ONLINE CONFERENCES FOR JUDGES AND LAWYERS

NEW RULES OF CIVIL PROCEDURE OF CYPRUS: A STEP FORWARD
03 March 2021

CHANGE OF CIVIL PROCEDURE RULES OF CYPRUS: EXPERIENCE OF NATIONAL AND INTERNATIONAL COURTS
10 March 2021

Joint EU-COE Project on Enhancing the Current Reform of the Court System and the Implementation Process as well as the Efficiency of Justice in Cyprus

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I. Introduction

Today the Supreme Court of Cyprus with the support of the Directorate General for Structural Reform Support (DG REFORM) of the European Commission and the Council of Europe is undertaking an ambitious reform process to improve the court system and strengthen the efficiency of justice.

The reform process aims to secure the implementation of key recommendations contained in the Functional Review of the Courts System of Cyprus prepared in 2018. There are four areas of focus in the reform: (1) court operations; (2) judicial training; (3) e-justice; and (4) reform of civil procedure.

At the heart of the reform process lies the need to replace the existing cumbersome Civil Procedure Rules ("CPR"). The proposed new rules (the "new Rules") will represent a significant reformulation of the civil procedure framework for the first time in the last 60 years.

As Justice Persefoni Panayi, President of the Supreme Court, explained, the need for reform of the CPR is based on two main reasons. First, the CPR, having been in place since 1958, are based on outdated procedures and practices inherited from the Anglo-Saxon legal system of that time whereas the socio-economic conditions in Cyprus, as in the rest of the world, have changed drastically since then. Secondly, the administration of justice under the CPR suffers from significant delays which necessitates the urgent need for reform.

The finalisation and adoption of the new CPR constitutes one of the main parts of this EU-COE joint Project entitled, "Enhancing the Current Reform of the Court System and the Implementation Process as well as the Efficiency of Justice".

In addition to the convergence and harmonisation of the new Rules with the procedural rules applicable across Europe, the modernisation of the CPR is expected to strengthen the Rule of Law by ensuring the administration of justice is both expeditious and fair. The new Rules will enable the courts to deal with cases justly, at proportionate cost and more speedily thereby reducing the existing backlog of cases.

Furthermore, the establishment of an effective system dealing with property rights and the effective enforcement of civil and commercial claims is crucial to a country's macroeconomic development. The new Rules are expected to reduce the financial cost of litigation as well as resulting in a more efficient and streamlined legal system. Greater efficiencies in the administration of justice will, in turn, advance the country's interests in attracting investment and ensuring that economic development is sustainable.

At the same time, legal certainty and public confidence in the justice system will be enhanced by the new Rules. The development and maintenance of an effective justice system is an essential component of social justice, mutual trust and the creation of a favourable investment climate, elements that are all at the core of the long-term reforms and growth of Cyprus.

Tribute must be paid to the great efforts of all parties involved in the reform process including the Supreme Court of Cyprus, the Rules Committee and the Director of Reform and Training. It must be acknowledged that their constant commitment and dedication played a critical role in the finalisation of the proposed new Rules.

The acceptance of the new Rules by all stakeholders is of paramount importance for the success of the reform process. For this purpose, after the finalisation of the text, the proposed Rules were transmitted by the Supreme Court to the Cypriot Bar Association and the Association of Judges for their comments. Constructive feedback and comments are invaluable and necessary for the continuation and smooth implementation of the ongoing reform.

The Online Conference for Lawyers "New Rules of Civil Procedure: A Step Forward"[1] served as a forum for the explanation of the main changes in the new CPR as well as for the exchange of respective experiences on the reform of civil procedure rules in the UK and Ireland. The discussions were dedicated to the exchange of experience of practising lawyers and judges from the UK and Ireland faced with analogous procedural changes. The participants were also presented with the practical benefits for lawyers and other stakeholders.

The Online Conference for Judges "Change of Civil Procedure Rules: Experience of National and International Courts"[2] focused on the presentation of the main elements of the new Rules that were expected to be adopted by the Supreme Court of Cyprus as well as on the philosophy underpinning the new Rules. In the second part of the conference, the challenges, questions and possible solutions linked to the introduction of new procedural rules in various international and national institutions were presented and discussed by representatives of English and Irish courts, as well as of the Court of Justice of the European Union and the European Court of Human Rights.

This report describes and summarises the main points presented and discussed by the honourable speakers of both events.

The video recording of the conferences is available at the following links:

Lawyers' conference: https://vimeo.com/548321267

Judges' conference: https://vimeo.com/548334475

1 https://www.coe.int/en/web/national-implementation/-/new-rules-of-civil-procedure-a-step-forward-online-conference-for-lawyers
2 https://www.coe.int/en/web/national-implementation/-/change-of-civil-procedure-rules-experience-of-national-and-international-courts-online-conference-for-cypriot-judges

II.
PRESENTATION OF THE PROPOSED CIVIL PROCEDURE RULES

II. Presentation of the Proposed Civil Procedure Rules

1. The main concept of the new Rules

The Woolf Reforms, introduced at the turn of the 21st century in the United Kingdom, constituted a revolution for the civil justice system of England and Wales. Various innovative elements of the new Rules in Cyprus have emerged from the Woolf Reforms as several of the proposed changes to the CPR were based on the English model. **Rt. Hon. Lord John Dyson**, former Deputy Head of Civil Justice, Master of the Rolls and Head of the group of experts who drafted the Guiding Drafts of the new Rules for Cyprus, focused on some of these elements referring primarily to the requirement that the court must further the overriding objective of dealing with cases justly and proportionately, by actively managing cases.

