

ORDINANCE 10 OF 2004

**AN ORDINANCE TO REFORM THE PROCEDURE FOR
AND AVAILABILITY OF JUDICIAL REVIEW AND FOR
RELATED MATTERS**

P. T. C. Pearson CBE
ADMINISTRATOR

5th April 2004.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

1. This Ordinance may be cited as the the Courts (Judicial Review) Ordinance 2004. Short title.

2. (1) In this Ordinance, unless the context otherwise requires— Interpretation.

“court-martial” means a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957;

United Kingdom
Acts, 1955 c18,
1955 c19, and 1957
c53.

“habeas corpus order” means a writ or order of habeas corpus;

“Judge” does not include an Associate Judge;

“judicial review order” means a habeas corpus order, a mandatory order, a prohibiting order or a quashing order;

“judicial review procedure” means the procedure laid down under section 9, or any equivalent procedure as may be substituted from time to time for that procedure;

“legislation of the Areas” means any—

(a) Ordinance made by the Administrator under section 4 of the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960,

United Kingdom
Statutory
Instrument No
1369 of 1960.

(b) Law of the former Colony of Cyprus adopted under section 5 of that Order in Council, and

(c) order, rules, regulations, scheme, warrant, byelaw or other subordinate instrument made under such an Ordinance or Law;

“mandatory order” means an order of mandamus;

“prohibiting order” means an order of prohibition;

“quashing order” means an order of certiorari;

“Standing Civilian Court” means a court established under section 6 of the Armed Forces Act 1976;

“statutory public activity” means any decision, action or failure to act in relation to the exercise or purported exercise of a public function which is imposed by any legislation of the Areas on any person or body other than the Senior Judge or the Senior Judge’s Court;

(2) In any enactment, whether enacted before or after this Ordinance—

- (a) any reference to a writ or order of habeas corpus, of mandamus, of prohibition or of certiorari shall be read as a reference to a habeas corpus order, a mandatory order, a prohibiting order, or a quashing order respectively; and
- (b) any references to the issue or award of any such writ or order shall be read as a reference to the making of the corresponding judicial review order.

3. (1) The Senior Judge’s Court shall have jurisdiction to make judicial review orders.

(2) Subject to subsection (5), the jurisdiction granted by subsection (1) above shall be the exclusive original jurisdiction.

(3) Every judicial review order shall be final, subject to any right of appeal and subject to subsection (8).

(4) Subsection (5) applies if and for so long as—

- (a) there is no Senior Judge present in the Areas and no Senior Judge is able to deal with proceedings under section 20A of the Courts Ordinance 1960; or
- (b) for any other reason there is no Senior Judge who is able to act.

(5) When this subsection applies, any Judge present in the Areas shall have jurisdiction, subject to subsection (6), to hear and determine an application for judicial review as if such Judge were a Senior Judge acting under the provisions of subsection (1).

(6) In respect of an application for judicial review which does not include an application for a habeas corpus order, a Judge shall only obtain jurisdiction under subsection (5) with the consent of a Senior Judge.

(7) Every order of any Judge issuing or refusing to issue a judicial review order under subsection (5) shall not be challengable in any way until a Senior Judge arrives in the Areas or assumes duty.

(8) A Senior Judge arriving in the Areas or assuming duty may on application by the Attorney General and Legal Adviser or by an

interested party set aside the order of the Judge and substitute any other order in exercise of his power under subsection (1).

(9) Section 19 of the Courts Ordinance 1960 is hereby amended by— Ordinance 3/60.

- (a) inserting at the beginning the words “In addition to its jurisdiction under section 3 of the Courts (Judicial Review) Ordinance 2004,”; and
- (b) deleting subsection (d) and the proviso following that subsection to the end of the section.

(10) The Mandamus Ordinance is hereby repealed.

Cap. 17 (Laws of Cyprus).
Grounds for Judicial Review.

4. Subject to section 5, the grounds on which a judicial review order may be made shall be those grounds on which for the time being the High Court of Justice in England and Wales has the power to make an equivalent order.

5. (1) In an application for judicial review to which this section applies, the court shall have the power to make a judicial review order on the ground of a material error of a purely factual nature.

