**THE ADMINISTRATION OF JUSTICE IN CYPRUS**

**by the Honourable Mr Justice Myron M. Nicolatos**

**President of the Supreme Court of Cyprus.**

The island of Cyprus, situated at the northeastern corner of the Mediterranean Sea, has a history and civilisation about nine thousand years old. As part of the ancient Hellenic and Hellenistic world it played an important role in the birth of the European and Western civilisation.

The ancient Greek Philosopher Zeno of Kition (ancient Larnaca in Cyprus) was the founder of Stoicism.

Cyprus played also a vital role in the spread of Christianity. During one of the visits of St. Paul here, the Roman Governor of the island was converted to Christianity thus making Cyprus the first country in the world to be governed by a Christian Ruler. The Church of Cyprus, has been independent for 1500 years.

Nevertheless, politically Cyprus became an independent Republic only in 1960 ending a long sequence of foreign rulers that included the Romans, the Byzantine Empire, King Richard Coer de Lion, The French dynasty of Lusignan, the Venetians, the Ottoman Turks and the British Empire. Very soon after independence Cyprus joined the British Commonwealth and the Council of Europe.

The British rule lasted form 1878 until 1960. During that period the English legal system was introduced and most of the principles of the Common Law and the doctrines of Equity were codified and formed part of the Laws of Cyprus. The English law of evidence and procedure, were also introduced.

When Cyprus became an independent Republic and, in accordance with the Cyprus Constitution of 1960, the Courts of Justice Law of the same year was enacted, according to which the Courts of Cyprus apply mainly:

1. The Constitution of Cyprus which embodies and guarantees all the fundamental human rights and liberties, on the model of the European Convention on Human Rights.
2. The Laws which have been retained by virtue of the Constitution.
3. The principles of Common Law and Equity, and
4. The Laws enacted by Parliament, after 1960.

Today Cyprus has a mixed legal system. In the domain of private law we apply the English Common Law and Equity accompanied with corresponding rules of procedure and evidence, but in the domain of public law we apply Administrative Law based on the Greek model which is itself largely based on the French Droit Administratif.

It is well known that in the Common Law System, the accusatorial procedure is followed, with the two sides having the responsibility of presenting their cases, and the Judge being in the position of the Umpire, whereas in the Continental System the inquisitiorial procedure is followed, with the Judge having the task of finding the truth.

Until recently we had strict rules of evidence excluding hearsay evidence except under specific circumstances. Recently the law of evidence has been changed, and it is now permissible for judges, to accept hearsay evidence but the Judge decides about the weight that will be given to such evidence, according to the circumstances of the case.

Our Rules of Civil Procedure are at the moment under serious study and hopefully, in the near future, they will be modernised in a way that will contribute to the minimisation of delays in the judicial process.

All the lower Courts are bound by the case law of the Supreme Court. English authorities, are not binding on our Courts but they are of persuasive effect, especially those of the Superior Courts. Since our independence there is no appeal from our Supreme Court to the Privy Council. There is such right of appeal from the Courts of the British Bases, in Cyprus.

In accordance with the 1960 Constitution, which is still applicable in the Republic of Cyprus, two Supreme Courts were established:

1. The Supreme Constitutional Court, and
2. The High Court of Justice.

Intercommunal troubles and the decision in 1964 of the Turkish Cypriot leadership to withdraw from participation in all functions assigned to their community by the Constitution, created an impasse. It was then imperative to have recourse to the Law of Necessity in order to secure the survival of the state.

The two Supreme Courts were merged into the present Supreme Court of Cyprus which has all the powers and jurisdiction of both Courts, in accordance with the Administration of Justice (Miscellaneous Provisions) Law of 1964.

In the case of ***Attorney General v. Moustafa Ibrahim (1964)*** it was unanimously held that the creation of the new Supreme Court was justified under the Law of Necessity. It should be noted that in 1964, the unified Supreme Court still included Turkish Cypriot Justices, who withdrew only in 1966.