According to the English Civil Procedure Rules ("English CPR") as well as the proposed new Rules, the court has a number of managerial powers which are designed to promote procedural efficiency. In this respect, the court needs to ensure that the directions agreed by the parties for the conduct of a particular case will further the overriding objective. Furthermore, the English CPR, following the Woolf Reforms, provides that the parties themselves are also obliged to help the court in furthering the overriding objective. Lastly, the proposed new Rules foresee that the court will encourage the parties to use alternative dispute resolution ("ADR") procedures and it will also facilitate the use of such ADR procedures.

The Guiding Drafts to the new Rules prepared by Lord Dysons' group, although they were based on the English model, were substantially simplified in light of Cypriot practice, culture, customs and particular needs. An important example of this calibrated approach is the recommendation of a far simpler set of rules for disclosure of documents than the elaborate disclosure process that has been implemented in the English CPR. Moreover, particular English procedural rules that presented problems in practice in the courts of England and Wales were avoided. The final guiding drafts were subsequently scrutinised very carefully by the Cypriot Rules Committee comprising of an equal number of Cypriot judges and lawyers.

According to Lord Dyson, the English experience suggests that it takes time for major changes of this kind to bed in and to be applied as a matter of routine. Initial training is essential. In addition, early judgments on the interpretation and application of the new Rules will set the tone and those judgments should support the new philosophy since to do otherwise will create a real risk that before long, the benefits of the new Rules will be lost, and prior inefficiencies will return to the administration of justice in Cyprus.

2. What will be the main changes?

The new Rules will not refer to an unknown procedural system. As explained by the President of the permanent Rules Committee, **Justice Yiasemis N. Yiasemi**, they are structured and adapted to serve the common law adversarial system upon which the judicial system of Cyprus is based. The corresponding English CPR have been introduced into the English legal system since 1998 and are supported by abundant case law and a number of books and articles, which have been published since the Woolf reforms.

Part 1 of the new Rules provides that the overriding objective is introduced to enable the court to deal with cases justly and at proportionate cost. In this respect, the overriding objective constitutes the cornerstone of the new Rules as a whole and in particular the powers that the courts will have regarding case management. To this end, they shall take into account, "to the extent practicable", a non-exhaustive list of criteria necessary for a fair trial, having regard to the particular circumstances of each of the parties to the relevant litigation.

Furthermore, Part 3 of the new Rules introduces new powers for the court including, but not limited to, the power to communicate with the litigants in order to ensure that they comply with the court's directions. The parties must respond to such communications. In the same Part, provision is also made for the use of appropriate Pre-Action Protocols. These Protocols impose an obligation on any person who intends to make a claim in court, to address in pre-action correspondence the nature of the proposed claim and to provide evidence of same, to the other party and to seek a settlement of the claim or, at least, the narrowing of disputed issues between the parties. Such communication is mandatory, and non-compliance with the Pre-Action Protocols may be penalised by way of the imposition of costs orders at the discretion of the court.

The development of an alternative procedure for certain claims constitutes another important amendment as envisaged in Part 8 of the new Rules. The key features of such Part 8 claims will be that the claim will be largely conducted on the basis of accepted facts as between the parties such that the procedure will focus upon resolving purely legal issues that arise. This Part 8 process will be particularly important in relation to the interpretation of contractual agreements and other legal documents.

The process of submitting applications for pending proceedings (set out in Part 23 of the new Rules) will be of special importance in the new Rules as well. There are various common provisions of the new application process that will not differ from the existing process. It was envisaged, however, that in relation to each application, whether by summons or *ex parte* application, there would be a stage called a Procedural Directions Hearing, abbreviated as P.D.H. A date for the P.D.H. will be set at the time of filing of the application. The court, within the framework of the P.D.H., will determine the procedural timetable to be followed and will give directions in relation to the course of the application, i.e. the filing of evidence in opposition, any supplemental written evidence, any application for cross-examination, written submissions and, finally, set a date for the hearing, which will be strictly observed, so that the application can be processed without the need for the parties to appear at court, otherwise than is provided for at the P.D.H.

At present, the power of the court to grant interim remedies is sought either in various laws that provide for such remedies or by reason of the common law. Part 25 of the new Rules provides, in

a non-exhaustive manner, fifteen such interim remedies which a party may seek pending the final hearing of the case on the merits. The relevant application for any interim remedy will be made pursuant to the Part 23 process, mentioned above. In the event an Order for an interim remedy is made, it will be based upon the standard remedies included in the new Rules.

