Access to justice falling outside of the scope of EIA, IPPC/IED, access to information and ELD

1.1. Decisions, acts or omissions concerning specific activities falling within the scope of EU environmental legislation, but outside the scope of the EIA and IED Directives

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission and its content (in particular, the conditions to be fulfilled and any time-limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

As already explained in Part 1, the legal rights of natural or legal persons to obtain an administrative or judicial review for an act/decision/omission are the same for an environmental issue as for any other claim. Access to justice is delineated in Articles 29 and 146 of the Constitution. Article 29 provides that every person (including non-Cypriots and legal persons) has a right individually or jointly with others to address any competent authority, to have their complaint attended to expeditiously and to receive a response within 30 days. (This refers to complaints addressed to civil service departments or other public authorities). Article 146 prescribes who may apply to the Court against a decision, act or omission of a public authority and this would, therefore, apply with respect to environmental issues. For such right to arise, the complainant must have an existing, personal and legitimate interest which has been directly affected by a decision, act or omission exercised by a public authority in a manner which is contrary to the Constitution or to any other law, or represents an abuse of power, and must be exercised within 75 days of the event being publicised.

Under current legislation and Cypriot case law, unless the interpretation were broadened, ENGOs would have no legal standing outside the provisions of the EIA, IPPC/IED and ELD Laws. So in effect, NGOs or individuals who do not live or own property in the vicinity of the offending act would have difficulty in challenging environmental decisions, even though this goes against ACCC guidance and the case law of the CJEU which requires national courts to interpret national procedural rules in light of the Aarhus Convention and in light of Article 47 of the EU Charter in order to grant wide access to justice.

The CJEU case law on environmental issues is not known to have been quoted or referred to in court decisions, since, as already stated in Part 1 (1.1.), NGOs have seldom made judicial recourses after it was held by the Supreme Court in 1999 that they had no legal standing. Therefore, it could be said that CJEU decisions have not had a substantial effect. It has to be added that it is not just the absence of legal provisions or case law which has contributed to the cautionary approach of NGOs in utilizing legal measures. The lack of funding support, the uncertainty arising from the conservative court interpretation, and the consequent lack of experienced lawyers in this field of law, have all discouraged NGOs.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

An administrative review would cover all aspects of the issue under review. A recourse to the Administrative Court would normally review the procedural legality, unless there were an issue of error in law or violation of constitutional rights, in which case the substantive legality would also be reviewed.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to

recourse to judicial review procedures?

There is a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures in cases where an administrative review is specifically required in the legislation. In such cases the 75-day time-limit for going to court will be suspended during the review.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

In order to have standing before the national courts it is not necessary to participate in the public consultation phase of the administrative procedure. Legal standing derives from having a legitimate right of recourse under the Constitution.

5) Are there some grounds/arguments precluded from the judicial review phase?

The Administrative Court will base its decision on the files of the case regarding the decision/act/omission, which must be presented to the Court in full. Any factual matters other than those in the file cannot be introduced, unless in exceptional circumstances and with the leave of the court. See also response to 1.5.1

6) Fair, equitable - what meaning is given to ‘equality of arms’ in the national jurisdiction?

Both the Constitution and the Court Procedural Rules confirm that anyone can go to court. They are entitled to a fair trial and to interpretation if unable to understand the language of the court. Article 30 of the Constitution is the equivalent of Article 6 of the European Convention on Human Rights and is interpreted in much the same way. Article 30 applies to all types of cases, civil, criminal and administrative. Although there is no specific reference to 'equality of arms' as such in the Constitution, it is encapsulated in the concept of fair trial, and there is considerable case law on the matter, often with reference to ECHR decisions. The principles have been recently restated in a decision relating to a criminal appeal case delivered in 2020: Republic v. Stavrinou, no 266/2018. The concept is based on the principle that neither party should be put at a disadvantage, and that this should be determined not by particular incidents during the trial or hearing, but by an overall assessment thereof. Nevertheless, in the case of Marangos v. Cyprus, 4.12.08, which related to an administrative appeal, the ECHR found that the complainant's rights had not been affected by a denial of legal assistance by the Cyprus government, nevertheless, three ECHR judges issued a concurrent decision expressing the view that limiting legal assistance to civil and criminal cases and excluding administrative cases amounted to a lack of equality of arms. Since that time, financial assistance has become available in administrative recourses filed by asylum seekers.

7) How is the notion of “timely” implemented by the national legislation?