Currently the Supreme Court of Cyprus has the following powers and jurisdiction:

1. It is the Supreme Constitutional Court of the land. It decides pre-emptively questions of constitutionality of proposed legislation, when asked to do so by the President of the Republic. It adjudicates upon questions of conflict of power or competence that arise between Organs or Authorities in the Republic, and it decides on the constitutionality of existing laws i.e. whether they are compatible with the Constitution, or not.
2. It is the Highest Administrative Court of the land with exclusive Appellate Revisional Jurisdiction. It adjudicates upon Appeals from recourses made on complaints by anyone having a legitimate interest, as to whether a decision, act or omission of any organ, authority or person, exercising executive or administrative authority, is contrary to any of the provisions of the Constitution or of any law, or is made is excess or in abuse of the powers vested in such organ, authority or person. The act or decision must be an executory one, i.e. it must produce legal consequences. As Appellate Administrative Court, the Supreme Court consisting of panels of three Judges, it has appellate and final jurisdiction. The administrative jurisdiction of the Supreme Court is limited only to the review of the legality of the challenged act or decision and it does not extend to the merits of the case, except in Tax and Asylum Cases.
3. It acts as the Electoral Court of the land, hearing election petitions.
4. It is the Civil and Criminal Appeals Court. Panels of three Judges decide finally on civil and criminal appeals. They may uphold, vary, set aside or order the retrial of a case as they may think fit. They may draw their own inferences from the facts found by the trial Court and in certain exceptional cases they may receive fresh evidence. In case of conflict between Judgments of the Courts of Appeal or when the issues involved are of great importance, the Grand Chamber of the Supreme Court is convened and it decides finally on the matter.
5. It has jurisdiction to hear and determine Admiralty cases both at first and final instance.
6. The Supreme Court has also exclusive jurisdiction to issue the Prerogative Orders – Habeas Corpus, Certiorari, Mandamus, Prohibition and Quo Warranto, which are traditional tools of the English system of judicial review.
7. The Supreme Court consisting of one President and 12 Justices, is also the Supreme Council of Judicature, with powers to appoint, promote and transfer all Judicial Officers. It also exercises disciplinary jurisdiction over them.
8. The Supreme Court, also acts as “Council” in accordance with the Constitution, having jurisdiction to “impeach” the Highest Officials of the Republic.
9. It is the Second Instance Family Court, hearing Apeals from the First Instance Family Court.

The fact that the Supreme Court is also the Supreme Council of Judicature is of great importance for the maintenance of the independence of the Judiciary, a feature of paramount importance in our constitutional and legal order.

The President and the Justices of the Supreme Court are appointed by the President of the Republic. As a rule, the Presidents of the Republic have followed the advice of the Supreme Court, when making the appointments of its Justices, with only one known exception.

Apart from the Supreme Court, we have the lower Courts, the most important of which are the District Courts, one for each of the six districts of Cyprus. They are the First Instance Civil and Criminal Courts for their District. Since the Turkish invasion of 1974 and the continuing occupation of the North Eastern part of the island two of our District Courts, those of Famagusta and Kyrenia are under occupation and their jurisdictions have been assumed by the Larnaca and Nicosia District Courts respectively.

The District Courts have jurisdiction to hear at first instance civil cases where the cause of action has arisen wholly or in part within the limits of the District where the Court is established, or where the defendant resides or carries on business within that District.

The District Court Judges have also jurisdiction to try at first instance, summarily, all offences punishable with imprisonment for a term not exceeding five years or with a fine not exceeding €85.000 or both.

First instance criminal jurisdiction is also exercised by the Assize Courts, composed of three Judges. They have unlimited jurisdiction to try all criminal offences punishable by the Criminal Code or any other law and they have power to impose the maximum sentence provided by the relevant law. At present we have four Assize Courts.