In addition, an application for summary judgment can be made using the process prescribed by Part 24. Such a summary judgment application may be made against a claimant, which is not presently the case within the existing CPR, or against the defendant.

Pursuant to Part 22 of the new Rules, it will now be the rule that pleadings and a number of other documents to be submitted to the court will have to be verified by a statement of truth. The court will have the power to require the confirmation as to the truth of such documents that are explicitly mentioned in the new Rules. Proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

The new Rules have also placed considerable importance upon the disclosure and inspection of documents. More specifically, Part 31 provides that standard disclosure by list is provided by the parties within a specified period before the case management conference. Specific disclosure is made at the request of either of the parties or both separately, specifying the documents that will be requested to be disclosed. Disclosure may also be requested from a third party, with the permission of the court. In any case, the disclosure of documents by a party is accompanied a disclosure statement in the prescribed form setting out the extent of the search that has been made to locate documents which the party is required to disclose; certifying that the party understands the duty to disclose documents; and certifying that to the best of the party's knowledge the party has carried out that duty.

Instructing an expert as a witness in a trial is not uncommon, even today. With Part 34, this practice is now put on a formal basis. Its provisions emphasise the duty of an expert witness to the court and, in particular, that his or her testimony is intended to assist the court on the matters within their expertise and any expert evidence shall be the product of his or her independent opinion uninfluenced by the pressures of litigation. Experts may file written requests for directions from the court for the purpose of assisting them in carrying out their functions. In addition, the court may order that expert evidence be given by a single joint expert instructed by both parties or alternatively to order that separately instructed experts identify and discuss the expert issues in the proceedings and, where possible, reach an agreed opinion on those issues.

In Part 35, the offers to settle procedure constitutes another novel innovation in the new Rules by which a party may make another party an offer to settle relating to the whole of the proceedings or to part of them or to any issue that arises in them. Neither the fact nor the amount of the offer or of any payment into court in support of the offer may be communicated to the court until after all questions relating to liability and the amount of money to be awarded, other than costs and interest, have been decided. There are specified consequences depending on whether an offer to settle is accepted or rejected but the offer is exceeded by the court's award after the trial.

Finally, the factors which the court may take account of in respect of what order to make about costs are identified in Part 39. Specifically, the court can consider the conduct of the parties before and during the proceedings including the extent to which the parties complied with any relevant pre-action protocol. Where the court orders a party to pay costs, it can either make a summary assessment of costs or order the detailed assessment of costs by the Registrar which is subject to approval by the court. However, where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs unless there is good reason not to do so.

3. How the new Rules will affect legal practitioners?

According to the President of the Cyprus Bar Association, **Dr. Christos Clerides**, the new Rules will be extensive and demanding for lawyers regarding their understanding and use. The lawyers dealing with court cases will have to spend at least in the early stages of implementation a large part of their time to study the new Rules as well as the practical instructions that will be provided occasionally by the Supreme Court and the additions, improvements and modifications that will occur later. However, the lawyers will be able to refer to the case law of the English courts that have already dealt with similar procedural rules since 1998 and draw guidance and help from it. Moreover, in addition to the White Book, the use of websites related to procedural matters in England will become useful tools.

The new Rules are not expected to immediately affect litigators since they are not expected to be fully implemented in all cases as their provisions will rarely be adapted to the pending old cases that are in progress. Their full implementation will largely depend on the course of processing of thousands of old cases and known backlogs.

However, Part 60 of the new Rules is entitled "Old Proceedings" and offers two options. The first option provides that the new Rules will apply to proceedings from now on from a date to be determined and the second option is that, although the new Rules do not apply to proceedings which have already begun, when the court exercises its discretion in old cases, it may take into account the principles set out in new Rules and in particular the overriding objective and Part 28 in relation to case management. Therefore, there is the possibility of at least partial application of the new Rules in old court proceedings.

The new Rules constitute a new ecosystem of procedure in which lawyers will be invited to participate. Reference to existing jurisprudence and drawing on some principles will be inevitable. But it is a completely new system that will be interpreted and applied based on the new philosophy that the system offers and the Rules themselves explicitly set out in Part 1 and 2. It is expected that there will be a relaxation of formalism by all the protagonists.

The overriding objective of the new Rules as referred to in rule 1.2 is "to enable the Court to handle cases justly and at a reasonable cost." Therefore, in the new ecosystem, the court plays a key role in managing the cases and does not leave the initiative to lawyers who must understand this primary purpose and assist in achieving it.

Time limits may not be differentiated by agreement of the parties in relation to the date of the trial and the hearing during which the trial or hearing will take place. The provision in rule 37.6 is also indicative, according to which the dates of the hearing are consecutive, i.e. "day in - day out", which of course presupposes a proper planning of the hearing of the case between the lawyers and the court. The current practice of setting a case for a hearing is to have one day allocated every 2-3 months and if the hearing needs to continue over 10-15 days, this results sometimes in the continuation of hearings over two or three years. This will not be allowed under the new Rules.

