

# Questionnaire answered by the Supreme Court of Cyprus

## Climate Change in Legislation

### 1. How (if at all) has climate change and issues related to it been incorporated into legislation in your jurisdiction?

Cyprus Constitution does not explicitly grant a right to environmental protection or provide any legislation regarding climate changes since Cyprus constitution was adopted before the significance of climate change and its effects were widely understood.

However, national courts ruled that Article 7 of the Constitution, which provides that «1. Every person has the right to life and corporal integrity», incorporates each citizens' right for a healthy environment.

It must be noted that, Cyprus's environmental policy has undergone significant change only after Cyprus joined the EU and its obligation to increase align of national law with the *acquis communautaire*. So, Cyprus legislation regarding environmental issues derives mostly from Cyprus' obligation to align national laws, rules and procedures to *acquis communautaire*.

The Ministry of Agriculture, Rural Development and Environment is the competent authority for the formation and implementation of the governmental policy on environmental issues and also for drafting and presenting to parliament the relevant bills.

Moreover, the House of Parliament (individual MPs and committees) can also introduce bills on environmental issues provided that they do not increase total expenditure.

### 2. How do the structures of government affect legislation related to climate change?

In Cyprus, there is a clear separation of powers which is entrenched in the Constitution. So as mention above, Ministry of Agriculture, Rural Development and Environment is considered to be the competent authority to propose bills on environmental issues. House of Parliament has also the power to propose bills on environmental issues provided some conditions are fulfilled.

The Commissioner for the Environment is a senior independent state officer who is appointed by the President of the Republic and has also an important role on environmental issues. The Commissioner undertakes the following functions and activities: His primary objective is to contribute in maintaining and improving the quality of the environment in Cyprus through advice given to Parliament, local councils, business, communities and other public agencies. He submit recommendations to Ministries, on matters relating to the environment and the implementation of relevant policies and legislation, at the request of the Ministry or on his own initiative. Submit opinions on important proposals for amending the relevant laws or the adoption of new laws on environmental protection, or provides advice to Cabinet and/or any Minister regarding environmental issues

Monitors and collects information, prepares reports and statistics, records the annual environmental conditions and submit an annual report to the Ministerial Council with his comments and suggestions on the environmental policy/issues.

### **Climate Change Litigation**

#### **3. Can climate change laws in your jurisdiction serve as basis for judicial action?**

It must be noted that there is no explicit legislation regarding climate changes but there are environmental laws that are relevant to climate changes issues for example : (the Petroleum legislation, the Genetically Modified Microorganisms legislation, the Essential Requirements to be fulfilled by Specific Product Categories legislation, the Safety of Offshore Oil and Gas Operations legislation, the Chemical Substances legislation, the Control of Atmospheric Pollution legislation, the Air Quality legislation, The Protection from Ionising Radiation and Nuclear Safety legislation). Most of those laws are part of Cyprus obligation to align national laws, rules and procedures to *acquis communautaire*. These laws can serve as basis for judicial action provided that the legal conditions posed by the national legislation are fulfilled.

#### **4. Has climate change, and related issues, given rise to court cases in your jurisdictions?**

It must be noted, there seems to be no case regarding legislation on climate change issues. As yet, few cases have come before the courts regarding environmental issues, and in the few cases that have arisen, the environmental issues were peripheral rather than central.

Climate change will be treated in the courts much like any other environmental issue and doesn't result in the development of a climate change jurisprudence.

A breach of environmental laws may result in criminal, administrative or civil liability. Criminal liability is founded on several offences which involve breaches of environmental legislation, such as failure to obtain environmental permits, breach of conditions of permits, water pollution, soil pollution and waste disposal among others. Sentencing involves fines up to €500,000 or imprisonment for not more than three years, or both of these sanctions. Civil liability may arise under the law of torts and, in particular, the well-known case law developed in relation to the torts of nuisance. Claims are usually for damages, but the courts can also grant an injunction.

Article 146 of the Cyprus Constitution secures the right of any person affected by any decision of an administrative body to file an administrative recourse to the Administrative court. Article 146 provides that «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. ».

### **Climate Change Adjudication**

#### **5. How easily resolvable are the legal questions raised in these different cases?**

A plaintiff has the burden of establishing: (1) concrete and particularized injury to a protected interest, (2) causation, meaning the injury can be traced to the actions of the defendant, and (3) redressability, such that the remedy sought from the court would mitigate, alleviate, remedy, or repair the injury. Courts often apply the precautionary principle, which allows courts to consider the serious environmental risks posed by climate change, even though the exact harm is uncertain. Cyprus Courts haven't issued any preliminary ruling concerning climate change laws or to relate issues to the EU court because as mentioned there are not many cases regarding environmental issues and even in those cases difficult legal issues don't arise.

#### **6. How straightforward is the resolution of factual issues in cases on climate change?**

As already mentioned, there are not many cases regarding environmental issues and even those, don't raise difficult legal issues.

### **Climate Change and Access to Justice**

#### **7. Who are the parties bringing climate change actions?**

Courts cannot adjudicate claims unless plaintiffs have standing to bring a case. This means that plaintiffs have to prove injury, causation, and redressability.

Climate change litigation is largely comprised of private plaintiffs suing government defendants. Most citizen cases are not brought by environmental groups, but instead community groups and individuals, often property owners. Another category is the actions against individuals based on tort law

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**8. How do legal rules in relation to the bringing of an action affect the ability to bring these cases?**

In order to bring a case a plaintiff has the burden of establishing: (1) concrete and particularized injury to a protected interest, (2) causation, meaning the injury can be traced to the actions of the defendant, and (3) redressability, such that the remedy sought from the court would mitigate, alleviate, remedy, or repair the injury. On climate change cases is quite difficult to prove the fulfilment all of the above conditions since it effect embrace an international dimension. As far as the second condition concern, courts apply the precautionary principle, which allows them to consider the serious environmental risks posed by climate change, even though the exact harm is uncertain.

The cost rules don't affect climate change actions since they don't hinder litigants to bring a case in front of the court.

**Climate Change and Remedies**

**9. What is the range of remedies available to national courts in climate change cases?**

Cyprus Courts' have jurisdiction to award a wide range of remedies. Usual remedies awarded by the Courts are damages, declarations mandatory or prohibitory injunctions etc.

Climate change victims may wish to request a range of remedies from the courts, including declaratory orders, compensatory damages or injunctive relief. The remedies that courts will be prepared to issue will depend on the particular facts and circumstances of the case.

There are very strict rules and high financial penalties for violation of environmental laws (for example, for breach of the Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide there is a fine, to the person that fails to comply with the provision of the law, up to €500.000).

**10. What types of issues are raised about remedies in climate change cases?**

Cyprus law and judicial system is detailed and precise so the application of remedies in environmental cases is straightforward.

There is a clear distinction of what constitute private law and public law so there is no relationship between them that affects remedies in climate change related claims.

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