Article 146 “Judicial Review of Administrative Action”

I. Judicial Review of Administrative Action under the Constitution

The Constitution introduced judicial review of administrative action as a separate jurisdiction distinguishable from every other judicial process. Article 146 institutionalizes judicial review of administrative action, i.e. action emanating from the exercise of executive or administrative authority in an all-embracing manner; a jurisdiction previously unknown to Cyprus law. The jurisdiction is founded on the continental prototype making judicial review of acts of the Administration a permanent feature of the judicial system and the system of government generally; a species of jurisdiction originating from France institutionalised in Napoleonic times, in the year 1799, as a bulwark against maladministration. The jurisdiction was entrusted to the Conseil d’État, an institution separate from the conventional branches of the Judiciary. The jurisprudence of the French Council of State played a major role in the development of the principles of administrative law in the continent of Europe and beyond. In addition to its judicial authority, an advisory role was acknowledged to the French Council of State to opine on
the acceptability of legal instruments to be issued or made. The advisory functions of the Council cannot properly be classified as judicial. The conferment of power upon a court of law to render advice to the other powers of the State, as distinct from pronouncing on the constitutionality or legality of their acts and decisions, is antithetical to the principle of separation of powers. By confining the competence and jurisdiction of the Supreme Constitutional Court of Cyprus to judicial review of action or inaction of the Administration, the purity of the system of separation of powers is preserved as well as that of the judicial process.

In the context of Cyprus’ constitutional order, judicial review became a potent instrument for the protection of the fundamental rights and liberties of man duly incorporated in the Constitution. As earlier indicated, Article 35, the last Article of the Part safeguarding human rights, imposes a direct obligation upon all authorities of the State not only to heed human rights in the exercise of their powers but to secure their “efficient application” too; casting a positive duty upon the Administration to give expression to them in its entire field of action.

Judicial review of administrative action as a separate branch of substantive and procedural law was unknown to English law at the time of Cyprus’ independence. Such limited amenity as was available to the ordinary courts of law to oversee the legality of the administrative process derived from jurisdiction to grant writs known as prerogative writs\textsuperscript{296} (mandamus, certiorari, prohibition, quo warranto) primarily intended to ensure that organs of government acted in specified situations in conformity with the law and within the boundaries of their jurisdiction.

Judicial review of administrative action enriched the armoury of the law for the sustenance of the rule of law. Under colonial legislation, the legal means available for the protection of one’s rights were limited to those provided for by civil and criminal law. Public law rights other than those deriving from criminal law were not acknowledged to a person except rights associated with protection against arbitrary detention for which the writ of habeas corpus was available. The effect of Article 146 was to render public law rights justiciable at the instance of a person or body whose legitimate interests were prejudicially affected by action or inaction of the Administration.

\textsuperscript{296} Emanating from the Crown.