Part 32 extends the power of the court to control the evidence, as the judge may give directions concerning the way in which the evidence is to be placed before the court. The court may also limit the cross-examination with a view to reducing the practice according to which cross-examinations are lasting for weeks.

Proper use of the new Rules by lawyers, no matter if they act on behalf of claimants or on behalf of defendants, will assist in promoting the interests of their clients in the best possible way. Lawyers should now realise that a large proportion of cases will have to be settled and advise their clients accordingly. As a result, the lawyers will need to get trained on the use of Alternative Dispute Resolution with reference to mediation and arbitration in order to be able to meet the needs of the modern justice system.

The proposed changes in relation to appeals need to be adapted to the developments in the field of judicial reform. Rule 41.2 provides that in order to appeal, permission must be obtained in most cases. The time limits for filing an appeal are reduced to 21 days but the lower court may give instructions for a longer or shorter period. It is possible to apply for an amendment of the deadline with the Court of Appeal having the relevant discretion to provide for a different deadline. Suspension of the judgment does not occur upon filing of the appeal.

4. How the new Rules will affect Judges?

The new Rules are expected to impact directly and at several levels the daily judicial tasks of the first instance judges. As the President of the Judges' Association, **Justice Alexandros Panayiotou** pointed out, the philosophy that governs the new Rules is completely different from that of the existing Rules. The judge ceases to be an arbitrator in the promotion of the civil procedure by the parties. More specifically, the proposed Rules provide judges with a number of important tools as a mean to achieve the overriding objective and conduct a speedy and effective civil court process.

According to the proposed CPR, the judge acquires the duty to actively manage depending on the nature of each case, by using various procedural tools. The trial judge should also give appropriate instructions and definitively decide on all pre-trial matters that may be raised, through applications of the parties or through his/her own initiative by issuing interim orders.

In addition, the judge can encourage the parties to use alternative dispute resolution procedures, when it is considered appropriate. Some of the main radical changes introduced by the new Rules also involve the power of the court to issue an order on its own initiative when deemed appropriate. Furthermore, the judge will have the authority to ensure compliance with his/her directions, timetables, and orders, in many instances, through the imposition of sanctions on the parties in the event of non-compliance so as to prevent delays.

The role of the court is also essential when a case management conference takes place, since at this stage, the court should give detailed instructions on the subsequent conduct of judicial proceedings. In the context of the proposed Rules, it is necessary that the judges are extensively trained before the expected implementation of the new system so that they adjust to the new procedures and philosophy, especially as regards the case management. Finally, except for the extensive knowledge of the new Rules, the judges of the first instance courts will be required to study thoroughly each case including the respective positions of the parties in order to be able to identify the matters in dispute and take appropriate actions to handle each case fairly and in a cost-effective manner.

Despite the completely different philosophy, the English case law can help to address potential problems with different interpretations of the new Rules that may arise in the early stages of their implementation. Most importantly, issues of adaptation to the philosophy of the proposed Rules and change of culture of all actors of the trial, including the judges need to be addressed by an intensive training program before the implementation of the Rules.

Upon the expected enactment of the new Rules, the judges will have an essential role to play in the implementation of the new provisions since they will become the guardians of the overriding objective with the aim to deal with cases justly and at proportionate cost.

5. What are the next steps?

Mr. George Erotocritou, Director of Reform and Training, presented the process that will be followed. When the Rules are adopted, the Supreme Court will have to decide the date on which the Rules should enter into force, taking also into consideration the backlog of cases. The Project stipulates that upon the approval of the Rules, an intensive training of judges, lawyers and court staff on the new Rules should start. After the finalisation of the trainings, which will mark the completion of the Project, the Supreme Court will have the competence to decide on the steps forward. Finally, the permanent Rules Committee, which is established, will undertake the close monitoring of the Rules and will submit on a regular basis, recommendations to the Supreme Court for their revision and improvement.

III.
CHANGE OF RULES: NATIONAL EXPERIENCE

III. Change of Rules: National Experience

1. Change of Civil Procedure Rules in the UK

Lawyers' perspective

The English barrister **Mr Darragh Connell** shared his experience as a practitioner appearing daily before the English courts from the application of the English CPR in the British judicial system concentrating on three common aspects found in both the English CPR and the proposed new Rules, namely the overriding objective, the active case management and the prescribed pre-action processes.

The overriding objective of the English CPR enables the court to take a broader view of the application of a particular procedural rule both in terms of the conduct of the case as a whole and in respect of other cases that are going through the courts to ensure scarce judicial resources are not wasted. One important aspect of the overriding objective is that the court is expressly required to deal with the case in proportionate way. The implementation of the proportionality principle to the case management process has afforded judges the ability to allot the court's time to a case in ways which are proportionate to the amount of money involved, the importance of the case, the complexity of the issues, and the financial position of each party.

