



Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a.

Association des Conseils d'Etat et des Juridictions administratives suprêmes de l'Union européenne a.i.s.b.l.



**Council of State of Belgium**

**Association of the Councils of State and the Supreme Administrative Jurisdictions of the European Union**

**With the collaboration of the Council of State of Belgium**

**Increasing the efficiency of the  
Supreme Administrative  
Courts' powers**

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**ISSUE 1: The “administrative loop”, or the power to rectify the legality of an administrative decision.**

**QUESTION 1**

**In your country’s legal system do you know of a mechanism laid down in the constitution, in law or in regulations, or borne out of established case-law, that confers on an administrative court, in the course of proceedings, the power to rectify a flaw in a disputed decision rather than have that decision quashed and proceedings reopened? If so, what does this power consist of? How is it organised?**

**ANSWER**

There is no provision in our legal system by which the Supreme Court in its administrative jurisdiction can rectify a flaw in the course of the proceedings. Such a flaw can only be rectified by the administration following an annulling decision.

By virtue of the provisions of Article 146 of the Constitution, the Supreme Court of Cyprus has exclusive jurisdiction to review judicially every administrative act, decision or omission. Article 146 provides the following:

*“1. The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person.*

2. *Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission.*

3. *Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse.*

4. *Upon such a recourse the Court may, by its decision-*

*(a) confirm, either in whole or in part, such decision or act or omission; or*

*(b) declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever, or*

*(c) declare that such omission, either in whole or in part, ought not to have been made and that whatever has been omitted should have been performed.*

*(5) . Any decision given under paragraph 4 of this Article shall be binding on all courts and all organs or authorities in the Republic and shall be given effect to and acted upon by the organ or authority or person concerned.”*

The Supreme Court in its revisional jurisdiction in administrative law matters is not a court of appeal; it therefore cannot reach a decision as to how the decision of the administrative organ ought to have been. It only decides whether in the circumstances such decision of the organ under recourse was legally reached or not. If the decision was reasonably open, the court will not disturb the same. If such decision is annulled, the organ itself is the appropriate organ to reconsider the matter in the light of the judgment of the Court and to reach a new decision.

## **QUESTION 2**

**Can the administrative court itself exercise its power to rectify a flawed decision and itself rectify the infringement that has been identified (power to reverse decisions)?**

**ANSWER**

As stated above the court can only declare an administrative decision null and void. It has no power to rectify a flaw; this power can be exercised by the administrative authority who in principle complies with the decision of the court. If the flaw is immaterial, the court will ignore the same, On the other hand if the flaw is material then this is one of the reasons that the decision can be annulled; for example for misconception of facts or law.

**QUESTION 3**

**How is the action to quash affected if the decision involving an infringement is rectified? Is the appeal still valid? Must or can the rectified decision be disputed in another appeal? How do the proceedings continue once the court decides to exercise or has exercised its power to rectify a flawed decision? Explain your answer.**

**ANSWER**

See answer to question 1 above.

**QUESTION 4**

**What are your experiences of the administrative court having such a power to rectify?**

**ANSWER**

See answer to question 1 above.

**QUESTION 5**

**Does your court hear appeals against decisions that are rectified in this way?**

**ANSWER**

No, in view of our answer to question 1 above.

**ISSUE 2 : Power to award compensation and action for annulment****QUESTION 1:**

**Are you familiar with the system of compensation as an alternative to annulment?**

**ANSWER**

The matter is regulated by Article 146.6 of our Constitution which provides as follows:

“Any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared thereunder that it ought not to have been made shall be entitled, if his claim is not met to his satisfaction by the organ, authority or person concerned, to institute legal proceedings in a court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the court or to be granted such other just and equitable remedy as such court is empowered to grant.”

Paragraph 6 expressly provides for the right to damages consequent upon a decision of the Supreme Court. The appropriate court to assess and award damages is the District Court. It is not the duty of the Supreme Court in its revisional jurisdiction, to

declare that a person is entitled to damages or to assess the same. There is a right of appeal from the decision of the District Court to the Supreme Court.

According to our case law (see inter alia **Nicholas v. Republic (2001) 1 CLR 984**) before a person file an action for damages to the District court, must first apply to the administration and ask compliance with the annulling decision. If his claim is not satisfied, he has the right to file an action as aforesaid. Failure of the complainant/applicant to follow the above procedure, deprives him from the right to file an action for damages

Therefore there is no system of compensation alternative to annulment.

## **QUESTION 2**

**What is the extent of the compensation and how is it calculated?**

## **ANSWER**

The damages to be awarded in an action instituted in pursuance of article 146.6 our Constitution are to be just and equitable. When we speak of damage, detriment, or prejudice in this context we must confine it to damage arising solely and directly from the sub judice act itself and not from any other source. The cause and source of the damage must be the sub judice and not causes or sources incidental to the sub judice act such is the grounds upon which it was founded. In assessing damages in relation to a decision which has been declared to be void the respective importance of the culpability of the Administration and of the claimant must be taken into account.