Additional ground for Judicial Review.

(2) The ground set out in subsection (1) is in addition to any ground available under section 4.

(3) This section applies to an application for judicial review if—

- (a) the review is of a statutory public activity which is not an exempt activity as defined in section 8; and
- (b) the court is satisfied that it is necessary for it to consider the ground set out in subsection (1) in order for its review of the activity to achieve compliance with a Convention Right as defined in the Human Rights Ordinance 2004.

Ordinance 9/2004.

6. (1) This section applies to any statutory public activity which takes place after the date of coming into force of this Ordinance, but the authority for which is derived from legislation enacted before that date.

Subjection of existing statutory public activities to judicial review.

(2) Any activity to which this section applies may be reviewed by the courts by way of judicial review in accordance with this Ordinance, unless it is an exempt activity under section 8.

(3) Without prejudice to subsection (2), the Administrator may by Order amend any legislation of the Areas governing an activity to which this section applies so as to make specific provision for judicial review or appeals in relation to that activity.

(4) Any limitation imposed by any legislation of the Areas on the jurisdiction of the courts to review an activity to which this section applies shall only apply to any jurisdiction other than the jurisdiction to entertain applications for judicial review in accordance with this Ordinance.

(5) Subsection (4) shall not apply to any limitation—

- (a) consisting of preliminary steps required by the legislation before an application can be made for judicial review; or
- (b) imposed by or under this Ordinance or the Human Rights Ordinance 2004.

Ordinance 9/2004.

7. After section 26 of the Interpretation Ordinance there shall be inserted the following new section—

- Judicial review of
statutory public
activities
- Ordinance 10/2004.
- “26A (1) This section applies to any legislation of the Areas which—
- (a) gives authority for a statutory public activity as defined by section 2 of the Courts (Judicial Review) Ordinance 2004; and
 - (b) is enacted after the coming into force of that Ordinance.
- (2) In any legislation to which this section applies it is implied, unless the contrary intention appears expressly, that—
- (a) the activity concerned may be reviewed by the courts by way of judicial review in accordance with the Courts (Judicial Review) Ordinance 2004; and
 - (b) any limitation imposed by the legislation on the jurisdiction of the courts to review the activity only applies to any jurisdiction other than the jurisdiction to entertain applications for judicial review in accordance with that Ordinance.
- (3) Subsection (2)(b) shall not apply to any limitation consisting of preliminary steps required by the legislation before an application can be made for judicial review.
- (4) For the purposes of subsection (2) a contrary intention shall not be taken to appear expressly unless—
- (a) the activity has been made an exempt activity as defined by section 8 of the Courts (Judicial Review) Ordinance 2004; or
 - (b) such a contrary intention is necessarily drawn from the express words of the legislation notwithstanding that the activity has not been made exempt.”

8. (1) The Administrator may by Order declare that any statutory public activity shall, from the date of such publication or such later date as is provided for in the Order, be an exempt activity for the purposes of this Ordinance.

(2) Any legislation of the Areas creating or governing a statutory public activity may, by express reference to this section, make that activity an exempt activity for the purposes of this Ordinance.

(3) Any declaration under subsection (1), or any provision referred to in subsection (2), may be made subject to any express reservation but shall not otherwise be read as being subject to any implied reservation of any kind.

(4) To the extent that it constitutes a statutory public activity, the making of a declaration under subsection (1), or the passing of a provision referred to in subsection (2), shall itself be an exempt activity.

(5) Subject to subsection (6), no court shall have any supervisory or other jurisdiction (whether statutory or inherent) in relation to, or entertain proceedings for questioning (whether by way of appeal or by way of the judicial review procedure or otherwise), an exempt activity.

(6) Subsection (5) does not apply—

- (a) to any jurisdiction conferred by or resulting from the Human Rights Ordinance 2004;
- (b) to any jurisdiction preserved by any reservation made under subsection (4); or,
- (c) where the court is satisfied that significant evidence has been adduced of dishonesty or corruption by the person or body engaging in the activity, to any jurisdiction to review the activity for bad faith on that basis.