A further important aspect is that lawyers are expected to cooperate with the opposing counsel to ensure that the case is dealt with in accordance with the overriding objective. In England and Wales, litigants cooperate on a regular basis to agree adjournments, extensions of time for service of documents and dates of availability with a view to ensuring that court time is not wasted. Nowadays if a litigant is uncooperative about practical and logistical matters, the court is empowered to find that they have breached the overriding objective and to impose an appropriate sanction.

In England, active case management includes identifying the issues in dispute and deciding promptly which issues need full investigation at trial and disposing summarily of other issues. The English CPR also encourages the parties to use alternative dispute resolution procedures. It is not infrequent that a judge at the first case management conference of a particular claim makes a direction for a short stay of the proceedings to enable a mediation to occur or some other form of alternative dispute resolution to be undertaken.

Ultimately, the pre-action process which requires the parties to let each other know the basis of their proposed claims and proposed defences before issue of proceedings, has a very important role in England. As a result, the parties may also avoid litigation by agreeing a pre-action settlement of the claim. The pre-action process also has the effect of narrowing the issues in dispute between parties.

English lawyers have also benefitted from the introduction of CPR as they can advise clients with greater certainty as regards how a case will be actively managed by the court. At the same time, the pre-action protocols enable clearer legal advice to be given at an earlier stage of the litigation process because both parties are required to exchange full details of the claim and the proposed defences. The claim is required to be properly particularised even in pre-action correspondence.

Judges' perspective

The English The English CPR introduced by the Civil Procedure Act 1997, have been in a process of constant change since their inception. It is a living structure which both needs and benefits from constant amendment. To address all possible challenges, a standing committee was established comprising of judges, solicitors and barristers, lay people and civil servants which proposes amendments to the rules for their improvement.

According to the **Right Honourable Lord Briggs of Westbourne,** there are three challenges in the area of civil procedure that were presented by the Woolf Reforms. The complex substantive law which is accommodated by new rules as well as by practice directions constitute the most significant challenge for the maintenance of proportionality in civil procedure and thereby for access to justice. Also, there is constant, unending battle to achieve proportionality between the cost of civil litigation and the value at risk, i.e. the amount being claimed, or the value of the property in dispute. Lastly, there is a need for the establishment of suitable procedures to accommodate the changes brought about by the application of modern IT. At the UK Supreme Court, staff and judges have now entirely given up paper case files. All the hearings during the pandemic are virtual, with judges and advocates each on screen in separate places while the rest of their legal teams, and judicial assistants, clients, the press and the public watch the proceedings live over the internet.

The response of the English CPR to the exponential increase in the complexity and detail of the substantive law could have taken one of two divergent courses. The first course says that civil procedure is essentially about dispute resolution by courts, which ought to be able to determine disputes about any area of law or fact, irrespective of complexity, by essentially the same simple processes. For the opposite course, which the English CPR have followed, is to match the increased complexity of the substantive law with an equivalent increase in the complexity in the new rules made to accommodate them with the consequence of not maintaining simplicity. Another reason for this complexity relates to the issuance of practice directions one for each rule which also include substantive provisions and often are longer than the rule itself.

The new Rules will avoid the UK practice of splitting the procedural code between rules and practice directions right from the outset. They are also drafted by a small dedicated drafting team which brought uniformity and clarity of language of the text. At the same time, simplicity has been a founding principle in the drafting of the new Rules for Cyprus.

The speaker finally shared his experience on the new process of development and public testing of a form of online court for small civil money claims of all kinds, which it is hoped will be the prototype for a radical recasting of the way in which, eventually, most civil litigation will in the future be conducted in England, stressing the importance of using modern IT for cost efficient conduct of some types of claim which in his opinion is the real solution to the access to justice problem based upon disproportionality.

2. Change of Civil Procedure Rules in Ireland

Lawyers' perspective

The Irish barrister, **Mr Eoin Martin**, explained the reasons why, in his opinion, comprehensive reform is beneficial for lawyers by sharing the Irish experience on the substantial reforms in the practices of the Commercial Court and the Court of Appeal. The establishment of the Irish Commercial Court, that was directly linked to the aggregation of investments to the country, constituted the first major reform, influenced by the Woolf reforms. The change in the way the Commercial Court heard cases was radical by Irish standards. The control of the pace of litigation was taken away from litigants and managed by the judge through a series of case management hearings. At the outset, the judge would make directions setting a timetable for the exchange of pleadings and discovery requests. Usually once discovery was complete, a second directions hearing would govern the exchange of witness statements and would set a pathway to the trial of the action. Before all court hearings, judges would read the papers in advance and when a case was assigned a hearing date, unless something very unexpected happened, the case would go ahead on that date.

The experience of lawyers appearing in the commercial list was that it was demanding. A lot more preparatory work had to be done early on in the case to identify the relevant issues and the procedural steps that would be needed to bring the case to a conclusion. It was absolutely essential for barristers to be thoroughly prepared for hearings.

Despite demanding, the commercial court has been a great success. It achieved what it was set up to do. Whereas cases in the chancery list could take two or three years to reach trial, the commercial list was regularly disposing of cases within nine months which was beneficial for foreign investors and for the overall economy.