In the case of **Frangoulides v. Republic (1982)3 CLR 462** the Supreme Court stated the following:

*“The cause of action conferred by Article 146.6 of the Constitution, is a cause sui generis, in the sense that it bears no relationship to a common law action for damages or, in fact, to any other cause of action known to the law (**Costas Tsakkistos v. The Attorney-General (1969} 1 C.L.R. 355**). It is a right to be evaluated in the context of Article 146 and the system of review of administrative action created thereby. It is ancillary to judicial review, as a measure necessary for its effectiveness. Primarily it entitles the injured party to recover damage not remediable by proper administrative action. If the proper administrative action is not taken, the remedy is to go to the administrative court again. If this step notwithstanding the injured party is left to shoulder damages, then he has a right to recover them from the Republic. The right to damages under Article 146 is distinctly independent\* from any other cause of action, as the Supreme Court held in **Attorney-General v. Andreas Marcoulides and Another (1966) 1 C.L.R. 242**. Not only its juridical basis but also the manner of quantifying damages is different from a common law action. The Supreme Court emphasized the equitable character of the relief as well as the damages recoverable, stressing that they are not strictly compensatory: Consequently, it is legitimate for the Court to have regard, not only to the extent of the material damage suffered,. but also to the conduct of the parties and the degree to which the successful party contributed to the production of the wrongful administrative act. In the case of Marcoulides, supra, the Supreme Court derived guidance, inter alia, from French case law, establishing that the conduct of the parties*

*and their blameworthiness, if any, is of crucial importance to the determination of the quantum of the damages.”*

Reference to the above case was made in the case of **Kyriakides v. Cyprus, app. No 39058/05, 16.10.08**, where the European Court of Human Rights awarded the applicant €5000 for violation of Article 8 of the Convention. The ECHR observed that the district court had awarded damages to the applicant for moral and psychological integrity by the impugned administrative act. The Supreme Court did not explicitly depart from or overrule the finding made by the district court as to the damage that had been sustained by the applicant, but left the issue open by stating that the moral damage sustained by the applicant did not emanate from the annulled decision giving no reason for this conclusion. Therefore set aside the decision of the District Court. The ECHR found that the Supreme Court denied the applicant equitable relief in respect of damage caused by the administrative act without sufficient explanation and failed to provide an adequate explanation for the reversal of the award for moral damages made by the district court, thereby violating article 8 of the convention.

### **QUESTION 3**

**What is the impact of penalizing an unlawful decision by awarding compensation on the decision itself.**

### **ANSWER**

As stated above in order for compensation to be awarded the decision must be annulled by the Supreme Court.



**QUESTION 4**

**Does your court have the power to settle compensation for the damage caused by the unlawful decision it has previously annulled? If so, is this an exclusive power or is that power also granted to other courts.**

**ANSWER**

The District Courts have the power to award damages following annulment of a decision by the Supreme Court. However, as already said in answering question 1 on issue 2 above; their decision is subject to a civil appeal, to the Supreme Court

**QUESTION 5**

**What is the extent of the compensation and how it is calculated?**

**ANSWER**

See answer to question 2 above.

**ISSUE 3 The effectiveness of enforcement of the rulings of administrative courts.****QUESTION 1**

**Do the administrative courts in your country have the means to ensure actual implementation of their rulings and judgments by the authorities?**

**ANSWER**

The decision of the Supreme Court is by virtue of paragraph 146.5 binding on all courts and organs or authorities in the Republic and has to be given effect to and acted upon by the organ, authority or person concerned. In relation to these provisions read in conjunction with Article 150 of the Constitution which provides that the Supreme Court shall have jurisdiction to punish for contempt of itself arose the question whether there could arise an issue of contempt of court on behalf of the organ or authority for failing to comply or for delay in complying with an annulling decision of the court.

In the case of **Kyriakou and others v. Minister of interior (1988) 3 CLR 643** the Supreme Court decided that Article 146.5 automatically imposes a duty to active compliance for breach of which a person may be committed for contempt under article 150. Subsequently, however, the Supreme court in the case of **Republic v Thalassinos ( 1991) 3 CLR 203** decided that article 146.4 which exhaustively specifies the extent of the powers of the annulling court does not include contempt proceedings and consequently a successful applicant is not entitled to apply for such proceedings against the administration for its failure to comply with the annulling decision. This principle was reaffirmed in the case of **Vyronas v. Republic (1999)3 CLR 77**.

**QUESTION 2**

**Do the administrative courts have the power to order the authority to enforce their rulings and judgments ( power of injunction)**

**ANSWER**

As stated above the administration must give effect and act upon the decision of the court. In the event that there is no compliance with the decision, the Supreme Court has no power to order the enforcement of their decision. However if the administration issues a new decision which is identical to the one that has been annulled then the applicant can file a recourse claiming breach of res judicata and in such a case, the decision will be declared again as null and void with costs against the respondent administration.

**QUESTION 3**

**Have all your country's administrative courts been granted this power of injunction?**

**ANSWER**

See answer to question 1 above

**QUESTION 4**

**Can your court's administrative courts sentence the offending authority to pay a penalty or a fine?**

**ANSWER**

No. As stated in question 1 there are no such powers of the court.

**QUESTION 5**

**What happens where the authority has enforced the ruling of judgment but this enforcement is not in line with the authority or res judicata?**

**ANSWER**

In such a case the only available remedy to the applicant is to file a new recourse claiming breach of res judicata.

Note: The questionnaire was answered by Mrs Natassa Papanicolaou, Legal Assistant at the Supreme Court of Cyprus under the supervision of Mr Michael Fotiou, Justice at the Supreme Court of Cyprus.