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Cyprus: Affordability and Accessibility of the Civil Justice System

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Abstract

In determining the accessibility and affordability of the civil justice system, this article will evaluate the costs regime and litigation funding available in Cyprus in light of the recent proposed reforms to the civil procedure rules. At the time of writing, civil cases in Cyprus are ranked according to their value and governed by fixed costs rules depending on the scale of the claim. Litigation funding, such as legal aid, is available only if the civil case involves the infringement of human rights and is granted under specific circumstances. Furthermore, third-party funding and contingency fees are practically unheard of, as they remain unregulated by the Cypriot legislation. Third-party litigation funding has only recently been examined by the national courts albeit in the context of an application for the setting aside of an order enforcing a foreign judgment. Is the Cypriot civil justice system affordable and thus accessible? Does limited access to legal aid and third-party funding result in violation of the right to access to justice? Will the civil justice reform improve accessibility for litigants? A holistic answer will be achieved by drawing comparisons with costs and litigation funding practices in England and Wales, as well as in Germany, both of which are leading jurisdictions in Europe and especially influential owing to their geopolitical history with the island, representing the common law and civil law systems, respectively.

Keywords: Cyprus, accessibility, affordability, costs, legal aid, civil procedure.

1 Introduction

The civil justice system is fundamental to any democratic society as it impacts a wide spectrum of daily interactions, from contractual agreements and commercial arrangements to family relationships and their breakdown. It is no secret that civil justice comes at a cost, but the question remains whether this cost acts as a deterrent to exercising the fundamental right of accessing justice.

Considering that the average length of a first instance civil trial in Cyprus is ranging from 600 to almost 1,200 days,[1] time *is* money and money *is* justice for litigants on the island, as the cost of litigation lies at the heart of effective access to justice. At the time of writing, civil cases in Cyprus are ranked according to their value and governed by fixed costs regimes depending on the scale of the claim.[2] Litigation funding, such as legal aid, is available only under specific circumstances and for specific types of claims,[3] whereas third-party funding is practically unheard of.[4] In determining the accessibility and affordability of the Cypriot civil justice system, this article will evaluate the costs regime of Cyprus in light of the recently proposed reforms to the civil procedure rules,[5] as well as the right to legal aid and availability of third-party funding, by drawing parallels with two jurisdictions in Europe that are highly influential owing to their geopolitical history with the island, England and Wales and Germany.

The connection between the justice systems of Cyprus and England and Wales is undeniable, considering that the former has stemmed from the latter; however, since it became a member state of the European Union, Cyprus' justice system has been considerably influenced by European Law, which under Article 1A of the Cypriot Constitution is now superior to national law. Considering Brexit and Cyprus' continual commitment to the European Union, a comparison with Germany's civil justice system is also appropriate given Germany's central role in the European Union.[6] A comparison between these two leading jurisdictions in Europe, representing the common law and civil law systems, respectively, is also appropriate given that the justice system in Cyprus is considered by some as a hybrid, with private law based on common law principles codified in statutes and public law deriving from the island's continental tradition.[7]

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1 EU Commission, 'The 2020 EU Justice Scoreboard' COM (2020) 306; EU Commission, 'The 2021 EU Justice Scoreboard' COM (2021) 17.
2 Appendix B, Cyprus Civil Procedure Rules.
3 Cyprus Legal Aid Legislation (N. 165(I)/2002).
4 S. Pavlou, C. Nicolaou, K. Philippidou, A. Antoniou & A. Patsalidou, 'Litigation and Enforcement in Cyprus: Overview', *Practical Law Country Q&A* 7-502-0202 (2021).
5 Supreme Court of Cyprus, Civil Procedure Rules (Proposed) (26 November 2020). www.supremecourt.gov.cy/Judicial/SC.nsf/All/6305B22D4879980CC22586F8002A979A/$file/FULL%20VERSION%20CPR.pdf (last visited 19 March 2022).
6 N. Kyriakides, 'Civil Procedure Reform in Cyprus: Looking to England and Beyond', *Oxford University Commonwealth Law Journal* 16(2) (2016); Procedural Regulation (No 1) of 2003 on Legal Aid.
7 The main difference between a common and a civil legal system is the importance of legal precedent in the common law system, whereas in a civil law system codified statutes predominate. Although Cyprus has per-

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2 Costs

The civil procedure rules were first introduced in Cyprus during the British rule and follow the English White Book of 1954.[8] More than 65 years since, the civil procedure rules remain mostly intact, with partial amendments and reforms in 2016, predominantly in relation to Order 25, which provides for the amendment of court pleadings at different stages of the claim, and Order 30, which outlines the framework for a summons for directions.[9] The Republic of Cyprus is currently in the process of reorganising and improving the Cypriot judicial system as part of the Economic Adjustment Programme (EAP) following the economic crisis of 2012. The Supreme Court of the Republic of Cyprus, with the support of the Structural Reform Support Service (SRSS) of the European Commission, undertook the 'ambitious' project of reviewing and reforming the civil procedure rules in their totality, with the help of the Institute of Public Administration (IPA), Dublin.[10] The proposed draft of the new rules was approved by the Supreme Court of Cyprus in May 2021 and is due to come into effect by 1 September 2023.[11]

2.1 Costs in Civil Legal Proceedings: 1954-2022

At the time of writing, for *inter alia* costs purposes, civil cases in Cyprus are classified in different scales depending on the value of the claim as pleaded or determined by the court.[12] Currently, there are eight scales under which a claim may fall, the first being for claims valued at up to € 500 and the last for claims over € 2 million.[13] The general rule is that 'costs follow the event', meaning that the unsuccessful party will be responsible for covering the successful party's costs; however, the final decision as to the costs order remains with the court under Order 59 and Article 43 of Law 14/1960 on the Courts of Justice. Once the Court decides which party will pay, the court registrar is responsible for assessing the costs based on a bill submitted by the successful litigant and using the fixed costs listed in Appendix B of the civil procedure rules. This assessment exercise by the registrar has been viewed by the Court as being of a judicial nature.[14] The registrar certifies the amount of costs, which is then approved by the Court and can be executed as a court order.