As the speaker highlighted, the biggest benefit from a lawyer's perspective was certainty. According to the new regime, the cases would be dealt with speedily, and in this regard the time limits would be fixed by the judge and enforced. The existence of a clear timetable and a plan for the steps between commencing proceedings and getting to trial has also been an important advantage for the lawyers since they could provide their clients with realistic estimates regarding the duration and the pricing of the case. The rules also required that the pleadings should be dealt with in a much more detailed way. A further provision provided for witness statements to be exchanged in advance of trial, enabling the litigants to know in advance what the evidence in chief of the opponents would be. This positive development made the preparation for trial a lot easier and less stressful for the lawyers since they had the opportunity to be better equipped to prepare their cross-examination.

Irish lawyers view the above-mentioned reforms as successful as they made their practices more efficient and easier. Although the Irish civil procedure rules are designed to reduce party autonomy and increase judicial control, in many ways, according to the speaker, they give lawyers more control because they can manage the progress of their case in a very predictable way.

The creation of the new intermediate Court of Appeal between the High Court and the Supreme Court was the second major reform in Ireland that introduced various changes in the area of civil justice. In this respect, the waiting time of the appeals was drastically reduced by half and directions' hearings were decided to be used in all appeals to set timetables for the exchange of legal submissions and any other procedural steps. The new procedures have again been of real benefit for the lawyers since they involve far less delay, and fewer missed deadlines.

Lastly, the most recent development in Ireland relates to the transition to conducting cases almost entirely remotely by the Court of Appeal which allowed the court to keep up its normal workload despite the pandemic which has shut down a lot of other courts in Ireland.

However, the speaker explained that the Irish reforms, despite beneficial, have been very piecemeal to date. This is why, according to the speaker, Cypriot lawyers have a fantastic opportunity to introduce a comprehensive set of reforms in one go which is a real advantage for the overall modernisation of the Cypriot legal system.

Judges' perspective

The **Honourable Mr Justice Peter Kelly**, former President of the High Court of Ireland and Chairman of the Review Group for Civil Justice highlighted the similarities between the Irish and Cypriot legal systems both being common law systems for historic reasons.

As he explained, in Ireland the courts did not become involved in the management of the litigation, as that was left to the litigants. This means that the litigation moves at the speed of the slowest for different reasons such as indolence, negligence or tactics. However, during the last decade there was an increased amount of court cases resulting from foreign investments and much complaint on the delays due to the absence of a commercial court. For that reason, in Ireland the only experience of substantial reform refers to the establishment of the Commercial Court.

Justice Peter Kelly was selected to provide a set of Rules of Court for the setting-up of the Commercial Court. The first major change proposed by the speaker was that the case would be judicially managed such that no longer would the timetable be fixed by reference to the parties, but rather by reference to the judge. Secondly, there was going to be a regime which would ensure that the case would be dealt with in a speedy fashion, so time limits would be fixed by the judge and enforced. Thirdly, there was a requirement that the pleadings which until then were framed in very wide fashion, would have to be dealt with in a much more detailed way. A further provision provided for witness statements to be exchanged in advance of trial so the old notion of trial by ambush came to an end and so lawyers knew before the trial what the evidence in chief of the opponents would be.

In addition, for the first time the Rules of Court provided for the judge in charge to be able to adjourn a matter for a short time so as to require the parties to consider alternative dispute resolution. The court had also the ability to make wasted cost orders against lawyers personally who failed to comply with directions in order to ensure compliance. Speed and certainty were achieved through the new regime revealing the success of the reform.

Resources are needed so as to ensure that measures by way of reform can be implemented. There is a further need for buy-in of the profession so that they will enthusiastically embrace the rules rather

than resist the rules. The quality of rules of court is also important as well as a template to ensure their uniform application by judges.

The **Honourable Mr. Justice Seamus Noonan**, Judge of the Court of Appeal in Ireland presented the main problems of the Irish system which is also based on the common law and has a lot of similarities with the court system in Cyprus. The main problems include lack of resources, particularly in the context of the number of judges and delays in court proceedings due to the inaction of the parties. At the same time, litigants appearing in person have become a key characteristic of the Irish courts as a result of the high cost of legal representation and because of the limited nature of civil legal aid available. The pleadings system reform has also met limited success in the area of personal injury claims despite the fact that since 2004 general pleading is no longer permissible, and all statements of claim and defence have to be verified on affidavit. He also emphasised the importance of precision at the early stages as the way a claim is pleaded is important in circumscribing the need for particulars and discovery. Lastly, the speaker referred to the failure to provide pre-trial procedural rules for the Chancery and Non-Jury actions due to the lack of resources required for their implementation.

In Ireland, the establishment of the Court of Appeal in 2014 contributed significantly to the reduce of the existing backlog in the Supreme Court. At the same time, active case management by courts and early judicial intervention is the key to ensuring the timely disposal of litigation. In some divisions of the Irish courts, the leave of a judge of the High Court is required to institute proceedings seeking judicial review which in turn must be sought within three months of the decision sought to be challenged. Once leave is granted, the case is automatically returned to the court list where it remains under active management until trial. The same applies to cases admitted to the Commercial List. However, for example on the personal injuries, chancery and non-jury side of the court, cases do not generally come under judicial management until they are ready to seek a trial date. These are the areas in particular where very significant delays can occur as a result of the inaction of the parties.

