Eojourian & Georgiou LLC
Advocates and Legal Consultants
t: +357 – 22101785
w: www.eojgeo.com

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The New "Proposed" Civil Procedure Rules in the Republic of Cyprus

The Civil Procedure Rules came into during 1958 and were adopted in 1960, when the Republic of Cyprus was established; so, by now they are very old and out of date, since the legal profession relied on work on the English law prior to the Republic's civil procedure reforms.

As the law is a living instrument, it must evolve as the society does, to adapt with it and fulfil its needs to the maximum. Also, as the time was passing, it appeared that claims and defences were extremely lengthy and complex. Each case was taking a lot of time and a higher financial cost to complete, at a point where someone could consider that pursuing the case was not even worth it. These are matters directly connected to the procedural process and **have been identified as major causes of the backlog of civil cases**. Therefore, the Cypriot Judicial Authorities after recommendation of the Irish judicial experts appointed by the Republic, decided that it was time for them to act to modernize the Civil Procedure Rules (CPR). In collaboration with the European Union (EU) and the Council of Europe (COE), the Cypriot authorities commenced working on this project in June 2019, which was approved in May 2021 by the Supreme Court of Cyprus The implementation of these new CPRs are estimated to enter into force in September 2023.

To begin with, the courts have several administrative powers which are set out in Part 3 of the "Proposed Civil Procedure Rules", hereinafter the **"PCPRs"**. These powers aim to ensure the efficiency of the judicial process and can be exercised by the court "**ex officio**" (without waiting for an application from a party) unless otherwise provided by a regulation or the law. The court may take any other step or issue an order to handle the case and extend the primary purpose, including the implementation of actions aimed at assisting the parties in settling the case. If the parties fail to comply with the regulations or an order, they may have

to face some consequences, such as expenses, suspension of the proceedings or in extreme cases they may reject a part, if not the entire claim or defence.

Pre-trial protocols have been reformed regarding compensation. Examples are traffic accidents and damages/personal injuries. As for cases which are not covered by protocols, a procedure of pre-trial behaviour, which aims to reform the treatment of the parties towards each other before the initiation of judicial proceedings, is followed. Some protocols, which have been described as **"a very important part of the architecture of judicial proceedings''** help the parties co-operate with each other. This happens by mediation and by exchanging information with each other. Based on a pre-trial protocol, compliance or non-compliance can be considered by the court when case management directions are issued, as well as when making cost-orders. This creates a strong incentive for parties to engage in pre-litigation procedures and communication.

As for Part 8 of the PCPRs, it provides an alternative procedure which mainly concerns cases in which there may not be a material dispute of fact for any claim or application to which law of regulation provides as it is raised by summons petition or other initiating process. The claimant is required to register his written evidence at the time of registration of his claim. This is expected to be processed without the need to report a claim.

"Case file" is a term which includes a claim form and a statement of claim when those are not included in the claim or defence, and it is confirmed by a statement of truth. The plaintiff or the defendant signs the statement of truth (depending on the case). In some cases, the statement of truth must be signed by their lawyer.

"A witness statement" and a response in compliance with an order under regulation 19.1 of the PCPRs, to provide further information, shall also be confirmed by a lawyer, as well as any other document required by an order or direction. A further reason is to enable a statement of truth to be used as evidence in certain interlocutory proceedings, removing the need for a lawyer.

Part 25 of the PCPRs mentions the entitlements of the **"Interim Remedies"** where it provides a list of interim remedies that the court may grant. In an Appendix of Part 25 of the PCPRs, specimens of some complex orders are included (including order to appoint a receiver).

During the preliminary case stage, in accordance with the PCPR's, the courts will have the right to instruct any claim proceeds either as a small claim (for €10,000 or less) or an ordinary claim (for over €10,000).

As for small claims, special regulations are applied. (As mentioned above this is for claims regarding 10,000€ or less). This process is set out in Part 28 of the PCPRs. Its goal is to be faster, more efficient, cheaper, and relatively informal. Therefore, the application of Part 25 (interim remedies), Part 31 (disclosure), Part 32 (evidence), Part 19 (further information) and Part 37 (hearings) of the PCPRs regarding small claims is very limited.

Regarding the primary purpose the court may at any time, give directions whether a small claim shall proceed as an ordinary claim or the opposite, **"vice versa"**.

