Disclaimer: this note was prepared on 21.12.21 on the basis of the recordings of the event on the Facebook page of the Cyprus Bar Association. If any inaccuracies or omissions exist, this may be due to the quality of the recordings. We would be pleased to receive requests for corrections at info@ldlaw.com.cy in this respect.

Legal Conference on the World Human Rights Day

On 10 December 2021, Achilleas Demetriades of our office, and Chairman of the Human Rights Committee, presided over an event on Euthanasia and the Environment. The event was organised on the occasion of International Human Rights Day and constituted a collaboration of the House of Representatives, the Cyprus Bar Association and the Council of Europe.

The conference began with a minute of silence in memory of Mr Petros Artemis, the former President of the Supreme Court.

WELCOMING ADDRESSES

Annita Demetriou (President of the House of Representatives), Maria Stylianou Lottide (Ombudswoman), Louiza Zannetou (Law Commissioner), Tigran Karapetyan (Head of Division, Transversal Challenges and Multilateral Projects Task Force, Directorate General of Human Rights and Rule of Law of the Council of Europe), Irene Charalambidou (MP, Committee on Human Rights and Equal Opportunities for Men and Women) Dr Christos Clerides (President of the Cyprus Bar Association) gave welcoming addresses.

SESSION A: THE RIGHT TO A HEALTHY ENVIRONMENT

Environmental protection and the European Convention of Human Rights

Georghios Serghides, Judge of the European Court of Human Rights, spoke about environmental protection and the European Convention of Human Rights. He focused on the ecocentric approach, arguing that this approach is centred on the protection of our home – in other words, our common environment.

Mr Serghides emphasised that the protection of human rights and the environment are closely interrelated. Unlike the EU Charter of Fundamental Human Rights of 2000, there is no explicit reference to the right to a healthy environment in the European Convention of Human Rights. However, the European Court of Human Rights has interpreted the Convention as a living instrument, to be adapted to present-day circumstances, including positive obligations relating to the protection of the environment. Mr Serghides mentioned that the Court has decided over 300 cases concerning environmental risk.

There are several provisions of the Convention which have been interpreted so as to include environmental protection, but the most commonly invoked ones are:

1. Article 8 (quality and well-being of private life): this has been interpreted to include the protection of the home against disruptive environmental situations, such as noise and smell.
2. Article 2 (right to life): the European Court of Human Rights has found that a state may have a positive obligation in the context of dangerous activities such as nuclear tests
3. Article 1 of Protocol 1 to the Convention (guarantees to protection to property): this has been interpreted to mean that the protection of the individual right to peaceful enjoyment of one's possessions requires public authorities to ensure certain environmental standards.

A new Protocol has been debated. In 2009, the Council of Europe's Parliamentary Assembly debated that the Committee of Ministers should draft an additional Protocol in which a right to healthy environment would be incorporated. However, this did not come to fruition, as it was argued that the Convention's system had already addressed the protection of the environment through the existing case-law of the European Court of Human Rights.

In October 2021, a resolution was passed to urge the Committee of Ministers to adopt such an additional protocol, but no decision was made. It is hoped that Committee of Ministers will accept this as it will provide broader and more complete protection of the environment.

Strasbourg's environmental activism

Mr Ioannis Ktistakis (Judge of the European Court of Human Rights) spoke about Strasbourg's environmental activism. He referred to fact that the first individual applications concerning the environment were filed before the (now defunct) European Commission of Human Rights. The first two decisions where an indirect recognition of environmental rights was made were *Powell and Rayner* v. *the United Kingdom* (excessive noise) and *Lopez Ostra* v. *Spain* (severe environmental pollution).

Climate change litigation: the perspective of national courts

Charikleia Vlachou provided an insight into climate change litigation. She mentioned that climate change is a painful reality and that the consequences have repercussions on human rights (right to life, right to health, etc). The connection between climate change and human rights has been recognised by various international bodies and, since 2015, there has been an increase in the number of cases before the courts invoking human rights. These have been filed by individuals, activists, NGOs, environmental refugees, etc.

Justice & Jurisprudence in the Convergence of Energy, Environmental, & Climate Law

Odysseas Christou (Assistant Professor of Government, International Law and International Relations at the University of Nicosia) covered two different areas: firstly, the conceptual emergence of various new developments in environmental justice and the convergence of that area into energy justice (and climate justice), and secondly, how these conceptual developments have been implemented in EU policy.

Mr Christou described how amidst increasing climate change, there has been a rise in new concepts such as energy justice, climate justice and environmental justice.

Environmental justice is defined as the fair treatment and meaningful involvement of all people regardless of race, colour, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. This definition is the one used by the US Environmental Protection Agency and it was adopted because environmental justice began in the US as a natural extension of the civil rights movement of the 1950s and 1960s. At its core, the concept is the application of social justice principles to environmental law and policy. These have been applied to energy policy and more recently, climate policy.

More recently, there has been a rise of two additional principles in academic literature on environmental justice. The first principle is cosmopolitan justice, which aims to target the environmental impact on historically excluded or disproportionately groups of anthropocentric activity at the global level. The second principle is the application of restorative justice, but in context of environmental justice, where there is an attempt to

remedy past and present harms faced by communities that are negatively affected by policy priorities.

Energy justice is defined as the goal of achieving equity in both the social and economic participation in the energy system, while also remediating social, economic, and health burdens on those disproportionately harmed by the energy system.