The amount of recoverable costs for all judicial activities is listed under the specific scale in which the claim falls. For each specific action that was undertaken during the litigation process, namely preparation of writs, filing of pleadings or interim applications, appearances before the Court, there is a corresponding set amount that cannot be disputed. When assessing the costs bill, the registrar will consider whether all actions taken were necessary and proper for the purposes of litigation, and in the interest of justice, or whether the party has unnecessarily complicated matters during case preparation.[15] Notably, private fee agreements made between the parties and their lawyers are not calculated in the final costs order, meaning that the recoverable costs do not reflect what the parties pay for in reality.[16]

In terms of transparency, while the fixed costs system operating in Cyprus has been seen as sufficient, criticism has been directed against the lack of widely and easily accessible information on costs and the difficulty this creates for parties that are not legally represented when assessing whether to initiate a civil action. This lack of easily accessible information, which despite the efforts of the Cyprus Bar Association and the introduction of online legal information platforms persists to an extent, increases the reliance on lawyers and can in turn be seen to increase costs from the outset.[17] It should be highlighted that according to the Advocate's Law (Cap. 2) and the Advocates' Code of Conduct (which every legal professional in the island has to abide by), when there is no written agreement between the lawyer and the client as to the fees, the lawyers *must* 'inform their client of the approximate requested fees, the amount of which must be fair, justified and reasonable under the circumstances'.[18]

The consequence of front-loading of costs was also discussed by the Expert Group appointed to review the CPR Rules, in relation to Order 30, which compels parties to take certain procedural steps at the outset of a case even though the said case might settle before trial. Although Order 30 was amended in 2016 in an attempt to improve case management and accelerate the litigation process, it is now seen as creating 'more problems than it solves'.[19] Order 30 introduced the procedure for sum-

haps the most elaborate codified Constitution, case law has precedential authority, and it is therefore important to use both a common law jurisdiction and a civil law jurisdiction for comparison. N.E. Hatzimihail, 'Cyprus as a Mixed Legal System', 6 *Journal of Civil Law Studies* (2013). https://digitalcommons.law.lsu.edu/jcls/vol6/iss1/3 (last visited 19 March 2020).

8 C. Clerides, 'Civil Procedure' (European University Cyprus, 25 November 2009). www.clerideslegal.com/article/civil-procedure-lecture-7 (last visited 26 September 2021).

9 For more see Kyriakides, above n. 6.

10 IPA, 'Progress Report on the Review of the Rules of Civil Procedure of Cyprus', June 2018.

11 It is important to note that initially the proposed rules would be introduced by September 2022; however, this deadline was pushed back. Supreme Court of the Republic of Cyprus, News and Announcements, 18 June 2021. www.supremecourt.gov.cy/Judicial/SC.nsf/All/3C14E6251DEC1DEFC22586F80027A8AA?OpenDocument (last visited 26 September 2021) (in Greek); IPA, 'Courts Reform in Cyprus: Final Report on Key Performance Indicator Matrix', 14 January 2022. www.supremecourt.gov.cy/Judicial/sc.nsf/All/0CBDCD9EB9C96BC1C22587D50030C44F/$file/Final%20Report%20on%20KPI%20Matrix%20Cyprus%20Courts%20Change%20Management%2020%20January%202022.pdf (last visited 19 March 2022).

12 Kyriakides, above n. 6, at 26; Cyprus Civil Procedure Rules.

13 Cyprus Bar Association, News and Announcements, 'Scales Lawyer's Costs from 24/10/2017'. www.cyprusbarassociation.org/index.php/el/news/817-24-10-2017 (last visited 26 September 2021) (in Greek).

14 *Georgiades* v. *The Council of Ministers* (1999) 3 CLR 35; J. Albert, *Study on the Transparency of Costs of Civil Judicial Proceedings in the European Union – Country Report Cyprus* (European Commission Directorate-General for Justice, Freedom and Security, 2007), 14.

15 *Ibid*., at 27.

16 Pavlou et al., above n. 4.

17 Albert, above n. 14, at 17-18.

18 Advocates' Code of Conduct, Rule 26(2).

19 IPA, above n. 10, at 11.

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mons for directions as well as a two-tier system on the basis of the value of a claim (below and above € 3.000) and has vested the court with increased case management powers. In terms of costs, Order 30 introduced the requirement that for actions that have been dismissed for failure of issuing a summons for directions to be reinstated, costs must firstly be paid. In practice, this provision allows defendants to hold claims hostage; if defendants refuse to submit a bill of costs to the registrar, costs cannot be assessed, and the action cannot be reinstated.[20] Order 30.9, which can be seen as an attempt to mirror the 'overriding objective' principle of England and Wales, preserves the Court's discretion in making case management orders to save time and costs and to ensure that the parties are on an equal footing. However, in practice Order 30.9 has not been utilised by the Courts and is significantly narrower in scope than the 'overriding objective', a principle that is now extensively included in the proposed civil procedure rules.

2.2 Other Jurisdictions

2.2.1 England and Wales

With regard to the case of England and Wales, two major reports that were produced in 1996 and 2009 by Woolf and Jackson, respectively,[21] identified that the cost of litigation is merely a symptom of wider issues in civil procedure.[22] The Civil Procedure Rules were therefore drastically reformed, introducing the notion of the overriding objective in dealing with cases justly and at *proportionate* cost and giving the court greater case management powers.[23] The proportionality assessment in terms of costs is twofold; first, there is a global assessment of costs driven by the conduct of parties, preparation time, knowledge and skill needed, etc. Secondly, there is an individual assessment for each amount of costs sought on the standard basis.[24] The Court has the power to sanction parties for unreasonable conduct by undertaking the individual assessment of costs on the indemnity basis considering whether an amount is reasonable.[25]

In a further attempt to curb the length of litigation or even reduce the number of cases in need of litigation, parties are required to engage in pre-action disclosure and negotiation through the Pre-action Protocols designed.[26] The Court also has a duty to encourage parties to engage in alternative dispute resolution (ADR), even after the commencement of an action.[27]

Unlike Cyprus, England and Wales operates a fixed costs regime only for claims on the small claims track[28] or claims on the fast track that are governed by the Pre-Action Protocols in relation to road traffic accidents, low-value personal injury arising from road traffic accidents and employer's liability.[29] In multitrack claims the Court, together with the parties, undertake a cost-budgeting exercise before trial so as to constrain spending by capping recoverable costs.[30] Moreover, to increase access to justice, for proceedings that include a claim for damages for personal injuries or arising from a fatal accident, qualified one-way costs shifting (QOCS) was introduced with the reforms of 2013 so as to protect an unsuccessful claimant from costs consequences.[31] Conditional fee arrangements (CFAs) as well as no fee damages-based agreements (DBAs) were also introduced so as to give litigants funding options in initiating their claims. In contrast, such fee agreements are prohibited in Cyprus, as they are 'contrary to the principle of champerty'.[32]

Parties also have the opportunity to use Part 36 of the Civil Procedure Rules and make an offer to settle before or after the commencement of proceedings.[33] The said offer needs to be a genuine offer to settle, to be made 'without prejudice except as to costs', and to comply with the strict requirements of the rules contained within Part 36.[34] The tactical advantage in making a Part 36 offer is that a party that refuses a reasonable offer and chooses to carry on with litigation, failing to obtain a more favourable judgment, faces costs consequences.[35] Overall, the use of costs as a sanction creates a balance between the parties' incentives in bringing claims to Court; it encourages settlement and deters unreasonable conduct.