The case management session ensures that the real differences between the parties are determined, the judge ''actively'' manages the case in conference with the parties. The parties' duty is to ensure that all interlocutory issues are addressed during the case management session. During this stage, the court will give instructions for the subsequent conduct of the judicial process up to the trial and will establish a timetable for the steps to be taken for the expeditious disposal of the case. This happens to assist the court and to estimate how long the trial will last.

It is important to mention a point made by the Group of Experts, that **the setting of a realistic hearing date is to be held on consecutive days.** All users of the scheme should understand that such hearing dates can be postponed or can change, as a last resort and only under truly exceptional circumstances.

While the court gives procedural directions**, it will encourage the parties to use an alternative dispute resolution process, if it deems it appropriate**. Additionally, if a party fails to comply with a court order, the other party may apply for an order to comply or for a sanction, or both.

The Institutions Committee when drafting Part 31 of the PCPRs, decided to adopt the approach of the International Bar Association in relation to the rules of testimony. Lawyer members of the latter committee who have experience on the International Bar Rules, have found them to be less complex in their application than the English ones. Unlike the English approach, the proposed regulations require disclosure only on the documents that the parties' intent to rely. However, a party may ask the other party to disclose specific classes or documents if they believe that they are in their possession, control or power and are relevant to the case material and important for the outcome of the proceedings.

As for Part 34 of the PCPRs, **it is related to expert evidence to aid the court.** During the case management session, the court can order an expert to testify. The parties are not allowed to submit an experts report as evidence without the court's permission which shall be given as a written report, unless the court orders otherwise. The testimony must be an independent product of the expert's opinion and be unaffected in terms of its form and content by the requirements of the judicial process.

The expert must assist the court by providing an objective and unbiased opinion on matters within the scope of his expertise. **A party may ask written questions to an expert, who received an order from another party or even to a common expert, who was appointed, by virtue of regulation 34.8, regarding his report.**

Under Part 35 of the PCPRs, titled as **"Settlement Proposal"** the parties are encouraged to solve their disputes using Alternative Dispute Resolutions. In the Republic of Cyprus, it is expected that within the next few years the cases to be given to Arbitrators, a body well formed during the last years.

For instance, if a settlement offer is rejected the case proceeds to trial and the court awards an amount to the plaintiff which is less than the defendant's offer, the plaintiff should be expected to pay the defendant the costs incurred after the last date on which the proposal could be accepted by the plaintiff.

Similarly, if the plaintiff makes a settlement offer to the defendant, which the defendant rejects, and the court awards the plaintiff an amount equal to or greater than his offer, then the court may consider the defendant's refusal to accept the plaintiff's proposal.

Order 39.3 of the PCPRs, has been modified by deleting the phrase **«every affidavit shall be intituled in the cause or matter in which it is sworn;»** and replacing it with the phrase **«Each affidavit shall be titled with a reference to the cause or matter to which it relates, regardless of the time of swearing»**.

Parts 41,42 and 43 which are described as "**draft regulations''** of the Proposed Regulations and are related with the Court of Appeal, Commercial Court, Maritime Court, as the necessary underlying primary legislation do not exist yet. The New Regulations related to the Maritime Court follow England's legislation

As for the Court of Appeal and the Commercial Court, they are based on the current English legal rule procedures, as decided by the Expert Group which undertook this project. The European Order for Payment Procedure, the European Small Claims Procedure and Cross-Border Mediation, have been revised by the Institutions Committee and incorporated with their Appendices as Part 45 of the PCPRs.

As the Civil Procedure Rules have been very anachronistic and they could no longer keep up with the current society's needs, their reformation was a must. I strongly believe that **ALL THE CHANGES** proposed by the Cypriot authorities with the assistance of the Council of Europe and European Union were mandatory, to make the Cypriot Justice System more efficient, faster and at a reasonable cost.

Indeed, the Civil Procedure Rules are a shield of protection of the substantive rights. Without good knowledge and understanding of the civil procedures, one cannot effectively defend one's substantive claims. **For this reason, the Procedure Rules must be designed to provide a simple and a non-formalistic approach and any changes to this effect is more than welcome**.

Please contact us for any further assistance.

Sincerely,

EOJOURIAN & GEORGIOU LLC
[Author: Arsenia Sergidou]