greek].

competent to form an opinion in the same way as the first instance tribunal.⁶⁶

It is therefore permissible to challenge the trial court's evaluation of the evidence before it, insofar as this relates to the construction of the legal principles. On the other hand, grounds of appeal which seek to challenge the findings of fact as such, which were made by the trial court, shall be rejected.⁶⁷ It has been held that the question whether the composition of the IDT was a proper one is a point of law.⁶⁸ Similarly, the question whether the trial court has properly accepted or rejected the admission of evidence,⁶⁹ or whether the trial court's judgment is sufficiently reasoned,⁷⁰ are points of law. Moreover, the question of whether the constitutional right of a party to have a fair trial, including the right to be heard, has been safeguarded, is a pure question of law, as it revolves round the application of the law to given facts.⁷¹ However, if the question refers to whether the IDT has correctly exercised its discretion, the point is not a legal one, unless the allegation is that the IDT exceeded the limits of its discretion.⁷²

Epilogue

There is little doubt that the right to appeal is substantial for the proper functioning of justice. As indicated by the Network of the Presidents of the Supreme Judicial Courts of the EU in 2015:

‘quashing judgments that demonstrate clear and evident violations of the laws at the lower level of jurisdiction perhaps can also be seen as a significant public task of the Supreme Court’.⁷³

The 2016 Report of the Supreme Court concluded that the current judicial system is hindered by delay, outdated rules and procedures, low level of fees for access to courts, inefficient procedures, insufficient use of information and communication technologies in Court, staff recourses, insufficient number of judges, low level of use of alternative dispute resolution methods, insufficient level of funding and resources allocated to the judicial system. Following these recommendations, a

66 *Aristeidou* [1997] 1 CLR 1264 [in Greek], *Kyros Manufacturing Ltd v. Kleovoulou* [1992] 1 CLR 936 [in Greek], *Argus Stockbrokers Ltd v. Hatziitheodosiou* [2009] 1 CLR 1514 [in Greek].

67 *Antenna Ltd v. Constantinou* [2010] 1 CLR 392 [in Greek], *Galatariotis Telecommunications Ltd v. Vasiliou* [2003] 1 CLR 318 [in Greek], *Panayiotis Kountourides Ltd v. Georgiou* [2003] 1 CLR 980 [in Greek], *Spinneys Cyprus Ltd v. Christou* [2004] 1 CLR 1833 [in Greek].

68 *Demades Auto Supplies Limassol Ltd* [1996] 1 CLR 1139 [in Greek], *Cyprus Workers' Confederation* [1996] 1 CLR 1030 [in Greek].

69 *Eliades* [1994] 1 CLR 184.

70 *Metaxa* [1997] 1 CLR 257 [in Greek].

71 *Kosmos Press Ltd* [1993] 1 CLR 925 [in Greek].

72 *Mintchev v. Georgiou* [2000] 1 CLR 469 [in Greek], *Bank of Cyprus* [1999] 1 CLR 1010 [in Greek], *Kemal v. Redundancy Fund* [2004] 1 CLR 237 [in Greek].

73 Filtering of Appeals to the Supreme Court, Introductory Report.

number of measures were taken, such as the appointment of additional judges, the establishment of an Administrative Court, the revision of Orders 25 and 30 of the CPR and proceeding with public procurement for the provision of an e-justice system. However, delays continue and there is a growing discontent among judiciary, advocates and the business community that there are no real signs of improvement. On 27 March 2018 the Institute of Public Administration of Ireland officially presented before the Supreme Court their commissioned study for the reform of Cypriot courts so as to address delays.⁷⁴

Whereas, reform is pending and cannot yet be evaluated, it could be argued that structural reform is not sufficient. The current system does not effectively apply a fully-fledged right to appeal in the sense of retrial of the case, rehearing of witnesses and re-evaluation of factual evidence as is the norm in certain jurisdictions. On the contrary, the Supreme Court restricts itself to the determination of legal points and the consideration on whether the decision of the trial court was within the wider limits of the exercise of its discretion. The appellate procedure is an important instrument for promoting justice. And whereas Justice Robert Jackson famously said: ‘we are not final because we are infallible; we are infallible because we are final’,⁷⁵ the fact that the appellate court cannot lead to correctness, this does not diminish the importance of the exercise of authority through proper review procedures of the trial court’s decisions. Not only are review procedures an important public function of the appellate courts, but collective deliberation, the experience of justices, the exercise of review of material already evaluated by the trial court and of more targeted arguments by the advocates all lead to better safeguards for quality assurance in the administration of justice.

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⁷⁴ Available at <http://www.supremecourt.gov.cy/judicial/sc.nsf/All/F8C912FFF71E0020C225825D0038F145?OpenDocument>.

⁷⁵ *Brown v. Allen* 344 U.S. 443.

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