2.2.2 Germany

Even though Germany, like Cyprus, operates on a system of fixed costs, it is perceived as one of the most cost-efficient jurisdictions in Europe.[36] The costs regime in Germany was reformed in 2004 and is now extensively codified in German legislation, making it highly transparent and easily accessible to prospective litigants.[37] In fact, there are three cardinal pieces of legislation that seek to regulate the costs of litigation in Germany; a) the German Code of Civil Procedure (Zivilprozessordnung) (ZPO), b) the Court Fees Act (Gerichtskostengesetz) (GKG) in combination with its annexes, and c) the Costs Act (Kostenordnug) (KostO).[38] Title 5 of the ZPO

20 *Ibid.*
21 Lord Woolf, *Access to Justice: Final Report* (Her Majesty's Stationery Office 1996); R. Jackson, *Review of Civil Litigation Costs: Final Report* (2009).
22 E. Booth, 'The Cost of Civil Justice: Time for Review or Revolution?' 161 *New Law Journal* 6 (2011).
23 White Book 2021, Volume I, Section A: Civil Procedure Rules 1998, Parts 1 and 3.
24 *Ibid.*, Part 44.
25 *Ibid.*, Part 44.4.
26 White Book 2021, Volume I, Section C: Pre-Action Conduct and Protocols.
27 White Book 2021, Volume I, Section A: Civil Procedure Rules 1998, Part 26.
28 *Ibid.*, Part 27.14.
29 *Ibid.*, Part 45.
30 *Ibid.*, Part 29.
31 *Ibid.*, Part. 44.13-16.
32 Pavlou et al., above n. 4.
33 White Book 2021, Volume I, Section A: Civil Procedure Rules 1998, Part 36.
34 *Ibid.*, Part 36.5.
35 *Ibid.*, Part 36.17.
36 Kyriakides, above n. 6, at 27.
37 B. Hess and R. Huebner, 'Cost and Fee Allocation in Civil Procedure: National Report for Germany' (International Academy of Comparative Law, 18th World Congress Washington DC, July 2010) 9.
38 Albert, above n. 14, at 19.

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provides the general costs principles that govern civil litigation,[39] whereas the GKG is used for the calculation of costs in terms of court fees based on the value of the claim.[40] The type of claim or the stage of the proceedings also affects the fee payable to the Court, which is then multiplied to reflect the specific type/stage of the claim; for example, the Court fee for maintenance-related conflicts within the sphere of family law is three times the corresponding rate set out in Annex 2.[41]

Lawyers' fees operate on a similar basis and are regulated by the German Lawyers' Remuneration Act (Rechtsanwaltsvergütungsgesetz) (RVG). The RVG stipulates that the fees are calculated according to the value and type of claim before the Court, but higher fees can be agreed with the client.[42] Notably, contingency fees in Germany are used only in an attempt to increase access to justice when a party would have no other way of bringing their claim to Court.[43]

There is a stark difference between the calculation of costs and fees in Germany and that of Cyprus, as the activities undertaken as part of the action are not charged separately. Both the trial costs and the advocate's fees are calculated for the action, or trial, as a whole.[44] This in turn prevents lawyers from overcomplicating proceedings in an attempt to ramp up costs, thereby ensuring the efficiency of litigation. Another major difference between the two jurisdictions is that the German costs system has been structured in a way that encourages settlement; not only are court charges lower if litigation is not pursued, but lawyers also receive an additional fee in the event of settlement.[45]

The rules of evidence in Germany also assist in the efficiency of litigation, thus exhibiting that the legal system in its entirety is driven by cost and time saving. The fact that claimants ought to identify and/or provide the evidence on which they base their claim from the outset makes it easier for the Court, which plays an inquisitorial role, and even the parties themselves, to identify whether or not a claim is valid and ought to continue down the path of litigation.[46] This leading role of the Court in light of the absence of 'pretrial disclosure' means that evidence gathering and fact finding is only done once, and only if the Judge deems it necessary to explore the issue in question.[47] In fact, it is common practice for the Court to intervene in order to motivate the parties to settle, more specifically through the so-called conciliation hearing.[48] It is not unheard of for judges in Germany to give early indications of the case outcome in an attempt to demotivate parties from pursuing their action, thereby avoiding the risk of unnecessary and prolonged court proceedings.[49]

2.3 Reform – What Does the Future Hold for Cyprus in Terms of Costs?

As already noted, there has been a movement in recent years stemming from the EU as well as legal professionals, pushing for a wide range of reforms in the justice system extending beyond the civil procedure rules. One example of this is the introduction of electronic justice through 'i-Justice', an online court filing platform that also enables electronic communications between the parties and the Court. While this is undeniably a step towards establishing a modern, 21st century-appropriate justice system, it is questionable whether in the short run there will be any positive effect on the access to justice. On the contrary, even though one would expect that electronic filing and communication would carry lower operating costs, which would then be reflected on the fees payable to Court, there has been no change to the said fees. Furthermore, lack of training and information campaigns means that litigants, especially the ones without legal representation, might not be able to use the i-Justice platform, either for want of resources or for want of technological knowledge and familiarity, resulting in an additional hurdle in accessing the Court and in turn justice.

Turning to the civil procedure rules, the proposed new rules drafted with the help of Experts led by The Rt. Hon. Lord John Dyson, have been approved by the Supreme Court of Cyprus with a view of coming into effect by 1 September 2023. It comes as no surprise that these new rules are heavily based on, or even mirror, the Civil Procedure Rules of England and Wales.

First and foremost, the overriding objective will now also be the guiding light for the civil courts in Cyprus, who will not only have to ensure that cases are dealt with justly and at proportionate cost, but will also have a duty to encourage parties to engage in ADR.[50] While some may argue that litigation proceedings were already or at least ought to have been carried out in the spirit of proportionality, the codification of the overriding objective is undoubtedly a novel concept, with which all legal professionals on the island will have to become accustomed.

Three Pre-Action Protocols will also come into effect guiding the parties' conduct before the commencement of proceedings, specifically in claims where a specified sum of money is being sought, in claims relating to road

39 The Code of Civil Procedure of Germany. www.gesetze-im-internet.de/zpo/ (last visited 26 September 2021) (in English).

40 Court Fees Act (GKG), Art. 3. Annex 2 of the GKG, contains a table that provides the fee payable to the court to initiate a civil claim according to the value pleaded. Court Fees Act (GKG), Annex 2. www.gesetze-im-internet.de/gkg_2004/anlage_2.html (last visited 26 September 2021).

41 European Justice, 'Costs: Germany' (last update 4 November 2020). https://e-justice.europa.eu/content_costs_of_proceedings-37-de-maximizeMS-en.do?member=1 (last visited 26 September 2021).

42 Albert, above n. 14, at 26-29.

43 RVG, Art. 4A.

44 Kyriakides, above n. 6, at 28.

45 B. Hess and R. Huebner, 'National Report for Germany', in M. Reimann (ed.), *Cost and Fee Allocation in Civil Procedure* (2010) 7.

46 J. Langbein, 'The German Advantage in Civil Procedure', 52(4) *University of Chicago Law Review* 823, at 827(1985). https://chicagounbound.uchicago.edu/uclrev/vol52/iss4/1/ (last visited 29 September 2021).

47 *Ibid*., at 831.

48 A. Reeg and M. Weiß, 'Litigation and Enforcement in Germany: Overview' (2021). https://uk.practicallaw.thomsonreuters.com/1-502-0728?transitionType=Default&contextData=(sc.Default)&firstPage=true (last visited 29 September 2021).

