



**EUROPEAN RULE OF LAW MECHANISM: INPUT FROM MEMBER STATES**



**2023 RULE OF LAW REPORT**

**A. Independence B. Quality of Justice and C. Efficiency of the Justice System in Cyprus**

*(Significant Developments that will contribute to the decongestion of the District Courts, to the adjudication of disputes expediently and effectively and to the upgrade of the quality in the administration of justice in Cyprus)*

\*\*\*\*\*

The reform of the Courts of Cyprus has finally reached the stage of its implementation following the passage of a series of Laws providing for a major restructuring of the Cypriot court system from the Supreme Court downwards.

By a vote of 51 for and one against, the plenary of the House of Representatives voted the 17th amendment to the Constitution<sup>1</sup>, required to reactivate the Supreme Constitutional Court – which remained dormant under the so-called ‘law of necessity’ ever since the Turkish Cypriot community withdrew from the functions of the state. During this time the jurisdictions of the Supreme Constitutional Court had been assigned to the Supreme Court. Now, both courts will operate again.

---

<sup>1</sup> *The Seventeenth Amendment to the Constitution Act of 2022 (L. 103(I)/2022) regulates the reform and modernisation of the top tier of the judicial system by providing for the separation of the current Supreme Court of Cyprus (composed of a President and 12 judges) into a Supreme Constitutional Court and a “new” Supreme Court with more limited jurisdiction than the current Supreme Court.*

The constitutional amendment cleared the path for the enactment of two separate pieces of legislation aimed at reforming the judicial system.<sup>2</sup>

In addition to having a repurposed Supreme Court and a Supreme Constitutional Court, the two Acts provide for the establishment of an Appellate Court in order to act as the second tier in the judicial system hearing appeals from the lower Courts.

Even though the relevant legislation on the splitting of the current Supreme Court, was enacted by Parliament on 5<sup>th</sup> of August 2022, its full implementation will take place on July 2023.

Therefore, the Supreme Court which since 1964 exercises the jurisdiction of both the Supreme Constitutional Court and the Supreme Court as contemplated in the Constitution, from the 1st of July 2023 will function as two separate Courts, the Supreme Constitutional Court and the Supreme Court.

The Supreme Constitutional Court will consist of 9 Judges, one of whom will act as President (section 3(8) (b)) and the Supreme Court will consist of a maximum number of 7 Judges, one of whom will act as President (section 3(8) (c)).

**The Supreme Constitutional Court (SCC)** will have a jurisdiction for the review of constitutionality of laws, but it will also act as the supreme administrative court (“on referral from the Court of Appeal, an appeal against a decision of the Administrative Court on a matter of public law of major public interest or of general public importance” (Article 9 (b) Administration of Justice (Miscellaneous Provisions) Law). This will also ensure that the SCC does not remain idle when there are no constitutional cases pending.

Constitutional review cases, notably from the civil and criminal courts, can reach the SCC via a system of leave to appeal by referral from an ordinary court of “questions of constitutionality which are essential to the determination of the case pending before it” (Article 9 (a) Administration of Justice (Miscellaneous Provisions) Law.

**The Supreme Court (SC)** will be repurposed as a third level-appellate court, competent to resolve any matter referred to it by the new (second level) Appellate Court and not falling within the competence of the

---

<sup>2</sup> *The Administration of Justice (Miscellaneous Provisions) (Amendment) Act 2022 (L. 145(I)/2022) and the Court of Justice (Amendment) Law of 2022 (L.146(I)/22)*

Supreme Constitutional Court. In effect, the Supreme Court will deal with appeals on civil and criminal cases. The Supreme Court maintains exclusive jurisdiction over issuing writs of habeas corpus and writs of certiorari.

### **Assignment of the current SC justices to the new SC or the SCC**

The newly enacted Legislation specifies that the current SC judges shall continue as either a member of the SCC or the new SC “under the same conditions of service as before”.

It also specifies that SCC judges and SC judges shall have the same salary.

The individual justices of the current SC are free to choose between the SCC and the new SC as concerns the continuation of their duties.

### **The Advisory Judicial Council**

Under the newly legislative amendments, the power of the President of the Republic to appoint the judges of the SCC and the new SC would remain unaltered, which – at least in part – is a consequence of the unamendable constitutional provision.

However, it is provided for the setting up of **the Advisory Judicial Council**, “an independent Council” which will act as an advisory body to the President on the suitability of candidates for appointment as Judges of the Supreme Constitutional Court and the Supreme Court with the aim to enhance and give legislative force to the above-described well-established practice currently in place as part of Cypriot legal culture and tradition.

If a **vacancy arises in the SCC**, the Advisory Judicial Council would *be composed* of the President of the SCC as the chairman of the Council, the members of the SCC, the Attorney General, the President of the Bar Association and two lawyers (members of the Bar Association of recognized standing) attending in a non-voting capacity.

