CYPRUS

Under the legal system of the Republic of Cyprus, the Attorney-General, as the legal advisor of the Republic, the President, the Council of Ministers and the Ministers, with extensive powers vested under the Constitution and the Law (including common law) and, traditionally regarded as the guardian of the public interest, plays a key role in addressing the issue whether it is possible to raise, in the context of litigation not involving the government, a serious issue of public international law pertaining to the immunity of States or international organisations.

The case-law of the Supreme Court of Cyprus provides interesting guidance as to the possibilities offered in this matter, which are, mainly, twofold:

A. Intervention by the Attorney-General

The right of the Attorney-General to intervene in a private suit in the form of applying to the Supreme Court for the issue of a prerogative order of Certiorari (i.e. an order to quash an inferior Court´s decision due to lack of jurisdiction or an error of law on the face of the record) when such suit may affect the public interest, including the relations of the Republic with foreign states, was upheld by the Supreme Court (at the highest level, sitting as an appellate court) in the case of **Attorney General v Unitica Enterprises Ltd** (2004) 1 C.L.R. p.730 (pp 742-745). The substantiation of this legal right was made with reference to relevant English jurisprudence, where the principle was first enshrined that the Attorney- General has a right of intervention at the invitation or with the permission of the courts in a private suit whenever it may affect the prerogatives of the Crown, including its relations with foreign states, or raises any question of public policy on which the executive may have a view which it may desire to bring to the notice of the courts [see **R v. Amendt** (1915) 2 KB 276, **Adams v. Adams (Attorney- General Intervening)** (1970) 3 All ER 572, **Duff Development Co. v. Kelantan Government and another** (1924) All ER Rep.1].

The intervention of the Attorney-General in the **Unitica** case was made upon the request of the Ministry of Foreign Affairs, following receipt of a Note Verbale by a Foreign State protesting against the issue of a judgment in default of appearance by the District Court of Nicosia against that State and the subsequent issue of execution measures by means of an order for the sale of immovable property owned by that foreign State in Nicosia. The purpose of the Attorney-General´s intervention was, inter alia, to raise and argue before the Supreme Court important principles or Public International Law concerning State immunity and immunity of a foreign State´s property from execution.

It should be mentioned that the right of the Attorney-General to intervene in a case which may affect the foreign relations of the Republic with another State, so as to raise before the Court important points of state immunity, including immunity from the jurisdiction of the domestic courts, had been upheld by a first instance judgment of the Supreme Court in another case (**Re Attorney General**, Application No. 81/97, dated 11 July 1997), which concerned a civil action by a building company against a foreign State and its embassy in Nicosia, claiming damages for breach of a building contract to erect the Embassy premises in Nicosia.

B. Amicus Curiae

Another way for enabling the Attorney-General to raise before the Court, in a private suit, important arguments concerning the obligations of the Republic under International Law governing State immunity or immunities of international organisations, is the amicus curiae procedure.

According to the leading case of **Theodosiadou and Others v. the Republic** (1985) 3 C.L.R 178, which has been adopted in all subsequent authorities (see p. 186):

> "The Attorney-General has often been invited to appear as amicus curiae in cases where the legal issues raised were of far reaching effect and affected a particular interest of the public in the elicitation and application of the law. No doubt the invitation was extended because of the constitutional position of the Attorney-General as the repository of rights vested in the public-Gouriet v. Union of Post Office Workers [1977] 3 All E.R 70(H.L). It appears that the position of the Attorney-General also entitles the holder to intervene in proceedings raising questions of public policy. On very many occasions the Attorney-General was invited to voice his views as amicus curiae in matters of a diverse nature, but always of particular interest to the general public.
> Though the jurisdiction to hear someone other than the parties appears to have been originally confined to disinterested bystanders, an exception was made in the case of the Attorney-General because of his constitutional position explained above. But in the case of the Attorney-General too he must have no direct interest in the immediate out-come of the judicial cause. As may be the case where the rights of the State as a corporate entity are at issue. In that case he can only be heard as a legal representative of the State. The appearance of the Attorney-General as amicus curiae is only justified when the principle at issue is of a special interest to the general public."

As revealed by subsequent case-law, the Attorney-General may be heard as amicus curiae not only upon the invitation of the Court, but also upon application by one of the parties to the proceedings (**Matsakis v. Pancyprian Medical Association and Medical Disciplinary Board**, Case no. 443/2002, dated 27.11.2002) and upon his own application to the Court (**Theodosiou Ltd v. Limassol Municipality** (2004) 3 C.L.R p. 687).

It is worth noting that in the case of **Preece v. "Estia"** (1991) 1 C.L.R p.568, the Attorney-General had been invited by the Supreme Court as amicus curiae in order to present his position on serious legal issues of public interest pertaining to the legal status of the British Bases in Cyprus and "the international relations of the sovereign Base Areas with the Republic of Cyprus to the extent that they affect the outcome of the present appeal" (see **Preece v. "Estia"** (1990) 1 CLR p. 695).

Article 19 of the Law stipulates that the institutions possessing the original classified information and the state archives, in cooperation with the Directorate of Classified Information Security (DSIK) set up the bibliography of the declassified information.
This information, unless it is subject to special rules under the law is open to the public.

4. Express your views as to whether the Ministry of Foreign Affairs can communicate with the Parties engaged in procedures before national courts and, if so, as to how it can proceed. In particular with regard to:

- **the principle of equality of arms (e.g. does the communication with one Party imply informing the others about the content of that communication?).**
- **the scope of the communication (e.g. communication of possible factual elements or communication restricted to a single point of law).**
- **the principle of independence of the Judiciary.**
- **any other related issue.**

With regard to this point, as it was mentioned above (reply to Point1) the Code of Civil Procedures has defined in its Article 191 that "Everyone may intervene in a trial process through other persons, when there is an interest to support one or the other party, which it joins in the trial and come to its assistance. Article195 of the Code of Civil Procedures, in its second paragraph, has envisaged that with the consent of both parties, a third person that has intervened on his own or has been summoned by either party may replace the other party on whose account it has intervened, which may go exceed the trial process boundaries.