49 ZPO Art. 139; Langbein, above n. 46, at 832.

50 Proposed Civil Procedure Rules, above n. 5, Part 1, at 16-17.

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traffic accident as well as personal injury.[51] As discussed previously in the context of England and Wales, the introduction of the Pre-Action Protocols can be seen as an attempt to limit the number of litigated claims and reduce costs by encouraging settlement. The Court will have the power to impose costs sanctions on parties that fail to comply with the Pre-Action Protocols.[52] However, it should be noted that when these protocols were introduced in England and Wales they were criticised by scholars as having the effect of over-complicating proceedings and front-loading costs.[53] It, of course, remains to be seen how and to what extent these Pre-Action Protocols will be used by prospective litigants in Cyprus and the effect this will have on the number of litigated claims.

Notably, the new rules will also place the Court under a duty to restrict expert evidence to prevent parties from incurring unnecessary costs.[54] This is of particular importance considering that, so far, litigants in civil claims have retained absolute discretion as to the number of experts used during trial, something that undeniably affects costs considerably. In addition, Part 35 of the new rules introduces the concept of 'offers to settle',[55] which, as discussed previously, act as an incentive for litigants to accept reasonable offers to avoid costs sanctions in the event of an unfavourable judgment.

The main difference between the new civil procedure rules of Cyprus and those of England and Wales is the creation of only two tracks under which a claim may fall – a small claims track for claims under € 10,000 and the 'customary claims' track for claims over € 10,000. In terms of costs, the fixed costs regime will continue to operate in Cyprus for all claims, irrespective of their value. The codification of costs procedure in Part 39 of the new rules and the inclusion of the table of costs as an Annex will provide the long-awaited transparency and will in turn improve access to justice for litigants, who will now be able to make informed assessments on the cost of litigation before deciding whether to issue a claim. The new rules will also include a provision on wasted costs, which is expected to address any concerns related to the over-complication of proceedings by lawyers.[56]

Ultimately, a quick glance through the almost 700-page long text of the proposed rules is enough to give hope to the optimists among us, that a more efficient and affordable civil legal system is in sight, yet also to raise doubts as to how they will be utilised by judges and lawyers combined to ensure their effectiveness.

51 *Ibid*., Part 3, Annex I, at 33-43.
52 *Ibid*., Part 3.10, at 29.
53 A.A.S. Zuckerman, 'Lord Woolf's Access to Justice: Plus ca Change…', 59(6) *The Modern Law Review* 779 (1996).
54 *Ibid*., Part 34, at 204.
55 *Ibid*., Part 35, at 211. This part essentially mirrors Part 36 of the Civil Procedure Rules of England and Wales discussed previously.
56 *Ibid*., Part 39.10, at 229. Zuckerman, above n. 53, at 773.

3 Legal Aid

3.1 Normative Underpinnings

For justice to be delivered, proceedings need to be initiated. Legal aid is a precondition for people who lack financial resources to have access to justice, as in the absence of such right, judicial remedies would be available only to individuals in possession of the financial resources needed for the initiation and/or continuation of the legal procedure.[57]

The right to fair trial, enshrined in Article 6 of the European Convention on Human Rights (ECHR), constitutes a *sine qua non* for a person's access to justice.[58] However, the affordability of the procedures before the Court, including legal advice, and the relevant submissions of pleadings, as well as lawyers' fees, can be a substantive financial burden, which might result in a person's inability to access legal advice, assistance and representation.[59]

The significance of a right to legal aid lies in the fact that, once granted, it enables the individual to gain access to justice and provides financial support throughout the court procedure. In *Airey* v. *Ireland (1979)*, the European Court of Human Rights (ECtHR) recognised that Article 6 of the ECHR includes a right to legal aid for civil cases.[60] Specifically, it noted that despite the absence of an explicit clause for civil litigation in Article 6, the state may be sometimes compelled to provide the assistance of a lawyer, when such assistance proves indispensable for an effective access to court, either because legal representation is rendered compulsory or because of the complexity of the procedure of the case.[61] Furthermore, whether or not Article 6 of the ECHR requires the provision of legal representation is a matter of facts,[62] and the test applied is whether the lack of legal aid deprives the individual's right to fair trial, and particularly of their opportunity to present their case effectively before the court.[63] Nevertheless, the Court clarified that Article 6(1) of the ECHR does not imply that the state must provide free legal aid for every dispute arising out of a civil right.[64] Additionally, according to *Del Sol* v. *France (2002)*,[65] the ECtHR noted that states have the discretion to decide the procedure for granting

57 F. Francioni, 'The Rights of Access to Justice under Customary International Law', in F. Francioni (ed.), *Access to Justice as a Human Right* (2007) 2.
58 *See*, B. Rainey, E. Wicks, C. Ovey (eds), *The European Convention on Human Rights*, 8th ed. (2020) 277-308; S. Treschel, 'Why Must Trials Be Fair', 31(1-3) *Israel Law Review* 94-119 (1997).
59 *See*, C. Paraskeva, *Cypriot Constitutional Law: Fundamental Rights and Freedoms* (2015) 500; S. Rice, 'Reasoning a Human Right to Legal Aid', Legal Studies Research Paper No. 17/72 Sydney Law School 3 (2017).
60 *See*, Francioni, above n. 57, at 1-56.
61 ECtHR, *Airey* v. *Ireland* (1979), App. No. 6289/73.
62 ECtHR, *McVicar* v. *the United Kingdom*, App. No. 46311/99, 7 May 2002, para. 48; ECtHR, *Steel and Morris* v. *the United Kingdom*, App. No. 68416/01, 15 February 2005, para. 61.
63 ECtHR, *Steel and Morris* v. *the United Kingdom*, App. No. 68416/01, 15 February 2005, para. 72.
64 ECtHR, *Airey* v. *Ireland*, App. No. 6289/73, 1979, para. 26.
65 ECtHR, *Del Sol* v. *France*, App. No. 46800/99, 26/02/2002.

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such right, given that this procedure is always proportional and respects the party's right to access the court.

3.2 Overview of Legal Aid in Cyprus

The right to a fair trial in Cyprus is enshrined in Article 30 of the Cypriot Constitution,[66] which states that '*every person is entitled to a fair and public hearing*'.[67] This Article corresponds to Article 6 of the ECHR, and the interpretation of the latter is applied to the former, by virtue of the Law on Ratifying the European Convention on Human Rights and the Additional Protocol, L. 39/1962.

In *Fatsita* v. *Fatsita (1988)*,[68] the Supreme Court of Cyprus accepted that the right to fair trial can be regulated in legislation. Specifically, it noted that '*[t]he guarantee of the right of access to the Courts does not debar the legislature from providing for some sort of regulation of this right, provided that the regulatory provision is not arbitrary or unreasonable and does not labour as an infringement of the right of access to a Court*'.[69]

Under Article 30(3)(d) of the Cypriot Constitution, it is provided that everyone has a right to have a lawyer of their own choice, as well as free legal aid when the interest of justice so requires, and the provision of such legal aid is recognised in law.[70] Importantly, Article 30 of the Constitution does not automatically grant a right to legal aid, as there is a requirement for the adoption of a specific law on legal aid that legalises this right and that can be enforced on the basis of such legislation.

