

Market Intelligence

DISPUTE RESOLUTION 2021

Global interview panel led by Simon Bushell of Seladore Legal

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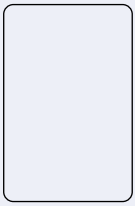

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Cyprus

Nicos Georgiades has been practising since 1988 and is a partner at Georgiades & Pelides LLC. He has a very strong litigation background, having acted for foreign governments, international banks and financial institutions, insurance companies and other international corporate and private clients. He specialises in large-scale international litigation and is considered a leading litigator in the urgent handling of cases requiring interim measures, including Mareva-type injunctions to freeze assets within the Cyprus jurisdiction. Nicos has advised the Cyprus Securities and Exchange Commission in relation to its most complex investigation, into the affairs of a public company listed on the Cyprus Stock Exchange.

Nicos is a barrister of the Middle Temple and is the co-author of the Cyprus chapter of *International Fraud & Asset Tracing*, published by Thompson Reuters (third edition, 2015).

Sotos Kasinos studied law at Queen Mary University of London and is a senior associate at Georgiades & Pelides LLC. He practises in all core areas of commercial litigation with a particular focus on complex contractual and tortious disputes, fraud and negligence claims, shareholder disputes, debt recoveries and foreclosures. He has experience in interim proceedings for urgent injunctions and freezing orders, acting both for claimants and defendants and he frequently acts and advises in cross-jurisdictional matters. Sotos also provides regular advice to financial institutions and corporations on various issues.

Sotos is a contributing editor to the Cyprus chapters in *Lexology GTDT: Complex Commercial Litigation 2020* and *Enforcement of Foreign Judgments 2020*.

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1 What are the most popular dispute resolution methods for clients in your jurisdiction? Is there a clear preference for a particular method in commercial disputes? What is the balance between litigation and arbitration? What are the advantages and disadvantages of the most popular dispute resolution methods?

Litigation is by far the most popular dispute resolution method in Cyprus. Alternative dispute resolutions such as arbitration and mediation are gradually becoming popular as well as they are considered to be efficient and quick alternatives. Arbitration is typically favoured for disputes requiring an arbitrator with special knowledge and expertise (eg, in construction disputes) and mediation usually for disputes where the parties have a genuine intention to find a compromise while maintaining their business relationship.

Litigation offers the advantage of direct enforceability of judgments, right of appeal and the possibility to obtain interim relief even against third parties. On the other hand, it is much slower and less flexible than alternative dispute resolutions.

2 Are there any recent trends in the formulation of applicable law clauses and dispute resolution clauses in your jurisdiction? What is contributing to those trends? How is the legal profession in your jurisdiction keeping up with these trends and clients' preferences? What effect has Brexit had on choice of law and jurisdiction clauses?

There are no recent trends in the formulation of applicable law clauses and dispute resolution clauses in Cyprus. It remains to be seen how Brexit will affect the choice of law and jurisdiction.

3 How competitive is the legal market in commercial contentious matters in your jurisdiction? Have there been recent changes affecting disputes lawyers in your jurisdiction? How is the trend towards 'niche' or specialist litigation firms reflected in your jurisdiction?

The Cypriot legal market in commercial contentious matters is becoming increasingly competitive as a result of global accounting firms and other emerging boutique law firms seeking to establish a commercial litigation presence. At the same time, there is a great increase in the number of lawyers entering the profession. The Cyprus Bar Association, recognising the need to maintain a high degree of specialism and competence among lawyers has recently made it mandatory for all registered lawyers to attend legal seminars and conferences regularly.

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Also, a specialised Commercial Court is expected to be established soon, which will exclusively hear disputes of a commercial nature involving claims of over €2 million. It is possible that a specialised Admiralty Court will be established, as well as a new Court of Appeals.

'Niche' and specialist litigation firms are not common in Cyprus and litigation firms deal with almost all aspects of commercial law.

4 What have been the most significant recent court cases and litigation topics in your jurisdiction?

An interesting, modified version of the conventional freezing order was sought and issued by the District Court of Larnaka the past year, the 'notification injunction' previously issued by the High Court of Justice in England.

This kind of injunction requires a defendant to notify the claimant before disposing or dealing with its assets. It is generally considered to be less intrusive than the conventional freezing order, a factor that is highly relevant when considering the overall justice and convenience of granting an injunction.

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"Interim procedures are particularly attractive for commercial clients who wish, for example, to apply for interim relief against an entity with assets within the jurisdiction."

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Recently, a global anti-enforcement injunction was also granted by the District Court of Limassol restraining a party from commencing judgment enforcement proceedings anywhere in the world.