The more recent development of climate justice focuses on a rights-based approach. There is an emphasis on three main areas: (1) intergenerational justice (a longstanding principle of environmental law); (2) a formulation of the historical responsibility and liability in the causes of climate change, especially from the perspective of major enterprises; (3) the broad characterisation of climate change as a violation of developmental, human and environmental rights. These approaches have a strong influence on recent patterns of litigation as well as the integration of principles in climate change policy, with an emphasis on just transition.

A Q&A session on this section followed.

SESSION B: EUTHANASIA – LEGAL ASPECTS

Euthanasia, within the legal framework of the European Convention on Human Rights

Paul Lemmens (Former Judge of the European Court of Human Rights) began by confirming that euthanasia is a human rights issue.

He then went on to explore whether there is a right to euthanasia under the European Convention of Human Rights.

There is no right to euthanasia under the Convention

Mr Lemmens emphasised that the European Court of Human Rights has never stated that there is a right to euthanasia. As to assisted suicide, the Court has, in one case, left open the question of whether the state has an obligation to adopt measures to facilitate the act of suicide with dignity. However, this is a case from 2011 and since then it has never given the impression that it will be prepared to give a positive answer to this question.

Given the considerable margin of appreciation given to states in this area, it is hard to conclude that there is right to euthanasia under the Convention. This is a right to be granted or refused by the national legislature. The situation can be different with respect to national constitutions, and there have been instances where constitutional courts in certain countries have considered that lack of euthanasia is problematic from point of view of domestic constitution.

So, given the wide margin of appreciation, the prohibition of euthanasia doesn't seem to be incompatible per se with the ECHR.

Euthanasia is about the choice about one's own end of life – it is expression of individual autonomy

Whilst the prohibition of euthanasia does not seem to be per se incompatible with the Convention, it nevertheless constitutes a restriction of the respect to private life and, like any such restriction, it must be justifiable under Article 8, paragraph 2 of the Convention. The big question here is whether the third restriction (is it necessary in a democratic society?) is fulfilled.

There are four points to be made with respect to this necessity:

(1) Firstly, this criterion implies, according to the case-law of ECtHR, that there is a pressing social need. What we know from case-law is that it implies a *proportionality* between legitimate aim pursued and the means employed.

(2) Secondly, in deciding whether to impose a restriction and in determining the scope of restriction, domestic authorities enjoy a margin of appreciation; it is for them to make a choice as to how and where to make a choice between competing rights involved. The margin of appreciation is not unlimited and there is always the option of control or review by ECtHR. In its case-law, where issue is moral or ethical, the Court generally says that domestic authorities have a wide margin of appreciation. Such restrictions also constitute a choice of society, and here the Court exercises a degree of restraint in its review of the compliance with the Convention.

(3) Thirdly, what characterises the prohibition of euthanasia is two things: (a) it forms a protection of the individual's rights against the will of that individual. (b) it is a blanket ban. These characteristics do not mean that the prohibition can't be justified, but see below the fourth point.

(4) Fourthly, the fact remains that it is for the national legislature to determine whether the reasons to prohibit euthanasia are strong enough to sufficiently outweigh the individual's right to individual autonomy. When a balance is struck, it is not struck once and for all. This balance is one that should be kept under review by national authorities, taking into account developments in science and developments in society.

Where restrictions are imposed on individuals and where they follow from the law, the quality of the decision-making within the national legislature will be a very important element for the ECtHR's review into the necessity of interference. Therefore, it is important for Parliament to make its decisions in a well-informed way.

Assuming that euthanasia can be considered compatible with the Convention, and assuming that the legislature will decide to decriminalise euthanasia, Mr Lemmens then went on to analyse what the requirements of the Convention would be in this respect, and he enumerated two of them: firstly, it necessary to provide for safeguards for right to life; there is a duty to protect vulnerable persons, even against actions by which they would endanger their own lives. This includes guarantees against abuse. Secondly, the law must also make it possible to effectively enjoy the right to euthanasia once this right is created. This second principle has been underlined by the Court several times in cases concerning abortion.

The Law on the Safeguarding and Protection of Patients' Rights (Law 1(I) / 2005)

Zoe Kyriakidou, (Lawyer of the Law Office of the Republic, Member of the Cyprus National Bioethics Committee) then gave a presentation on The Law on the Safeguarding and Protection of Patients' Rights (Law 1(I) / 2005) ("Patient Rights Law"). She reiterated that euthanasia was an especially sensitive issue and that we all need to remember that we are people first and then professionals. Ms Kyriakidou then gave a brief overview of the protection of human rights in the Cypriot Constitution, focusing on the importance and the foundations of the right to life and drawing upon academic literature to emphasise it.

The presentation went on to analyse the issue under the prism of patients' rights, saying that European countries differ in their approaches to the issue of euthanasia. Finally, the

provisions of the Patient Rights Law were analysed, emphasising that the need for the law arose from the international conventions ratified by the Republic of Cyprus.

Euthanasia under the prism of patient autonomy

Aristoteles Constantinides (Associate Professor of International Law and Human Rights at the University of Cyprus) approached the issue as a conflict of rights and obligations. From a human rights perspective, he said that the case-law of the ECtHR is not especially exciting, because its approach is usually limited to the analysis of the margin of appreciation. Therefore, he concentrated on two decisions of national courts: one handed down by the Supreme Court of Colombia on 20.05.1997 (ruling that doctors should be allowed to end lives with euthanasia) and one handed down on 11.12.2020 by the Austrian Constitutional Court (ruling that prohibition on assisted suicide is unconstitutional as it infringes the individual's right to self-determination and right to a dignified death).