

THE PHILOSOPHY BEHIND THE NEW CIVIL PROCEDURE RULES AND THE MAIN CHANGES¹

Advocates and Judges, alike, often argue that the current Civil Procedure Rules should remain in force with necessary amendments. They are acquainted with them and feel more comfortable in their application. They also observe that such amendments can offer a good solution to the serious problem of delays in the adjudication of cases in the civil law domain.

In reality, the above arguments beg the question: What amendments are necessary? There is no straight-forward answer to this. The current Civil Procedure Rules are based on the old Civil Procedure Rules of England and Wales. They came into force in 1958 and were adopted in 1960, when the Republic of Cyprus was established, to serve the newly created Courts in their above-said jurisdiction. Until recently, only targeted amendments were made, whenever the need arose.

¹ This speech was delivered by Justice Y.N. Yiasemis at the Final Conference regarding the Modernizing the Civil Procedure Rules in Cyprus, held at the Supreme Court of Cyprus in Nicosia, on the 8th December, 2021.

In the meantime, claims and the defences thereto have changed drastically; in most cases, they are lengthy and complex. Trials take longer to complete, with consequential higher legal costs. At the end of the day, one reasonably wonders whether a lengthy process is worth pursuing the case. In addition, nowadays a greater number of cases are filed. Litigants, in high monetary value cases, more often than not, are from abroad. These cases have a financial element, which is considered beneficial to the economy of the country. Most importantly, there is a pressing need for them to be decided in a short period of time. This coincides with the financial element mentioned before. These matters and others which are related to the procedural process have been identified as a cause for the backlog of civil cases.

An attempt to carry out drastic amendments of the Rules, to deal with these matters, would have been an impossible task. It is, evidently, difficult to effect major amendments to an existing code of Civil Procedure Rules, which must be effective and

workable, in order to meet the demanding system of law, which has evolved over the years. Hence, with these considerations in mind, it appeared to be more prudent to create a new code. The need for this was even more evident given the stagnant course of the current Civil Procedure Rules.

The Supreme Court, therefore, opted for a new set of Civil Procedure Rules. This was one of the major projects undertaken, with the support of the Structural Reform Support Service (SRSS) of the European Commission. It appointed the Irish Institute of Public Administration (IPA) to conduct an in-depth review of the Civil Procedure Rules. Following a scoping mission, a Group of Experts in this field was formed, under the guidance of the Rt. Hon. Lord Dyson, former Head of the Civil Court of Appeal of England and Wales, (the Master of the Rolls).

The culmination of the Expert Group's work was the preparation of a guiding draft of Civil Procedure Rules, written in the English language. These are modelled on the current English

Civil Procedure Rules. The guiding draft was delivered to the Supreme Court in June 2019. The proposed Civil Procedure Rules were, in due course, considered by a Committee of judges of all levels, advocates and a senior registrar, who ensured that they will meet the requirements of modern day litigation. Following the above stage, the Rules were translated into Greek and, on the 19th of May 2021, they were approved by the Supreme Court and published in the Official Gazette. The implementation of these new Civil Procedure Rules is scheduled to commence in September 2023. The approval of the new Rules was followed by intensive training of all those concerned in their application, that is, judges, advocates and registrars.

On a close study of Parts 7 to 30, it is apparent that the new Civil Procedure Rules are modelled on the adversarial system of the Common Law, which is applied by the Civil Courts of the Republic. It is the same system that runs through the current Civil Procedure Rules. Thus, the new Rules do not envisage a whole new procedural system unfamiliar to the legal practitioner.

Like the current Rules, proceedings commence with a claim form under Part 7 or, alternatively, under Part 8. Similarly, the new Rules provide for the filing, thereafter, of an acknowledgement of service and a statement of case, which need no introduction to practitioners. In this respect, the new Rules are pillared on a structure very familiar to all; as already said, they reflect the adversarial system, which is, of course, the cornerstone of the legal system of Cyprus.

The new Rules are a modern statement of the current Rules, but, in fact, they go much further in their provisions. They arm the civil procedure code, with the “*overriding objective*” and, the court, with “*case management powers*”; concepts unknown to the current Rules. What the overriding objective entails is a number of axioms, which under a single umbrella require “*dealing with a case justly and at a proportionate cost*”. At the same time, the parties are under a duty to assist the court in furthering the overriding objective.

In addition, the court will now be in a position to engage in active case management. New specific powers for case management have been entrusted to the hands of the court, which can be exercised on its own motion. The court's role in active case management is so emphatic, that, in order to manage the case and further the overriding objective, it may take any other step or make any other order, as it deems appropriate. On this basis, case management empowers the court to give directions for the efficient and expeditious management of the case, leading to an irrevocable trial date.

It must not be overlooked that the new Rules introduce pre-action conduct. Related Protocols have been drawn-up, aiming at the final settlement of disputes at an early, pre-action stage. Similarly, negotiations, Alternative Dispute Resolution, mediation and arbitration play an equal role. As regards the costs of interim steps in a case, they are adjudicated on the basis of the rule "*pay as you go*". This enables the litigant to know at any given time in

the course of the case where he stands with regard to the amount of costs that he owes.

In conclusion, the main, radical changes to the Civil Procedure Rules cocoon principals requiring overall change in civil litigation culture. Judges and advocates, when dealing with a case from now on, will know that they must look ahead and deal with it under the mechanisms provided for by the new Rules, also, “*ensuring that it is dealt with expeditiously and fairly*”, thus aiding the clearance of the burdensome backlog of cases.

In addition, the idea of adopting new Civil Procedure Rules aims at enabling Judges and advocates to see matters in the particular area afresh, thus encouraging all involved to head towards a change of mentality and to adopt a new culture. The above, in essence, constitute the philosophy behind the adoption of the new Civil Procedure Rules.

This event, seemingly marks the end of the Project of creating new Civil Procedure Rules. In actual fact, borrowing Winston Churchill's words: "*Now this is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning*". In the context of the new Civil Procedure Rules, this, in effect, means that there is, in fact, an endless road ahead; a road, that this generation of judges and advocates will have to walk and through their example and acquired knowledge guide the new generations of judges and advocates in the operation of the new Civil Procedure Rules. It is, indeed, a heavy burden. We are, however, all strengthened in this by our accumulated knowledge and experience and certainly by the noble cause of serving Justice.

Thank you all for your attention.

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Justice of the
Supreme Court of Cyprus

8th December, 2021.

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