The right to legal aid in civil proceedings in Cyprus is recognised in the Legal Aid Law of 2002 (Law 165(I)/2002) and specifically under Article 5. Although this Law regulates when and how legal aid is provided in civil cases, it recognises that legal aid may also be granted in criminal cases,[71] in family law cases,[72] in cross-border disputes,[73] and in cases related to the process of selling a mortgaged property.[74] Furthermore, the receivers of legal aid may be asylum seekers and refugees;[75] undocumented third-country nationals;[76] victims of trafficking, sexual harassment, child pornography, sexual exploitation and sexual abuse;[77] EU nationals and their family members;[78] as well as any individual whose human rights have been violated,[79] provided that certain conditions set out in the relevant Law are met.

Legal aid in Cyprus includes funding for advice, assistance and representation before a civil Court.[80] Notably, according to the Advocates' Code of Conduct, lawyers have a duty to inform their clients if they could potentially be eligible to receive a legal aid grant.[81] However, according to Article 5(1)(a), a legal aid application can be granted only for '*[c]ivil proceedings before the Court at any stage, brought against the Republic of Cyprus for damages sought by a person as a result of certain human rights violations*'.[82] In other words, the right may be granted only if there has been a decision establishing the existence of human rights violations.[83] Importantly, the Supreme Court, in the case *Yiallouros* v. *Nicolaou (2001)*,[84] established that a breach of a fundamental right or liberty of the individual, enshrined under human rights law, confers a right of action against the state, or an individual.[85] In this case, the Court made reference to Article 35 of the Constitution, which provides that the state must ensure the effective implementation of human rights and accepted that this provision calls for the detection of human rights violations, as well as the granting of relevant remedies that cure such violations. Remedies that may be granted in a civil procedure include compensation, reparation for damages caused, injunctions and other similar remedies that aim to restore justice.[86]

Even though Article 5 of the Legal Aid Law provides that legal aid may be granted for all civil cases that deal with a human rights violation, there have been contrary decisions related to specific procedures. For instance, the answer to the question of whether a Habeas Corpus procedure falls within the ambit of Article 5 of the Legal Aid Law has been ambiguous. The importance of the writ lies in its function, as it initiates judicial proceedings for the purposes of examining the legality of the applicant's incarceration.[87]

In *Mansour Ahmad (2011)*,[88] where the legal aid applicant intended to use the funding to initiate a Habeas Corpus procedure, the Supreme Court accepted that the allegedly unlawful deprivation of the applicant's liberty was an alleged violation of the applicant's human rights, and since Habeas Corpus constitutes a civil procedure it approved the legal aid application. In stark contrast, in *Paliei* v. *the Republic (2018)*,[89] where the applicant intended to use the legal aid funding for the purpose of submitting an appeal against a decision on Habeas Corpus, the Supreme Court of Cyprus decided that although Habeas Corpus falls under the category of civil procedure, it does not concern a procedure against human

66 *See*, Art. 30 of the Cypriot Constitution.
67 Art. 30(1) of the Cypriot Constitution.
68 *FATSITA* v. *FATSITA & ANOTHER* (1988) 1 CLR 210.
69 *Ibid.*
70 Art. 30(3)(d) of the Cypriot Constitution.
71 Arts. 3, 4 of the Legal Aid Law of 2002 (Law 165(I)/2002).
72 Art. 6 of the Legal Aid Law of 2002 (Law 165(I)/2002).
73 Art. 6A of the Legal Aid Law of 2002 (Law 165(I)/2002).
74 Art. 6E of the Legal Aid Law of 2002 (Law 165(I)/2002).
75 Art. 6B of the Legal Aid Law of 2002 (Law 165(I)/2002); *Application for Legal Aid by Azam Mohammad*, App. No. 13/2011, 27 May 2011.
76 Art. 6C of the Legal Aid Law of 2002 (Law 165(I)/2002).
77 Art. 6D of the Legal Aid Law of 2002 (Law 165(I)/2002).
78 Art. 6F of the Legal Aid Law of 2002 (Law 165(I)/2002).
79 Art. 5 of the Legal Aid Law of 2002 (Law 165(I)/2002).
80 Art. 5(3)(a) of the Legal Aid Law of 2002 (Law 165(I)/2002).
81 Advocate's Code of Conduct, Rule 29(2).
82 Art. 5(1)(a) of the Legal Aid Law of 2002 (Law 165(I)/2002).
83 Art. 5(1) of the Legal Aid Law of 2002 (Law 165(I)/2002); N. Kyriakides, 'Civil Procedure Reform in Cyprus: Looking to England and Beyond', *Oxford University Commonwealth Law Journal* 16(2) (2016).
84 *Yiallouros* v. *Nicolaou* (2001) 1 CLR 558.
85 *Ibid.*
86 *Ibid.*
87 E.M. Freedman, 'Habeas Corpus in Three Dimensions: Dimension I: Habeas Corpus as a Common Law Writ', 46(2) *Harvard Civil Rights Civil Liberties Law Review* 593 (2011).
88 *Mansour Ahmad* (2011) 1 CLR 2040.
89 *Regarding the Application by Paliei*, Application No. 317/2018, 6 December 2018.

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rights violations[90] and that thus legal aid could not be provided in this case.[91] Likewise, in the *Application by Singh (2021)*[92] and *Application by Islam (2021)*[93] the Supreme Court of Cyprus rejected the applications for legal aid and explained that a decision affirming the existence of human rights violations is required for the right to fall under the provision of Article 5 of the Legal Aid Law and for legal aid to be granted to initiate civil proceedings.[94]

In a similar vein, the case *Regarding the Application of Svetlana Shalaeva (2005)*[95] concerned a legal aid application for the purposes of the applicant's recourse for the annulment of detention and deportation orders. However, the Supreme Court of Cyprus clarified that proceedings arising from the facts of the applicant's case were not included in the Legal Aid Law of 2002.[96] The Court then proceeded to examine whether the applicant could be benefitted from the right to legal aid based solely on the provisions of Article 30 of the Cypriot Constitution. However, owing to the wording of Article 30, which requires the existence of law that regulates the right to legal aid,[97] the Court decided that this provision could not function as the basis for an automatic right to legal aid and thus dismissed the application.

It is important to note that the eligibility threshold set by the relevant case law for a legal aid grant is relatively high, as the requirement for a decision that declares that a person's human rights have been violated presupposes that this individual was able to initiate court proceedings through which such decision would be made. In other words, the requirement that a human rights violation ruling exists as a precondition for the recognition of a right to legal aid indicates that the applicant has had access to court proceedings prior to that legal aid application. Thus, for instance, if a dispute concerns matters regulated by administrative law but neither does the individual who wishes to initiate legal proceedings have the financial means to do so nor is legal aid provided for such a case, then, by definition, it is impossible to meet the criteria set out in the case law and be granted a right to legal aid under Article 5 of the Legal Aid Law to initiate civil law proceedings to seek remedies for human rights violations.