Regarding case management, Justice Seamus Noonan developed a case management system on the non-jury side as he thought that it would have particular value in the context of longer trials as there was a decrease in the accuracy of time estimates in cases taking longer than 3 days. If the estimation for the trial exceeded this limit, the parties were required to briefly explain to a judge the nature of the case before the allocation of the trial date. As a result, an ad-hoc weekly case management list was developed, accompanied by some standard directions that were applied according to the needs of each individual case. Lastly, these directions resulted in the reduction of trials and consequently to the elimination of particularly long cases and waiting times which was also the result of encouraging the use of alternative dispute resolution.

The speaker's opinion of case management is that a much stricter approach to adjournments is needed in the Irish system and maybe also this is the case in Cyprus. He thinks that judges have to be fairly ruthless about refusing to adjourn cases save for the most pressing reasons as once parties and their lawyers know what to expect, they adapt very quickly in his experience.

Lastly, the traditional approach to trials, primarily on oral evidence, in Ireland has been to allow the parties to call as many witnesses as they like and take as long as they like. With court resources scarce and the increasing volume of litigation, that is no longer a sustainable situation. As a result, the appellate courts strictly limit the time allocated to appeals and to each side for presenting their cases. The court, rather than the parties, decides how long the case will take. It is usually the other way around at first instance and this is something that needs to change.

IV.
CHANGE OF RULES: INTERNATIONAL EXPERIENCE

IV. Change of Rules: International Experience

1. The Recast of the Rules of Procedure of the Court of Justice of the European Union

Mr Marc-Andre Gaudissart, Deputy Registrar of the Court of Justice of the European Union explained the process and objectives of the revision of the 60 year old rules of procedure that took place in 2012-2013. The objective of the reform, like the current reform of the CPR in Cyprus, was the improvement of the court's efficiency to deal with cases swiftly, justly and at a proportionate cost, maintaining the capacity to face increasing workload. The new rules of procedure aimed also to modernise, simplify, and adapt to the reality of the caseload. Therefore, the revised rules of procedure included new measures as well as reinforced existing measures in order to allow the Court of Justice to deal more efficiently with the cases brought before it.

The involvement of different actors outside as well as inside the Court of Justice constituted one of the main challenges during the reform process. More specifically, aside from the extended discussion inside the General Court and the Court of Justice about the merits of the reform, the project of the revision of the rules of procedure required to be convincing for the Member States, since the rules of procedure require the approval of the Council of the European Union.

During the reform process, several points of controversial discussion were raised including the length of written pleadings, the possibility of the Court of Justice not holding hearings under particular conditions and the possibility for the Court to adopt reasoned orders, both in preliminary ruling cases and in appeal cases, without hearing the parties. The adoption of additional explaining measures, meaning practice directions explaining the new rules of procedure as well as the training of parties, judges, and lawyers, contributed significantly to the success of the reform. Of course, the shortcomings which appeared during the implementation of the new rules of procedure, brought about the submission of additional amendments in 2019 to the Council of the European Union. However, the measures adopted had altogether a positive impact as they enabled the Court of Justice to deal with the increasing workload as well as to manage through the today's pandemic.

2. European Court of Human Rights: Change of Rules and Backlog

Mr Klaudiusz Ryngielewicz, Head of Department at the Registry of the European Court of Human Rights shared his experience on the reform of the Rules of the Court introduced initially with Protocol 14[3] of the European Convention on Human Rights. In 2010, the Interlaken Declaration[4] marked the launch of the reform process and the Registry of the European Court was invited to organise this reform and put in place some case management tools to administer the cases brought before the European Court.

In this case, the reform process started with the change of the whole culture of the functioning of the European Court. The Registry of the European Court set up a priority policy, establishing a case management tool with a view to reorganising the cases and responding in due time to legal issues raised in the applications, while maintaining the high quality of judgements. To this end, the use of modern technologies as part of the IT system was of the utmost importance. The case management policy involved various steps including the immediate consideration of a case upon the reception of an application form, which should either be put in the right track or declared inadmissible. New formats for drafts and decisions was also introduced under the reform strategy as well as an application form that all applicants were required to follow. Furthermore, emphasis was put on cases not raising a new issue under the European Convention and so repetitive cases were addressed by the fast truck procedure with the aid of IT tools. The new procedures also encouraged friendly settlement and unilateral declarations.

As part of the reform process, the European Court adopted a problem based approach according to which the cases referring to a specific problem are gathered, and the European Court taking one pilot case or group of cases and trying to look at the situation from a broader perspective giving an answer to the whole scope of the problem. This approach enabled the European Court to keep consistency and focus on transversal problems of interest for every Member State to the European Convention.