Timeliness with reference to the applicant means challenging a decision/act/omission within 75 days of its publication/authorisation or of becoming apparent. Timeliness also refers to the duration of a court case. If a hearing is completed and a decision is not delivered within six months, questions will be asked and the interested party may complain to the Supreme Court. In practice, all types of procedure take a very long time (except in Rent Tribunals and Family Courts concerning the interests of minors). There have been instances of recourse to the ECHR against the Cyprus Republic because of court delays, and it was held that such delays are in themselves a denial of justice and fines were imposed. Law N.2(1)/2010, based on Article 6 of the European Convention on Human Rights, provides a cause of action to seek compensation for an unreasonably delayed court decision. A Supreme Court decision of 2019, M.D. Cyprus Soya v Attorney General, case no. 1/2018, suggests that it would also apply to delays in adjudication on appeal.

8) Is injunctive relief available? If yes, what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Unless provided in sectoral laws, there is no particular provision for granting injunctions in environmental matters. The normal judicial procedure would need to be followed and satisfied. In administrative recourses an application may be made for an interim judgment suspending the effect of the administrative decision. This may be granted only under exceptional circumstances, if there is flagrant illegality or irreparable damage. In general, such conditions apply that injunctions are more easily granted to a government department seeking to prevent an illegal act (e.g. to stop an individual from demolishing a building under preservation order). See also para 1.7.2.6 regarding guarantees.

There is an appeal against a decision to refuse an injunction which is made to the Supreme Court.

9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?

The costs are principally the lawyer's fees and would be the same as for any other recourse to justice, around €1,500 plus stamps depending on the complexity. While there are no specific safeguards against prohibitive costs, the issue does not actually arise, because the costs awarded by the court against a party are determined on the basis of the established judicial scales and do not necessarily represent the full fee paid by the party to his/her lawyer. They represent what the courts consider appropriate, and quite often this is less than what has been agreed between a party and his/her lawyer. The losing side will normally be ordered to pay the costs of the other side according to the scales, or such part of them as the Court decides. In cases involving a private person or a non-profit organisation suing the state, Courts have decided that each side should pay its own costs. So, it is largely up to the court and will not be known in advance.

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[1]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The SEA directive has been transposed to Cyprus law under Law N^{o} 102(1)2005. It makes no specific provision concerning rights of individuals or legal persons to challenge decisions/acts/omissions within the ambit of their constitutional rights (see 2.1.1. above re Article 146 of the Cyprus Constitution). Whether such rights exist in law will depend on the form in which the plans have been adopted, and if such rights exist there is no need for them to be reiterated in sectoral laws. Therefore, any legal or natural person whose legitimate rights are affected can, within 75 days of publication of the offending event, request an administrative review or file a recourse to justice. As case law stands at present, however, this will not apply to NGOs unless a law specifically grants them the right to be included in the ambit of Article 146 of the Constitution (as applies with respect to the EIA, IPPC and ELD Laws). The recognition given to environmental NGOs in the SEA Law concerns the right to be invited to participate in a public consultation. The definition of 'public' at article 2 of the Law is a broad one involving natural or legal persons, organisations or groups, and article 15(b) specifies environmental NGOs amongst them. What has been known to happen is that ENGOs have gone directly to Brussels, to DG Environment, to express their disagreement with decisions taken at an SEA, or to call attention to the fact that an SEA process has not been implemented.

CJEU case law on environmental issues is not known to have received judicial notice in any deliberations before the court. So at this point it would be fair to say that it has had little effect. It should be clarified that although Common Law applies in Cyprus, in matters of Administrative and Constitutional Law we follow the theory and practice of Greece, so Greek case law is often quoted in administrative cases, even though it has only an advisory effect.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

An administrative review is not specifically provided for, but should it be granted it will examine both the procedural and substantive legality of a decision/act/omission. A judicial review in the Administrative Court will normally consider matters of procedural legality and competence of the offending executory organ, but also of substantive legality if the question refers to error in law, violation of the constitution etc., or to errors within the files.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Before filing a court action, there is no requirement of exhaustion of administrative review procedures prior to

recourse to judicial review procedures under the SEA Law.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

In order to have standing before the national courts it is not necessary to participate in the public consultation phase of the administrative procedure, the legal standing of an applicant is derived from meeting the Constitutional provisions.