If a **vacancy arises in the new SC**, the Council would be *composed* of the President of the SC as the chairman of the Council, the members of the SC, the Attorney General and the President of the Bar Association and two lawyers (members of the Bar Association) attending in a non-voting capacity.

The **Advisory Council**<sup>3</sup> shall ***prepare a list of candidates deemed suitable for appointment***, the number of whom shall be at least three times the number of vacancies. It shall prepare evaluation reports for each of the candidates and present its list to the President in alphabetical order, i.e. the Council would not rank the candidates.

### **The Supreme Council of Judicature (SCJ)** <sup>4</sup>

With the enactment of the new Legislation, the provisions regulating the **SCJ** which is the body responsible for all other judicial appointments have also been amended. According to Article 157 of the Constitution, the “High Court shall be the Supreme Council of Judicature”.

Vacancies for judicial office are publicly announced and published after which interested candidates may submit their application within a specified period of time and may be invited for an oral interview by the SC.

It should be noted that as part of the holistic judicial reform – the SC had introduced since 2019 detailed and transparent eligibility criteria for appointment of judicial officers. Under the new Bill, this procedure will remain unaltered.

However, with the new Legislation the **composition of the SCJ has been changed**. The new SCJ will consist of the judges of the Supreme Court with the Attorney General, the President of the Bar Association and two lawyers of recognised standing, attending in an advisory non-voting capacity.

---

<sup>3</sup> *At the moment there is a transitional advisory board which is composed of all the members of the current Supreme Court, Attorney General, the President of the Bar Association and two lawyers of recognised standing, attending in an advisory non-voting capacity.*

<sup>4</sup> *At the moment there is a transitional SCJ which is composed of all the members of the current Supreme Court, Attorney General, the President of the Bar Association and two lawyers of recognised standing, attending in an advisory non-voting capacity.*

## **The Appeal Court**

Another important pillar of the modernised court system is the newly-created Court of Appeal<sup>5</sup>, which will be composed of 16 judges and will have three divisions: civil, criminal and revisional (administrative law) in order to promote a higher degree of specialisation among judges.

The relevant Law contains transitional provisions regarding appeals that are already pending before the current Supreme Court. Broadly speaking, appeals filed after a date to be specified by the current Supreme Court will be referred to the new Court of Appeal, while appeals filed before that date, will be tried, in the case of civil and criminal appeals by the new Supreme Court and with respect to revisional appeals by the Supreme Constitutional Court.

The Court of Appeal is expected to try 3149 cases of which 2158 are civil appeals filed since 1 January 2018; 233 are criminal appeals, 688 are administrative review appeals filed since 1st of January 2019 (582 against a decision of a judge of the Administrative Court and 106 against a decision of a judge of the Administrative Court for International Protection) and 70 civil applications regarding primary jurisdiction to issue prerogative writs.

## **The establishment of a Commercial Court and a Maritime Court.**

An important step forward in the justice reform is the enactment, *on May 12, 2022*, by the Plenary of the Parliament of the Legislation for the establishment of a Commercial Court and a Maritime Court<sup>6</sup>.

The two Courts are set to deal with and try complex and high profile cases, in order to lift the burden away from the busy district courts. Both courts

---

<sup>5</sup> *The Administration of Justice (Miscellaneous Provisions) (Amendment) Act 2022 (N. 145(I)/2022), the Court of Justice (Amendment) Law of 2022 (L.146(I)/22)*

<sup>6</sup> *The Law on the Establishment and Operation of a Commercial and Admiralty Court (N. 69(I)/2022)*

will be trying cases in which the claim value is not less than 2mln euros (with some exceptions).

**The Commercial Court** (which is modelled on the Commercial Court of Ireland) will have jurisdiction *over all commercial claims in excess of €2.000.000* arising out of contracts or other commercial documents, sale of goods, insurance, operation of financial markets, vehicle manufacturing etc. Additionally, it will have jurisdiction to hear all competition, arbitration and intellectual property related matters, irrespective of the amount of the dispute. It will be composed of five (5) judges who will be appointed by the Supreme Council of Judicature.

The judge of the Commercial Court shall have the discretion to grant interlocutory injunctions (i.e. freezing injunctions) also. The Commercial Court will not adjudicate any banking and finance disputes and it will adopt a Fast-Track procedure to deal with cases in a timeframe ranging from 9 months to a year.

**The Admiralty Court** which will consist of two (2) judges will have exclusive jurisdiction to hear admiralty claims relating to a vessel or an aircraft and issues of ownership, possession, mortgage or charge and damage caused by or to a vessel or loss of life.

Provided that the hearing of a commercial case has not commenced, the parties may apply for its transfer from the District Court to the Commercial Court. Pending admiralty cases shall automatically be transferred to the Admiralty Court.