To put the above observation in context, the following example can be proven useful. There are undeniably numerous legal aid applicants who are asylum seekers or undocumented third-country nationals and who usually seek to challenge decisions that reject their asylum applications or a detention order before the International Protection Administrative Court or the Administrative Court, respectively. If, for any reason, their application for legal aid to initiate these procedures – based either on Article 6B or on 6C of the Legal Aid Law – is rejected, then these persons would likely not be able to initiate legal proceedings for want of financial resources and might even have to act as litigants in person, constituting an inherently difficult endeavour, considering that most asylum seekers and migrants have little or no knowledge of the Greek language (the working language of the Court) or Cypriot law. This obstacle implies not only that they will not be able to fully engage with the proceedings but that they will also have access issues to the necessary resources to substantiate the pleadings, as most resources can only be found in Greek. This may lead to a situation where the individual will have no access at all to the court and to a fair trial and consequently to the decision that would declare a human rights violation in the first place.

Furthermore, as can be observed from the foregoing cases, the Supreme Court maintains that although Habeas Corpus is a civil procedure, it does not fall into the category recognised in Article 5 of the Legal Aid Law, because of the lack of a prior decision that establishes a human rights violation. However, the following paradox arises. Asylum seekers, refugees and undocumented third-country nationals can have access to legal aid only in first instance trials.[98] If their case is rejected and they cannot afford to challenge this decision on appeal by funding themselves, then they are, by definition, struck out of the legal system, and the possibilities to prove in the Court of Appeal that their human rights have been violated are eliminated, as well as any possibility of being eligible for legal aid under Article 5 of the Legal Aid Law.

Hence, it is plausible to conclude that there is an inherent barrier within the Legal Aid Law that excludes many applicants in the aforementioned category. This barrier hinders the right to meaningful access to justice. However, the right to legal aid is not absolute, and it is permissible for the state and the courts to impose several conditions on the right relating to the applicant's financial situation as well as the prospects of success in the proceedings.[99] However, the fact that the Supreme Court rejects almost all legal aid applications for Habeas Corpus proceedings and generally demands that a prior judgment of human rights violations exists indicates

90 *Ibid.*

91 Also, *see*, *Afran Siddigue, Legal Aid Application No. 18/2013*, 21 June 2013; *Abrar Gujjar, Legal Aid Procedure No. 21/16*, 12 April 2016; *Seyed Taghi Hosseini Bayati, Legal Aid Application No. 6/2017*, 09 March 2017; *Aboutaleb Latfipour, Legal Aid Application No. 15/2016*, 06 April 2016; *Ahmad Hashemi, Legal Aid Application No. 45/17*, 10 October 2017; *Mohsen Gharahasanloo, Legal Aid Application No. 13/2013*, 14 March 2013; *Zakir Ullah, Legal Aid Application No. 36/2016*, 30 May 2016.

92 *Application by Singh*, Legal Aid Application No. 56/21, 12 July 2021.

93 *Application by Islam*, Legal Aid Application No. 54/2021, 28 June 2021.

94 Also, *see*, *Application by Piyas*, Legal Aid Application No. 24/2021, 17 March 2021; *Application by Rahmati (Rahmatinia)*, Legal Aid Application No. 45/21, 12 July 2021.

95 *Regarding the Application of Svetlana Shalaeva*, App. No. 4/2005, 21 October 2005.

96 Law 165(I)/2002; *Andreas Konstantinou* v. *Republic of Cyprus*, No. 1/03, 19 December 2003; *Stavros Maragkos*, No. 2/04, 4 October 2004.

97 Also, *see*, *Yiallouros* v. *Nicolaou* (2001) 1 CLR 558.

98 Art. 6B (2) (aa) and Art. 6C (2) (aa) of the Legal Aid Law, Law 165(I)/2002.

99 ECtHR, *Steel and Morris* v. *the United Kingdom*, App. No. 68416/01, 15 February 2005, paras. 59, 60, 62.

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the adoption of a formal view of justice, rather than a substantive one.[100]

Importantly, the Committee Against Torture in its Concluding Observations on Cyprus in 2019 found that the application procedure for legal aid is restrictive and noted that Cyprus should '*ensure that the right to immediate legal aid is fully implemented in practice at all stages of the legal process*' and that the state should '*eliminat[e] overly restrictive procedural and judicial criteria*'.[101] This issue has remained unresolved, and the fact that the Committee had made similar recommendations in its concluding observations in 2014 indicates that no progress has been made throughout the years.[102]

Therefore, access to civil proceedings through a legal aid right is extremely restricted, and this may result in limited or no access to justice. Undeniably, the right enshrined in Article 5 of the Legal Aid Law constitutes a privilege that is granted only to individuals who have had the opportunity to access the court prior to the legal aid application in question. Furthermore, although a right to legal aid is not absolute, the limitations applied to Article 5 of the Legal Aid Law may result in the deprivation of the right to access to justice in many cases.

3.3 Other Jurisdictions

3.3.1 England and Wales

In England and Wales, there have been significant changes in the legal aid programmes throughout the years. Importantly, the Courts have not equated the right to legal aid to the right to access to justice.[103] However, to make access to justice meaningful, the right to legal aid is necessary in certain cases. In recognition of this, the UK government drafted a provision into the Legal Aid, Sentencing and Punishment of Offenders Act 2012, providing that legal aid is available only in exceptional circumstances.[104] More specifically, and as outlined in Schedule 1, Part 1 of the aforementioned Act, civil legal aid services are provided in cases of 'care, supervision and protection of children',[105] 'special educational needs',[106] 'abuse of child or vulnerable adult',[107] 'working with children and vulnerable adults',[108] 'mental health and mental capacity',[109] 'community care',[110] 'facilities for disabled persons'[111] and 'appeals relating to welfare benefits'.[112]

However, this has not always been the case for England and Wales. Zuckerman (1996)[113] suggested that the availability of an almost 'unlimited legal aid'[114] right in the 1990s fuelled a rise in the cost of litigation. Specifically, he claimed that infusing more money into a system already liable to upward pressure on costs accelerated the rise in the unit price of legal services.[115] From the mid- to the late 2000s, the legal aid fund was subjected to increasing cuts under the austerity programme introduced by the government.[116] The narrative presented by the government was that legal aid was something of a private need.[117] Thus, the UK government imposed cuts on the scheme, and most of the savings were made by cutting out certain areas of law that were included in the legal aid programme, such as private family matters, employment, welfare benefits, housing, debt, clinical negligence and non-asylum immigration law matters.[118] The provision according to which legal aid is now available for only exceptional circumstances has clearly been inserted to ensure that the UK abides with its obligation under Article 6 of the ECHR. However, this safety net has not been performing a meaningful role for the provision of legal aid to those most in need of it but has functioned more as a shielding of the UK from possible convictions by the ECtHR.[119]

3.3.2 Germany

The procedure of obtaining legal aid in Germany is considered both an efficient and a fair process.[120] The key piece of legislation that regulates legal aid in Germany is the Code of Civil Procedure (or the *Zivilprozessordnung*, also called ZPO),[121] and the Act on Advisory Assistance. According to the Act on Advisory Assistance, a party may be eligible for advisory assistance in civil law cases related to sales law, landlord and tenant cases, claims for damages, road accidents, neighbourly disputes, divorce and maintenance cases, other family matters, inheritance disputes and insurance claims, to name