5) Is injunctive relief available? If yes, what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no special rules, see comments under 2.1.8.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

The costs are principally the lawyer's fees and would be the same as for any other recourse to justice, around €1,500 plus stamps depending on the complexity. While there are no specifically expressed safeguards against prohibitive costs, the issue does not actually arise because the costs awarded by the court against a party are determined on the basis of the established judicial scales and do not necessarily represent the actual costs paid by the party to his/her lawyer. The *loser pays* principle generally applies, but the losing side will pay the costs of the other side according to the scales, or such part of them as the Court decides. Nevertheless, in cases involving a private person or a non-profit organisation suing the state, Courts have decided that each side should pay its own costs. So, it is largely up to the court and will not be known in advance.

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the public participation requirements of Article 7 of the Aarhus Convention in respect of plans and programmes not submitted to the procedures set out in the Strategic Environmental Assessment Directive 2001/42/EC[2]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time-limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

Cyprus has adopted Article 7 of the Aarhus Convention by including a regulatory framework for public participation in a number of environmentally related laws dealing, e.g., with water pollution, wastes, industrial emissions, atmospheric waste, etc. The relevant provisions are quite similar and define the 'public' to be consulted or invited to comment as 'natural or legal persons affected, or likely to be affected' by the act or license issued, including environmental NGOs. If the legitimate rights of legal or natural persons are affected, the remedies are as stipulated under Article 29 of the Constitution concerning complaints to public authorities, in cases where the specific legislation does not provide for an administrative review. In cases of a legal challenge by recourse to justice the provisions of Article 146 of the Constitution apply. So far, defects in a consultation procedure have been raised by individuals with a legitimate interest to have a decision nullified. Whether an NGO would be legitimized to challenge the legitimacy of an action on the grounds of an improper participation procedure has not been tested. The government is currently taking measures to strengthen public participation, but the initiative concerns only consultations carried out under the EIA Law.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

An administrative review, if granted, will examine both the procedural and substantive legality of a decision/act/omission, and while the review is in process the 75-day deadline will be suspended, if so provided, or

may be suspended by agreement between the parties. A judicial review in the Administrative Court will, as in all cases, consider matters of procedural legality and competence of the offending executory organ, but also of substantive legality if the question refers to error in law, violation of the constitution, etc.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Before filing a court action, there is no requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, unless the right for an administrative review is specifically provided in the legislation.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

In order to have standing before the national courts it is not necessary to participate in the public consultation phase of the administrative procedure. Legal standing derives from having a legitimate right of recourse under the Constitution.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Unless provided in sectoral laws, there is no general provision for granting injunctions in environmental matters. The normal judicial procedure would need to be followed and satisfied. In administrative recourses, an application may be made for an interim judgment suspending the effect of the administrative decision. This may be granted only in exceptional circumstances, if there is flagrant illegality or irreparable damage. Concerning guarantees please see para 2.1.8.

There is an appeal against a decision to refuse an injunction which is made to the Supreme Court.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

The costs are principally the lawyer's fees and would be the same as for any other recourse to justice, around €1,500 upwards (plus stamps) depending on the complexity. While there are no specifically expressed safeguards against prohibitive costs, the issue does not actually arise, because the costs awarded by the court against a party are determined on the basis of the established judicial scales and do not necessarily represent the actual costs paid by the party to his/her lawyer. Thus, the losing side, according to the *loser pays* principle, will normally pay the costs of the other side according to the scales, or such part of them as the Court decides. Nevertheless, in cases involving a private person or a non-profit organisation suing the state, Courts have decided that each side should pay its own costs. So, it is largely up to the court and will not be known in advance.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[3]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the content of the plan (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

There are no specific rules for challenging plans and programmes required to be prepared under EU legislation, so the general rules of standing would apply as described under the provisions for the SEA Law. The strongest position of any applicant would concern a denial of access to information or a denial to facilitate public participation in the process, since both of these rights are enshrined in a generally applicable legislation (concerning the right to environmental information) and in specific sectoral laws (concerning the right to participation), so they do not depend on demonstrating the existence of constitutional rights.

2) Does the form in which the plan or programme is adopted make a difference in terms of legal standing (see also Section 2.5 below)?

The form in which the plan or programme is adopted makes a difference in terms of legal standing, it can only be challenged if it is an administrative act.

3) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

An administrative review would cover all aspects of the issue under review. A recourse to the Administrative Court would normally review the procedural legality, unless there were an issue of error in law or violation of constitutional rights, in which case the substantive legality would also be reviewed.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Only if specified in the legislation concerned.

5) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

In order to have standing before the national courts it is not necessary to participate in the public consultation phase of the administrative procedure.

6) Are there some grounds/arguments precluded from the judicial review phase?