Perhaps the most important judgment of the past year, which has sparked extensive debate across legal professionals, was the landmark ruling of the Supreme Court on the lawfulness of pay cuts on wages and pensions imposed by the government on civil servants during the 2013 economic crisis. While the Supreme Court acknowledged that both wages and pensions constitute 'property' and is protected by article 23 of the Constitution of Cyprus, which enshrines the right to property (and which cannot be restricted for the public benefit or for the public interest), the majority of the bench took the view that the right to property does not necessarily extend to the specific amount of one's wage. Accordingly, it was held that, since the pay cuts were imposed in circumstances of financial urgency and did not jeopardise the dignified living conditions of the applicants, they did not affect the 'core' of their property right, which remained intact. The pay cuts were, therefore, not unconstitutional.

5 What are clients' attitudes towards litigation in your national courts? How do clients perceive the cost, duration and the certainty of the legal process? How does this compare with attitudes to arbitral proceedings in your jurisdiction?

Clients' attitudes towards litigation before Cypriot national courts vary depending on the nature of their case and the precise procedures it is likely to trigger. For example, whereas a delay of between four and five years is generally observed for civil actions to be heard and decided, Cypriot courts are generally swift in hearing applications for interim relief, which is often a matter of a few days if granted without notice.

Interim procedures are particularly attractive for commercial clients who wish, for example, to apply for interim relief against an entity with assets within the jurisdiction. The interim relief to be granted may range from mandatory, prohibitory and freezing injunctions, to worldwide freezing and anti-suit injunctions, to disclosure, tracing, search and seizure, gagging and Chabra orders and to the appointment of an interim receiver. These interim procedures have been adopted as part of the accommodation of the English law of equity into the Cypriot legal system, and ordinary equitable principles, apply.

The possibility to obtain interim relief provide an important practical tool for claimants who, for example, seek to ensure potential enforcement of a judgment, to safeguard their interests by restraining wrongful acts or to seek an early out-of-court settlement of a dispute.

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Parties to commercial litigation in Cyprus can take advantage of a high degree of certainty, consistency and foreseeability as a result of an extensively codified legal system, the application of the principles of common law and equity, the fundamental principle of precedence, which applies in Cyprus, and the pretrial procedures, which confine allegations and claims to those already pleaded and evidence to those already produced in discovery.

The costs ordered by the court are relatively low, a factor that usually benefits an unsuccessful party.

Arbitral proceedings, on the other hand, enjoy the advantages of speed, confidentiality and flexibility. The parties have the freedom to agree on the procedural rules to be applied, to appoint experts as arbitrators and to avoid court delays.

6 Discuss any notable recent or upcoming reforms or initiatives affecting court proceedings in your jurisdiction.

The Supreme Court of Cyprus together with the Ministry of Justice are undertaking an ambitious programme of reforms to improve the court system, focusing on four main areas: court operations, judicial training, e-Justice and the Cypriot Rules of Civil Procedure (CPR).

A number of measures have been implemented already. Orders 25 and 30 of the CPR have been amended with the aim of reducing delays and improving efficiency by imposing stricter deadlines and by encouraging effective and substantial pretrial procedures, as well as alternative dispute resolutions. Also, a specialised Administrative Court has been established, replacing the Supreme Court with the aim of reducing its caseload and speed up the adjudication of appeals.

More radical reforms are, however, required and are indeed underway. A comprehensive amendment has been completed and it is expected to be announced soon in an attempt to deliver a more efficient and timely service to the parties and to provide the judge with the necessary tools, time and resources to actively manage a case and enforce compliance with rules and orders.

Most importantly, the covid-19 pandemic and the devastating restrictions to physical filings, made clear that lawyers and other parties should be able to submit files to the court electronically. Accordingly, the Ministry of Justice, the Supreme Court and the Cyprus Bar Association have put all their efforts into accelerating the implementation of a long-delayed electronic filing system (e-Justice), which has already been launched for testing.

It is expected that the introduction of e-Justice together with the reforms of the civil procedure rules will revolutionise the court process and make it much quicker and more efficient.

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7 What have been the most significant recent trends in arbitral proceedings in your jurisdiction?

Arbitration proceedings in Cyprus are primarily governed by the detailed provisions of the Arbitration Law (Cap. 4) and Law 101/1987 on international commercial arbitration, which reflects the UNCITRAL Model Law with some minor amendments. While professionals and lawyers have repeatedly asked for the amendment of the Arbitration Law, no plans to amend or reform the law have been initiated and there have been no significant recent trends in respect of these provisions.

8 What are the most significant recent developments in arbitration in your jurisdiction?

Recent amendments of the Cypriot Rules of Civil Procedure have placed a lot of emphasis on pretrial proceedings in an attempt to facilitate an effective and substantial case management at an early stage. In these early stages, a party may now request from the court that the claim is referred to arbitration or mediation,

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promoting, in this way, alternative dispute resolution, which is not well developed in Cyprus.