100 For more information on the concepts of equality, *see* Fredman, *Discrimination Law*, 2nd ed. (2011).
101 Committee Against Torture, Concluding observations on the fifth periodic report of Cyprus, 23 December 2019, CAT/C/CYP/CO/5, para. 15.
102 Committee Against Torture, Concluding observations on the fourth report of Cyprus, 16 June 2014, CAT/C/CYP/CO/4, para. 7.
103 *See* Lord Neuberger of Abbotsbury, "Justice in an Age of Austerity", (2013) JUSTICE, https://files.justice.org.uk/wp-content/uploads/2015/02/06172428/Justice-in-an-age-of-austerity-Lord-Neuberger.pdf (last visited 30 September 2021).
104 Legal Aid Sentencing and Punishment of Offenders Act 2012, s.10.
105 Legal Aid Sentencing and Punishment of Offenders Act 2012, Schedule 1, Part 1, s. 1.
106 *Ibid*., s. 2.
107 *Ibid*., s. 3.
108 *Ibid*., s. 4.
109 *Ibid*., s. 5.
110 *Ibid*., s. 6.
111 *Ibid*., s. 7.
112 *Ibid*., s. 8.
113 *See*, Zuckerman, above n. 53, at 773-96.
114 *Ibid*., at 775.
115 *Ibid*., at 778.
116 *See*, Lord Neuberger, above n. 103.
117 A. Flynn and J. Hodgson, 'Access to Justice and Legal Aid Cuts: A Mismatch of Concepts in the Contemporary Australian and British Legal Landscapes', in A. Flynn and J. Hodgson (eds.), *Access to Justice and Legal Aid* (2017) 1.
118 J. Organ and J. Sigafoos, 'The Impact of LASPO on Routes to Justice – Equality and Human Rights Commission, Research Report' (2018).
119 *See*, for instance, the Interim Report produced by The Bach Commission on Access to Justice, 'The crisis in the justice system in England and Wales' (November 2016).
120 *See* Federal Ministry of Justice and Consumer Protection, "Financial aid for legal advice and court costs: Information on the Act on Advisory Assistance e (Beratungshilfegesetz) and the provisions on legal aid in the Code of Civil Procedure (Zivilprozessordnung), 2. www.hilfe-info.de/WebS/hilfeinfo/SharedDocs/Publikationen/EN/Information_court_costs.pdf?__blob=publicationFile&v=3 (last visited 19 March 2022).
121 The Code of Civil Procedure of Germany. www.gesetze-im-internet.de/zpo/ (last visited 19 March 2022).

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a few.[122] Moreover, anyone who cannot afford to pay the court costs can be eligible for legal aid.[123] However, the funding of legal aid does not include the costs that the party needs to pay to the opposing party, including the opposing party's lawyer's fees. Hence, the losing party must cover all costs incurred by the opposing party, regardless of whether the former has been granted legal aid or not.[124]

Most relevant are Sections 114 to 127 under Title 7 of the ZPO, which regulate the procedure of acquiring legal aid, as well as the prerequisites needed. Specifically, under s. 114, it is noted that anyone lacking the financial capacity to afford litigation procedures is able to receive legal aid or advisory assistance on submission of the relevant application.[125] The applicant should not be able to cover the total cost of the legal proceedings or should only be able to cover them partially or in instalments.[126] However, the intended legal action should afford a reasonable chance of success.[127]

In determining the amount of legal aid that should be granted for the successful applicant, the party's gross income is taken into consideration and calculated on the basis of a formula stipulated in the legislation. More precisely, the party's gross income includes any financial support from their spouse,[128] and living expenses as well as any child maintenance are deducted from the total amount. Furthermore, the success of the legal aid application is dependent on whether the applicant is eligible for state benefits and social grants, whether there is a likelihood that the applicant wins the dispute,[129] and whether it is financially justifiable to initiate legal proceedings, meaning that the costs of such proceedings should not be higher than the value of the claim that the applicant seeks to be afforded to him or her.[130]

4 Third-Party Litigation Funding

Third-party litigation funding is a commercial practice that enables a party, which would otherwise have been unable to, to initiate or participate in legal proceedings.[131] Specifically, a third party – that is, a party that does not take part in the legal proceedings before the court – provides funding to the party that cannot afford to pursue a claim in court, and if that party is successful, then the former will be entitled to a percentage of any damages received from the opponent. Admittedly, the recourse of third-party litigation funding has remained limited within the European Union. However, it has been accepted that third-party litigation funding represents a tool to support citizens and businesses in accessing justice.[132] Importantly, Directive (EU) 2020/1828 on Representative Actions for the Protection of the Collective Interests of Consumers[133] regulates some aspects of third-party funding regarding conflict of interest between the third-party provider and the entity bringing the representative action, which poses the risk of abusive litigation in cases when the third party has an economic interest in the bringing of the claim for redress measures or its outcome.[134]

4.1 Cyprus

In Cyprus, third-party funding is practically non-existent and has yet to be regulated.[135] Litigants in Cyprus are funded by themselves,[136] unless they are granted legal aid. Hence, although this practice would aid individuals who do not qualify for legal aid and cannot otherwise afford litigation costs to gain access to justice, the non-existence of this practice in Cyprus renders it impossible to gain access to justice through alternative means. It is important to note that the proposed civil procedure rules do not address third-party litigation funding, there are no pending legislation proposals before the Parliament in relation to third-party litigation funding and the EU Directive 2020/1828 has yet to be codified in Cypriot law. However, even when the EU Directive 2020/1828 is transposed into national law by Cyprus – which will need to be done byDecember 2022 – it is questionable whether and how it will be utilised in relation to third-party litigation funding, as there is no established market in Cyprus, *yet*.

It is important to note that, for the first time, on 31 January 2022, third-party litigation funding was the subject of a judgment issued by the District Court of Larnaca, in the case of *Kazakhstan Kagazy PLC a.o.* v. *Arip a.o.* (Application no. 1/2020).[137] In the context of an application for the setting aside of a Cypriot declaration of enforceability of an English money judgment and an order of the High Court of Justice of England & Wales, the Dis-

122 Federal Ministry of Justice and Consumer Protection, above n. 120, at 10.
123 *Ibid.*, at 17.
124 *Ibid.*
125 *Ibid.*, at 15-17, for more information regarding the interpretation of the term "available income".
126 "Costs: Germany", E-Justice Portal. https://e-justice.europa.eu/37/EN/costs?GERMANY&member=1 (last visited 30 September 2021).
127 Federal Ministry of Justice and Consumer Protection, above n. 120, at 15.
128 R. Zöller and P. Philippi, *German Code of Civil Procedure: Commentary* (2009), para. 3.
129 *Ibid.*
130 *Ibid.*
131 European Parliament, Draft Report with recommendations to the Commission on Responsible private funding of litigation, 2020/2130 (INL). www.europarl.europa.eu/doceo/document/JURI-PR-680934_EN.pdf (last visited 19 March 2022).
132 European Parliament, 'Responsible private funding of litigation' (March 2021). www.europarl.europa.eu/RegData/etudes/STUD/2021/662612/EPRS_STU(2021)662612_EN.pdf (last visited 19 March 2022).
133 DIRECTIVE (EU) 2020/1828 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC.
134 *Ibid.*, recital 52.
135 S. Pavlou, C. Nicolaou, K. Philippidou, A. Antoniou & A. Patsalidou, 'Litigation and Enforcement in Cyprus: Overview', *Practical Law Country Q&A* 7-502-0202 (2021). Pavlou et al., above n. 4.
136 *Ibid.*
137 Judgment available at www.cylaw.org/cgi-bin/open.pl?file=/apofaseised/pol/2022/3120220007.htm (last visited 2 May 2022).