The Administrative Court will base its decision on the files of the case regarding the decision/act/omission, which must be presented to the Court in full. Any factual matters other than those in the file cannot be introduced, unless in exceptional circumstances and with the leave of the court.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

Both the Constitution and the Court Procedural Rules confirm that anyone can go to court. They are entitled to a fair trial and to interpretation if unable to understand the language of the court. Article 30 of the Constitution is the equivalent of Article 6 of the European Convention on Human Rights and is interpreted in much the same way. Article 30 applies to all types of cases, civil, criminal and administrative. Although there is no specific reference to 'equality of arms' as such in the Constitution, it is encapsulated in the concept of fair trial, and there is considerable case law on the matter, often with reference to ECHR decisions. The principles have been recently restated in a decision relating to a criminal appeal case delivered in 2020: Republic v. Stavrinou, no 266/2018. The concept is based on the principle that neither party should be put at a disadvantage, and that this should be determined not by particular incidents during the trial or hearing, but by an overall assessment thereof. Nevertheless, in the case of Marangos v. Cyprus, 4.12.08, which related to an administrative appeal, the ECHR found that the complainant's rights had not been affected by a denial of legal assistance by the Cyprus government, nevertheless, three ECHR judges issued a concurrent decision expressing the view that limiting legal assistance to civil and criminal cases and excluding administrative cases amounts to a lack of equality of arms. Since that time, financial assistance has become available in administrative recourses filed by asylum seekers.

8) How is the notion of “timely” implemented by the national legislation?

Timeliness with reference to the applicant means challenging a decision/act/omission within 75 days of its publication/authorisation or of becoming apparent. Timeliness also refers to the duration of a court case. If a hearing is completed and a decision is not delivered within six months, questions will be asked and the interested party may complain to the Supreme Court. In practice, all types of procedure take a very long time (except in Rent Tribunals and Family Courts concerning the interests of minors). There have been instances of recourse to the ECHR against the Cyprus Republic because of court delays, and it was held that such delays are in themselves a denial of justice and fines were imposed. Law N.2(1)/2010, based on Article 6 of the European Convention on Human Rights, provides a cause of action to seek compensation for an unreasonably delayed court decisions. A Supreme Court decision of 2019, M.D. Cyprus Soya v Attorney General, case no. 1/2018, suggests that it would also apply to delays in adjudication on appeal.

9) Is injunctive relief available? If yes, what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

General national rules would apply and an injunction is granted only in very exceptional circumstances (see 2.1.8).

10) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

The costs are principally the lawyer's fees and would be the same as for any other recourse to justice, around €1,500 depending on the complexity. While there are no specific safeguards against prohibitive costs, the issue does not actually arise, because the costs awarded by the court against a party are determined on the basis of the established judicial scales and do not necessarily represent the actual costs paid by the party to his/her lawyer. So the losing side will normally pay the costs of the other side according to the scales, or such part of them as the Court decides. In cases involving a private person or a non-profit organisation suing the state, Courts have decided that each side should pay its own costs. So, it is largely up to the court and will not be known in advance.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[4]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedure for adopting or the content of the decision, act or omission of the national regulatory act (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

Although the Aarhus Convention has been transposed into law, no specific piece of legislation has been passed regarding public participation, as has been the case with access to information. The practice of involving the public in law-making by enabling the participation of interest groups/ENGOs in parliamentary discussion or at the administrative level of preparing legislation or regulations is less formal. There is a published guide on good public participation practice which is used by government departments, but it is not a legal document so it would not give rise to rights unless specifically provided by enabling legislation.

It could be argued that since the Aarhus Convention is part of the Cypriot legislation, the relevant articles concerning participation apply ipso facto. This position was argued by the complainants' lawyer in case no 746/2019 Demetriou et al v. Limassol municipality, but the Administrative court considered the evidence conflicting and did not base its decision on this issue.

[1] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.

[2] See findings under ACCC/C/2010/54 for an example of a plan not submitted to SEA but subject to the public participation requirements of Article 7 of the Aarhus Convention.

[3] These fall within the scope of both Article 7 and Article 9(3) of the Aarhus Convention. See also relevant case-law of the Court of Justice of the European Union such as Case C-237/97, Janecek and cases such as Boxus and Solvay C-128/09-C-131/09 and C-182/10, as referred to under the Commission Notice C/2017/2616 on access to justice in environmental matters.

[4] Such acts come within the scope of Article 8 and Article 9(3) of the Aarhus Convention. An example of such an act concerns the decision of the national administration that featured in Case C-281/16, *Vereniging Hoekschewaards Landschap*, ECLI:EU:C:2017:774.

Last update: 26/07/2021