Ordinance 9/2004.

(7) Subsection (5) prevents any court, in particular, from entertaining proceedings, other than under a jurisdiction covered by subsection (6), to determine whether an exempt activity was unlawful or otherwise a nullity by reason of any of the following grounds—

- (a) lack of jurisdiction,
- (b) irregularity,
- (c) error of law,
- (d) breach of natural justice,
- (e) bad faith other than in the circumstances set out in subsection (6)(c), or
- (f) any other matter.

(8) The jurisdiction granted by section 3 shall not entitle any court to make a judicial review order in relation to the jurisdiction of a court-martial in matters relating to

- (a) trial by court-martial for an offence, or
- (b) appeals from a Standing Civilian Court.

9. (1) The Administrator, with the advice and approval of the Senior Judge, shall by Order substitute for Order 56 of the Civil Procedure Rules a new procedure for applications for judicial review orders, to be known as the judicial review procedure, and shall make any other consequential amendments to those Rules or to any other rules of court.

New judicial review procedure to replace Order 56 of Civil Procedure Rules S.L. Vol. II p.120.

(2) From the date of the coming into force of an Order under subsection (1), any application for a judicial review order shall only be made in accordance with the judicial review procedure.

10. (1) No application for a judicial review order under the judicial review procedure, other than a habeas corpus order, shall be heard unless the leave of the court has been obtained in accordance with rules of court. Without prejudice to the generality of the court's powers to refuse leave, or to refuse relief after granting leave—

Leave.

- (a) the court shall not grant leave unless it considers that the plaintiff has a sufficient interest in the matter to which the application relates;
- (b) the court shall not grant leave where it considers that the plaintiff should have pursued an alternative remedy;
- (c) the court shall not grant leave where it considers that the plaintiff could have used a right of appeal instead of

judicial review, unless it considers the circumstances to be exceptional; and

- (d) the court may refuse leave where it considers that there has been undue delay in issuing proceedings and that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration

(1) Subsection (1)(d) is without prejudice to any enactment or rule of court which has the effect of limiting the time within which an application for judicial review may be made.

Directions under quashing orders.

11. A court which makes a quashing order may remit the matter to the court, tribunal or authority concerned, with a direction to reconsider it and reach a decision in accordance with the findings of the reviewing court.

Damages, restitution and recovery of a sum due.

12. On an application under the judicial review procedure the court may award damages, restitution or the recovery of a sum due to the plaintiff if—

- (a) he has joined with his application an application for such a remedy arising from any matter to which the application for judicial review relates; and
- (b) the court is satisfied that, if the application had been made in an action begun by the plaintiff at the time of making his application under the judicial review procedure, he would have been awarded such a remedy.

Declarations and injunctions.

13. (1) The judicial review procedure may be used to apply for a declaration or injunction—

- (a) under the jurisdiction granted by subsection (2); or,
- (b) subject to subsection (4), under any other jurisdiction.

(1) The court, when entertaining judicial review proceedings, shall have jurisdiction to make a declaration or grant an injunction where the court considers that, having regard to—

- (a) the nature of the matters in respect of which relief may be granted by mandatory orders, prohibiting orders, or quashing orders;
- (b) the nature of the persons and bodies against whom relief may be granted by such orders; and
- (c) all the circumstances of the case,

it would be just and convenient for the declaration to be made or for the injunction to be granted, as the case may be.

(2) The jurisdiction under subsection (2) is without prejudice to—

- (a) any other jurisdiction of any court to grant a declaration or injunction; or
- (b) any right to use any procedure other than the judicial review procedure to apply for a declaration or injunction under any such other jurisdiction.

(3) The judicial review procedure may not be used to apply

for a declaration or injunction under any jurisdiction other than that granted by subsection (2), unless the application involves an application for review of the lawfulness of—

- (a) an enactment, or
- (b) a decision, action or failure to act in relation to the exercise or purported exercise of a public function.

14. This Ordinance shall come into force on the day of its publication in the Gazette. Commencement.

5th April 2004
(SBA/128/260)

P. D. Draycott,
Chief Officer.