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trict Court of Larnaca decided that the recognition and enforceability of an English judgment obtained in proceedings funded under a third-party litigation funding agreement is not contrary to Cypriot public policy. The court noted that in the absence of national legislation or case law on third-party litigation funding, the relevant common law principles enshrined in the case law of England & Wales, as well as that of other common law jurisdictions, should be applied by virtue of Article 29 of the Courts of Justice Law 14/1960.[138] Given that the judgment has been appealed, it remains to be seen whether the Supreme Court of Cyprus will uphold the judgment, adopt the modern common law principles on third-party litigation funding and therefore improve access to justice.[139]

4.2 Other Jurisdictions

4.2.1 England and Wales

In contrast, third-party litigation funding is common practice in England and Wales. The third-party litigation funding industry in the United Kingdom has grown significantly over the years, in terms of both market participants and available capital.[140] In 2011, the Association of Litigation Funders was formed and constitutes an independent body appointed by the Ministry of Justice, which delivers self-regulation of litigation funding in the United Kingdom.[141] It aims to ensure litigation funders' ethical behaviour and best practice and to shape the law and regulation of third-party funding.[142] Importantly, a Code of Conduct for Litigation Funders contains standards of practice and behaviour that underlie third party litigation funding in the United Kingdom.[143] Furthermore, although the Code of Conduct has been described as a 'voluntary code',[144] the courts have accepted that the Code constitutes a legitimate basis for the regulation of third-party litigation funding, and the membership of companies in the Association of Litigation Funders is seen as good practice.[145]

138 Art. 29 of the Courts of Justice Law 14/1960 maintains the applicability of the common law and the principles of equity in the Cypriot legal system, unless it is specifically stated in the Cypriot Constitution or any of the laws and provided they are not contrary to the Cypriot Constitution.

139 Polyvios Panayides and Stacey Armeftis, 'Cypriot Court holds that a third party litigation funding agreement is not contrary to the public policy of Cyprus' (13 April 2022) published by Chrysses Demetriades & Co LLC, available at www.demetriades.com/wp-content/plugins/pdf-poster/pdfjs/web/viewer.html?file=https://www.demetriades.com/wp-content/uploads/2022/04/Litigation-Funding-Article.pdf&download=true&print=vera&openfile=false (last visited 2 May 2022).

140 Woodsford, 'At a Glance: Regulation of Litigation Funding in United Kingdom (England & Wales)'. www.lexology.com/library/detail.aspx?g=5e1b610e-ef1b-46f7-9a1e-3261741a7465 (last visited 17 March 2022).

141 S. Latham and G. Rees, 'The Third Party Litigation Funding Law Review: United Kingdom – England & Wales' (2021) Augusta Ventures. https://thelawreviews.co.uk/title/the-third-party-litigation-funding-law-review/united-kingdom-england--wales (last visited 19 March 2022).

142 *Ibid.*

143 Law Review: United Kingdom, above n. 138.

144 *UK Trucks Claim Limite* v. *Fiat Chrysler Automobiles NV and Others* and *Road Haulage Association Limited* v. *Man SE and Ohters*, Case No. 1282/8/7/18, 1289/7/7/18, 28 October 2019.

145 *See*, *Akhmedova* v. *Akhmedov* [2020] EWHC 1526 (Fam).

4.2.2 Germany

In Germany, third-party litigation funding is well developed.[146] According to Evensberg, the practice has not been legally challenged, as it is widely accepted and used.[147] Interestingly, no legislative or other regulatory provisions apply to the practice, as third-party funders are not considered as banks or insurers.[148] Furthermore, and unlike in England and Wales, no ethical rules apply regarding third-party litigation funding, and no public bodies oversee the practice.[149]

5 Conclusion

There is no doubt that the Cypriot civil justice system *is* working, albeit at a very slow pace and at a relatively high cost. This is also evident following a comparison of the Cypriot justice system with that of England and Wales or Germany. Undoubtedly, these delays and increased costs deter litigants from accessing the courts and causes the public to lose faith in the system. Cyprus is in the midst of a wave of reforms to its justice system, from the introduction of i-Justice to the adoption of a new set of civil procedure rules, and it remains to be seen whether these reforms will increase access to justice and reduce litigation costs.

As for the costs of civil proceedings, it is expected that the coherence of the reformed civil procedure rules will provide transparency and clarity to parties involved in civil litigation. The commitment to a fixed costs regime to control costs together with the introduction of the court's increased case and costs management powers is expected to assist in the swift delivery of justice at a more affordable rate. The reform of the civil procedure rules will be a step towards effective justice, but it will most certainly carry with it issues that have also been identified in England and Wales and that will need to be addressed; that is, there will be a continual review of the rules and their application. Perhaps the more holistic assessment of costs followed by Germany, rather than viewing and assessing costs based on separate actions taken in the context of a claim, would be more appropriate for Cyprus, deterring delays in court proceedings. Ultimately, the proposed civil procedure rules are aimed at changing the culture surrounding litigation in Cyprus, and it remains to be seen whether the system is in fact open to change – after all 'the success of these reforms rests almost entirely on the extent judges will utilise the management tools granted to them'.[150]

146 D. Sharma, 'Germany', in *Third Party Litigation Funding Law Review*, 2nd ed. (2018), 59. https://cdn.roschier.com/app/uploads/2019/12/16122450/third-party-litigation-funding-ed-2-book.pdf (last visited 19 March 2022).

147 F. Steven and B. Jonathan (eds.), 'Litigation Funding 2021' (2020), 45. https://woodsfordlitigationfunding.com/us/wp-content/uploads/sites/3/2021/02/2021_Litigation-Funding_Germany.pdf (last visited 19 March 2022).

148 *Ibid.*

149 *Ibid.*

150 Kyriakides, above n. 6, at 25.

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In terms of legal aid, the tendency of the UK government to restrict legal aid to only specific cases, thereby limiting access to courts for individuals who lack the financial resources, contrasts with the way Germany retains a more accessible legal aid system, with no limitations as to the civil matters eligible for legal aid grants. However, Cyprus can be characterised as the most restrictive jurisdiction in this regard, as the precondition for the existence of a prior judicial decision that has detected human rights violations for legal aid to be granted, is an often insurmountable barrier to justice. The regulation of legal aid in Germany may very well constitute a guide for the reform of legal aid practice in Cyprus, although there is no indication that the Law on Legal Aid will be the subject of review in the near future. Unfortunately, legal precedent shows that the bench is also not prepared to approach the right to legal aid with a new lens or provide the much-needed clarity on eligibility, meaning that access to justice for individuals of low means will continue to be hindered. The lack of a third-party litigation funding market and of alternative means for litigants to fund their claims constitutes an added barrier to justice. It remains to be seen whether the courts will pave the way for the establishment of an alternative litigation funding practice in Cyprus.

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