The other first Instance Courts and Tribunals are Courts of specialised jurisdiction. They are:

1. The, recently established, First Instance Administrative Court. This important Court was created in January 2016 and it is composed of five Judges (including one President) with the possibility of increasing the Judges to seven. It adjudicates, at first instance, upon administrative Recourses, under Article 146 of the Constitution. Such Recourses are filed by persons having a legitimate interest in the annulment of administrative acts or decisions.
2. The Rent Control Tribunals which have jurisdiction to try all disputes arising from the application of the Rent Control Laws. A Rent Control Tribunal is composed of one President, who is a Judicial Officer, and two lay members representing the Landlords and the Tenants respectively. At present we have three such Tribunals.
3. The Industrial Distutes Tribunal which has jurisdiction to hear applications by employees for unjustified dismissals and redundancies. It is composed of one President (who is a Judicial Officer) and two lay members representing the employers and the employees respectively. We have only one such Tribunal for the whole of Cyprus.
4. The Military Tribunal which has jurisdiction to try offences committed by the members of the Armed Forces under the Criminal Code and the Military Criminal Code. It is composed of one President, who is a Judicial Officer and two military officers who have no power of decision. We have only one such Tribunal for the whole of Cyprus.
5. The Family Courts have first instance jurisdiction to hear matrimonial petitions for the dissolution of marriage as well as all relevant property disputes between the spouses. They also have exclusive first instance jurisdiction to hear cases of custody, maintenance, access and adoption of children. They are composed of one President and two other Judges. At present we have three such Courts.

The Courts and Tribunals of specialised Jurisdiction have their own Rules of Procedure and evidence.

Areas of particular concern for the Cyprus Judiciary are the following:

1. The delays in the trial of Civil Actions and Appeals as well as Administrative Recourses and Appeals.
2. The increase in the number of crimes related to Drug trafficking and Human trafficking.
3. The increase in Administrative Recourses against the Dismissal of applications for Political Asylum. Being the southeastern border of the European Union and having a long illegal dividing line across our territory, make things particularly difficult for our small country. In fact the vast majority of applications for Political Asylum are unfounded.

We are making serious efforts to solve the aforementioned problems, by increasing the number of Judges, by modernising our Rules of Procedure, by creating New Specialised Courts and Tribunals and by computerising the Courts΄ machinery.

The number of all the Judges of Cyprus is about one hundred and twenty. In the lower Courts and Tribunals the percentage of female Judges is about 50% but in the Supreme Court it is still less than 50%.

The retirement age for Judges of lower Courts and Tribunals is 65, whereas for Justices of the Supreme Court it is 68.

Our salaries are considered quite satisfactory compared to those of some other European countries.

It may be added, with modesty, that the Courts and the Judiciary are highly respected mainly for their independence, integrity and impartiality, by the Government, the Parliament, the Administration, and by the people in general.

As already mentioned our written Constitution embodies the relevant provisions of the European Convention on Human Rights and protects all main Human Rights, including:

The Right to life and corporal integrity, the prohibition of torture, the right to liberty and security, 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 of Cyprus respects the decisions of the European Court of Human Rights and it is, in a way, in a constant dialogue with it. In certain fields our Supreme Court has gone even further than the E.C.H.R. in the protection of Human Rights, as in the case of the exclusion of illegally obtained evidence and in the case of breach of Human Rights protected by our Constitution, where damages were awarded to the victims, despite the lack of specific legislation.

The European Convention on Human Rights as well as all bilateral or multilateral conventions ratified by Cyprus, have supremacy over our laws. Against judgments of our Supreme Court there is, of course, the right of recourse to the European Court of Human Rights, in cases of alleged violations of Human Rights.

As of 1st May 2004, Cyprus is a full Member of the European Union and therefore the “acquis communautaire” forms part of our legal system. Constitutional amendments have been made, in order to give union law supremacy even over our Constitution.

The Constitutional Protection of Human Rights, the total independence of the Cyprus Judiciary, the existence of an independent Legal Service headed by the Attorney-General who is responsible for all public prosecutions, and the high standard of the administration of Justice, form the necessary safeguards and guarantees for the full application of the Rule of Law and the absolute respect of Human Rights and Democratic Freedoms on the territory under the control of the Republic of Cyprus, with the Judges of the Republic being the Trustees of those rights and freedoms, for the benefit of the people as a whole. This, however, does not remedy the mass violation of vital Human Rights of both Greek and Turkish Cypriots, which is still continuing for over 42 years due to the illegal occupation of the Northeastern part of our island, by Turkey.

My sincere hope and wish is that this unacceptable situation will soon come to an end, thus terminating one of the longest and most serious violations of Human Rights, in Europe.

**20 January, 2017.**