Another important change brought about is that where the interests of justice so require, *the proceedings may be conducted in the English language at the request of one of the involved parties*. In such case, the language by which the procedure is to be conducted, the court documents are to be filed and the issue of judgments/orders will be in English. To facilitate the purpose, the use of the English language is also allowed when the Appeal Court reviews and examines appeals against such judgments and orders.

The addition of the use of the English language at these two Courts is part of a series of judicial reforms that are meant to exploit the legal system of Cyprus, in order to effectively serve the diverse Cypriot community, the

current and new investors and the large number of ships registered in Cyprus.

Given that the speed and quality of the delivery of justice depends on the creation of specialized Courts, the establishment of the Commercial Court and the Maritime Court will substantially contribute to the decongestion of the District Courts, to the adjudication of disputes expediently and effectively and to the upgrade of the quality in the administration of justice making Cyprus an international dispute resolution center and more attractive to foreign business people

### **Backlog of cases**

On the 25<sup>th</sup> of November 2022, the Supreme Court issued **the *Hearing of Delayed Cases (Special) Procedural Rules (amended on 23<sup>rd</sup> of December 2022)***

The *Rules apply to all pending cases between the years 2014-2018* for which the hearing has not begun.

A brief outline of the most important provisions are outlined below.

Firstly, it is specified that for cases for which no application for hearing has been filled, the Registrar of the Court will give notice to the parties or to their lawyers requiring them to apply within 10 days of receiving the notice, otherwise the action shall stand dismissed for want of prosecution following by an order ratified by the judge.

An application for reinstatement of the case can be filled and if there are sufficient and good reasons justifying the untimely filling of an application for hearing, the judge may well reinstate the case.

Secondly, it is stipulated that for cases that are fixed for hearing, before the filing of any interim applications, prior leave by the judge must be obtained. An application for leave is made orally before the judge who in exercising his/her discretion will decide whether it is for the best interest of justice to be granted.

Moreover, the said Rules provide the Judge with greater case management powers. For instance, it is the Court that will make a witnesses' list and set the time framework for the examination and cross examination of those witnesses.

According to the said Rules, the trial of these cases may be based solely on the written evidence filed or in conjunction with oral evidence.

Lastly, it is worth mentioning that during the hearing of the case, filing of an appeal against an interim judgment or an order is not allowed. However, the parties in their appeal against the final judgment have the right to include and contend any interim judgment or order that has affected the course of the trial and in effect its outcome.

### **The establishment of an Independent Court Service**

The initiation of the project for the *establishment of an Independent Court Service* was marked by an online Kick-off meeting on 18 February 2021 and was completed as it was scheduled at the end of September 2022.

The project is co-funded by the European Union via the Technical Support Instrument and implemented by the Council of Europe in cooperation with the European Commission. The Institute of Public Administration (IPA), Ireland, has been selected to undertake the project and to provide consultancy in courts management and administration for the establishment of an independent Courts Service of Cyprus.

*The extra-judicial burden of the Supreme Court will be alleviated to a significant extent by the establishment of an independent court service responsible for the management and administration of the courts in Cyprus.* One of the main recommendations of the Functional Review (2018) was that, in order to address the ongoing management and administrative challenges, an independent body be established to undertake the management and administration of the courts in Cyprus:

*“It is recommended that ... the Courts Service of Cyprus, be established to manage and support the operations of the courts. This will represent a first, but very important, step in the modernization of the Cypriot courts system. The Courts Service of Cyprus will have a Chief Executive and management team, and a new streamlined structure to focus on operational and support functions. .... As the judicial system represents the third arm of government in Cyprus, it is important that any new governance model for the management and administration of the courts ensures the continued independence of the judiciary in the exercise of their judicial function.” (18, 2018)*



## **E justice**

Further, amendments relevant to the Judicial and Public Administration Reform that already are in effect are the introduction of a fully-fledged e-Justice system for the filling and management of all new Court cases and the constant development of the e-interface of the Public Administration services.

The implementation of the electronic justice system was expected to be fully operational by the end of 2022. However due to some technical issues its implementation has been extended for a short period of time.

Meanwhile, a temporary electronic filing and case management system by the name of “i-justice” is already used which provides for digital filing, fee payments, true copy seals etc. As from 1st of February 2022 all new cases are filed electronically.

## **New set of Civil Procedure Rules**

It is worth mentioning that by September 2023, a new, fully-fledged set of Civil Procedure Rules, already approved by the Supreme Court and published, are expected to enter into force.

One of the major aims of the new Civil Procedure Rules is to deal with the persistent problem of delays by promoting a radical change in civil litigation culture through the introduction of the “overriding objective” of dealing with cases justly and at proportionate cost as well as provisions intended to encourage the use of Alternative Disputes Resolution and enhance the courts’ case management.

The successful application of the Rules will very much depend on all factors of the judicial process enthusiastically embracing the new procedures and cooperating to bring about the overriding objective of the reform. The effort required for this to come about, both from judges and lawyers.