In addition, the European Court introduced elements of specialisation with a view to speeding up the processing of specific cases that are considered as priority and are important in essence. Part of its priority policy were also the impact cases according to which the European Court takes important cases for every single country and the Convention system. Lastly, the Registry has set up a gateway project that aims to assist the lawyers during the drafting process through the use of relevant IT tools and some elements of AI to accelerate the process.

3 https://www.echr.coe.int/Documents/Library_Collection_P14_ETS194E_ENG.pdf
4 https://www.echr.coe.int/Documents/2010_Interlaken_FinalDeclaration_ENG.pdf

3. Procedural experience from the General Court bench

The Vice President of the Court of Justice of the European Union, **Mr Savvas Papasavvas** referred to the last reform process of the General Court of Justice of the EU that lasted 3 years. The impact of this reform was significant since the new Rules of procedure contributed to the elimination of the backlog of cases. Furthermore, the possibility not to have a hearing unless it is required from the parties as well as the removal of the second round of pleadings in the cases of intellectual property, were also significant elements in the decrease of the existing backlog. According to his experience, the existence of the procedural framework is not in itself adequate to address the problems, but the judges should embrace the changes. Today, active case management as well as the swift delivery of justice, is one of the priorities of the General Court of Justice.

V.
SPEAKERS OF THE CONFERENCES

Conference for Lawyers

New Rules of Civil Procedure of Cyprus: A Step Forward

03 March 2021

Speakers:

Mrs **Persefoni Panayi**,
President of the Supreme Court of Cyprus

Dr. **Christos Clerides**,
President of the Cyprus Bar Association

Mr **George Erotocritou**,
Former Judge of the Supreme Court, Director of Reform and Training

Mr **Daniele Dotto**,
Acting Director, Directorate B – Support to Member States reforms, Head of Unit, Unit B2 – Governance & Public Administration, European Commission

Mrs **Pilar Morales-Fernandez-Shaw**,
Head of Programming Department, Office of the Directorate General of Programmes, Council of Europe

The **Rt. Hon. Lord John Dyson**,
Former Justice of the UK Supreme Court, Former Master of the Rolls, Chairperson of the Expert Group on Guiding Drafts for new Civil Procedure Rules in Cyprus

Mr **Yiasemis N. Yiasemi**,
Justice of the Supreme Court, President of the Permanent Rules Committee

Mr **Darragh Connell**,
Barrister at Forum Chambers, Guest Teacher in the Department of Law at the London School of Economics 2019 – 2020

The **Honourable Mr Justice Peter Kelly**,
former President of the High Court of Ireland, Chairman of The Review Group for Civil Justice

Mr **Eoin Martin**, Barrister, Member of the British Irish Commercial Bar Association, Adjunct assistant professor of land law at Trinity College Dublin 2018-2019

Conference for Judges

Change of Civil Procedure Rules of Cyprus: Experience of National and International Courts

10 March 2021

Speakers:

Mrs **Persefoni Panayi**,
President of the Supreme Court of Cyprus

Mr **George Erotocritou**,
Former Judge of the Supreme Court, Director of Reform and Training

Mr **Sebastien Renaud**,
Deputy head of unit for Governance and Public Administration, DG REFORM, European Commission

Mr **Mikhail Lobov**,
Head of Department for the Implementation of Human Rights, Justice and Legal Co-operation Standards, Council of Europe

Mr **Yiasemis N. Yiasemi**,
Justice of the Supreme Court, President of the Permanent Rules Committee

Mr **Alexandros Panayiotou**,
President of District Court, President of the Judges' Association of Cyprus

The **Right Honourable Lord Briggs of Westbourne**,
Justice of the Supreme Court, UK

The **Honourable Mr. Justice Seamus Noonan**,
Judge of the Court of Appeal, Ireland

Mr **Marc-Andre Gaudissart**,
Deputy Registrar of the Court of Justice of the European Union, Luxembourg

Mr **Klaudiusz Ryngielewicz**,
Head of Department, Registry of the European Court of Human Rights, Strasbourg

Mr **Savvas Papasavvas**,
Vice President of the Court of Justice of the EU

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Cyprus is undertaking the ambitious reform process with a view to improving the court system and strengthening the efficiency of justice. An important step in the ongoing reform - revision of the Rules of Civil Procedure - is facilitated under a Joint project of the Council of Europe and European Union in collaboration with the Supreme Court of Cyprus.

Successful progress in the integration of the new Rules into the Cypriot civil law and procedure, which is undergoing a serious reformation for the first time during the last 60 years, is of paramount importance as it is expected to provide ground for the improvement of the efficiency of justice and to contribute to an investment-friendly environment in Cyprus.

The two conferences for Cypriot Lawyers and Judges served as a platform for presenting the new proposed Rules and the main changes that accompany as well as for sharing similar past experiences by other national and international institutions. This Report summarizes the main points discussed during the conferences.

ENG

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

www.coe.int

The member states of the European Union have decided to link together their know-how, resources and destinies. Together, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders.

http://europa.eu

EUROPEAN UNION

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CONSEIL DE L'EUROPE