However, this amendment has not produced any positive results so far, since parties in Cyprus generally regard the courts as the primary mechanism for settling legal disputes. At the same time, the judiciary rarely encourages parties to consider arbitration or mediation and no sanctions are prescribed by the CPR for failure (or unreasonable failure) to refer a case to ADR mechanisms.

It is expected that the anticipated fundamental reform of the CPR discussed earlier will be much more effective in promoting ADR mechanisms.

In particular, it has been recommended that pre-action protocols must be adopted, which, inter alia, should instruct the parties to consider whether a form of ADR might enable them to settle their dispute without commencing court proceedings. In case of unreasonable non-compliance with the protocols, appropriate and deterring sanctions will need to be applied.

9 How popular is ADR as an alternative to litigation and arbitration in your jurisdiction? What are the current ADR trends? Do particular commercial sectors prefer or avoid ADR? Why?

Notwithstanding the establishment of a framework for the use of ADR pursuant to the Certain Aspects of Mediation in Civil Matters Law of 2012, the registration of hundreds of mediators with the Department of Justice and Public Order and the recent amendments to the CPR seeking to promote alternative dispute resolution, litigation remains the primary mechanism for settling legal disputes in Cyprus.

The local legal culture often exhibits an indolent resistance to embracing the full benefits of the mediation process. This is arguably reinforced by the provisions of the Mediation Law itself, which require the explicit consent of all parties in litigation before referring a court case to mediation and do not provide for sanctions in case a party unreasonably refuses. Thus, the use of mediation is subject to the absolute volition of the parties who may, in some cases, benefit from the delays and expenses that litigation entails and who commonly suffer from a misinformation gap regarding the potential benefits mediation may confer over the litigation process.

Mediation is mainly used for some banking disputes between debtors and cooperative institutions and for certain construction disputes. There are extensive ADR processes taking place in Cyprus between consumers and the banks in accordance with the provisions of Law 84(I)/2010 on the establishment and operation of a single agency for the out-of-court settlement of disputes of financial nature (financial ombudsman). Nevertheless, the decisions issued by the financial ombudsman are

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not binding unless accepted as such by the parties, which inevitably renders the process pointless.

Conciliation is, albeit more rarely, also used by parties to a dispute. Using this process, the parties may refer an issue for expert determination and an agreement is entered into whereby the parties agree to accept the expert's opinion. The agreement is enforceable as a private agreement and not as an arbitral award.

ADR is expected to become more popular once the anticipated amendments of the CPR are enacted (discussed in question 6), especially for disputes requiring speed, confidentiality and flexibility, special knowledge and expertise and where the parties have a genuine intention to find a compromise while maintaining their business relationship.

10 What is the position in relation to litigation funding in your jurisdiction? Is funding available? Have there been any significant developments in this area in your jurisdiction?

Cyprus is currently unfamiliar with third-party litigation funding. In the absence of a special framework regulating litigation funding, the common law rules against maintenance and champerty will most likely be applied. Accordingly, an agreement by one person to finance another's litigation in return for a share in the proceeds without having any genuine or substantial interest in the outcome of that litigation will amount to maintenance or champerty and will generally be deemed unenforceable and void.

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The Inside Track

What is the most interesting dispute you have worked on recently and why?

At the moment, we are preparing for the hearing of our application challenging the jurisdiction of the Cypriot courts to hear a multi-billion negligence claim brought by a foreign bank against their foreign and local auditors, in a case which raises novel and complicated questions of private international law and professional negligence.

We have also been working on a very interesting online defamation case concerning cryptocurrencies and cryptocurrency exchanges and the possibility of obtaining interim injunctions and disclosure orders against hosting internet service providers.

What do you consider to have been the most significant legal development or change in your jurisdiction of the past 10 years?

One significant development has been the establishment of a specialised Administrative Court and a specialised International Protection Administrative Court. The former has exclusive jurisdiction to adjudicate on first instance on all recourses submitted under article 146 of the Constitution, while the latter has exclusive jurisdiction to adjudicate on first instance on any recourse made to it by an asylum seeker against a decision, act or omission relating to the provisions of the Refugee Law.

Also, following the judgment of the European Court of Human Rights decision in *Nicholas v Cyprus*, which held that the applicant's doubts regarding the impartiality of a Supreme Court judge had been objectively justified and that the domestic law and practice did not provide sufficient procedural safeguards in this respect, the Supreme Court has adopted a judicial Code of Ethics with the aim of strengthening judicial integrity and avoiding potential conflict of interests.

What key changes do you foresee in relation to dispute resolution in the near future arising out of technological changes?

We expect that the introduction of e-Justice together with the reforms of the civil procedure rules will revolutionise the court process and enable the courts take full advantage of what technology has to offer. While information technology is an area that has been seriously underdeveloped in the Cypriot judicial system, it is hoped that this will soon change, especially in regard to case initiation and filings, pretrial directions and discovery, remote hearings, examinations and conferences.

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