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*Revisiting human right in occupation: the European Court of
Human Rights in Cyprus*

Abstract: This paper presents some developments in the case law of the European Court of Human Rights concerning the application of the European Convention on Human Rights in occupied Cyprus. It examines the role of the Court on the property issue and identifies grey areas in the recent jurisprudence. The paper argues that the Court has been inconsistent with public international law in its recent cases. This inconsistency challenges its own legacy, the rights of the victims as well as the peace process in Cyprus.

Keywords: European Convention on Human Rights, European Court of Human Rights, International Humanitarian Law, Belligerent Occupation, Pilot Judgment Procedure, Restitutio in intergrum

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λήθη γὰρ ἐπιστήμης ἔξοδος, μελέτη δὲ πάλιν καινὴν ἐμποιοῦσα ἀντὶ τῆς ἀπιούσης μνήμην
σώζει τὴν ἐπιστήμην, ὥστε τὴν αὐτὴν δοκεῖν εἶναι.

Plato, Symposium

I. Introduction

The story of the application of the European Convention on Human Rights (hereinafter the Convention) in occupied northern Cyprus has been considered until recently, by the legal scholars, the victims and the Cypriot foreign policy, as a story of great success. Since the first interstate application of Cyprus against Turkey, in 1974, the human rights mechanism of Strasbourg has been preoccupied with several issues of the Cyprus question. A first significant development occurred in 1996, when the Court delivered its landmark judgment in *Loizidou v. Turkey* case. The legacy of *Loizidou* was enhanced by the judgment in the interstate case *Cyprus v. Turkey*, in 2001, and by a series of other individual applications, where the Court has repeatedly called upon the violations of Turkey.

Starting from the Cypriot cases, the ECtHR had positively contributed to the expansion of the applicability of the European Convention on Human Rights to situations of armed conflict and military occupation. It has also influenced the general trend in international justice towards the acceptance of the continuous application of human rights law in armed conflict.² Additionally, the Court offered satisfaction to the victims of a prolonged military occupation, where any other legal remedy was unavailable.³ Finally, it reiterated, in several occasions, the Resolutions of the UN Security Council and the General Assembly, in relation to the illegitimacy of the occupation and to the non recognition of the established puppet state in the north.⁴ As a result, the Court's findings have served as a valuable tool during the negotiation process under the auspices of the UN and endorsed with concrete legal arguments the procedure for a peace agreement.⁵

However, currently, the achievements of the past are at risk. Facing an enormous workload, the Court gradually developed a new strategy in order to deal with the widespread violations in northern Cyprus.⁶ This new strategy is mainly focused on the property issue and on the influx of individual applications to Court's registry after the success of *Loizidou*. This paper aims to present the new developments in the Court's jurisprudence, after briefly exposing the contribution of the Court on the property issue. We argue that the current developments tend to jeopardise the rights of the victims and to alienate the Court from the general framework of public international law. We believe that the new jurisprudential policy of the Court has to be assessed with precaution, in order to prevent any further outcome

² A. Reidy, 'The Approach of the European Commission and Court of Human Rights to International Humanitarian Law', *IRRC*, 324 (1998), 513–529 (p. 514).

³ *Cyprus v. Turkey*, App. no. 25781/94 (ECtHR, 10 May 2001), paras 91 and 92.

⁴ *Loizidou v. Turkey*, App. no. 15318/89 (ECtHR, 18 December 1996), paras 15, 19-23.

⁵ Kudret Özersay and Ayla Gürel, "Property and Human Rights in Cyprus: The European Court of Human Rights as a Platform of Political Struggle", *Middle Eastern Studies*, Vol. 44, No. 2 (March 2008).

⁶ Costas Paraskeva, 'Human Rights Protection Begins and Ends at Home: The "Pilot Judgment Procedure" Developed by the European Court of Human Rights', *Human Rights Law Commentary*, 3 (2007) available in <http://www.nottingham.ac.uk/hrlc/documents/publications/hrlcommentary2007/pilotjudgmentprocedure.pdf>.

which contradicts to the scope and the aim of human rights law and international humanitarian law.

II. Endorsing the rights of the displaced population in occupation: the contribution of the ECtHR

Belligerent occupation has been traditionally regulated by customary and conventional rules of international humanitarian law.⁷ These rules create a comprehensive legal framework for the protection of the population living under the hostile army, while balancing the interests of the occupier, the displaced government and the occupied people.⁸ On the other hand, human rights law, originally created to apply in peacetime does not contain provisions for this situation which, most of the times, is the outcome of an interstate conflict.⁹

The rapid development of international human rights law and the proliferation of its monitoring mechanisms have drastically influenced the laws on occupation.¹⁰ Nowadays, it is generally accepted by the practice and the legal literature that human rights law continues to apply during occupation.¹¹ The Strasbourg mechanism has primarily contributed to the affirmation of the applicability of human rights in occupation, by accepting its competence to adjudicate cases revealing Turkey's responsibility in the occupied territory of Cyprus.¹² Hence, the question no longer lies on whether human rights law applies in such context, but on the modalities of this application and its relation with international humanitarian law.¹³ So far, in respect to the prolonged military occupation in Cyprus, the ECtHR has applied the Convention without directly referring to the relevant rules of international humanitarian law.¹⁴

One very interesting aspect of the Court's case law is related to the property issue. The Court, relying on the early reports of the European Commission on Human Rights, found Turkey repeatedly responsible for violations of Article 1 of the 1st Protocol of the Convention and in some cases of Article 8, ECHR (right to property and right to private life).¹⁵ In the *Loizidou* judgment, the Court endorsed the rights of the legal owner and granted compensation to the victim for loss of use of her property. Moreover, the Court stressed, the continuity of the violation, which took place since the invasion and it was not convinced by

⁷ Yoram Dinstein, *The International Law of Belligerent Occupation*, Cambridge University Press (Cambridge, 2009), p. 4.

⁸ *Ibid.*, p. 2.

⁹ Cordula Droegge, 'Elective Affinities? Human Rights and Humanitarian Law', *IRRC*, 90 (2008), 502–548 (p. 503).

¹⁰ Danio Campanelli, 'The Law of Military Occupation Put to the Test of Human Rights Law', *IRRC*, 90 (2008), 653–668 (p. 660).

¹¹ Noam Lubell, 'Human Rights Obligations in Military Occupation', *International Review of the Red Cross*, 94 (2012), 317–337 (p. 335).

¹² Stelios PERRAKIS, 'L'application Des Droits de l'Homme En Temps de Conflit Armé et Leur Articulation Avec Le Droit International Humanitaire: État de La Question et Aspects Jurisprudentiels', in *Armed Conflict and International Humanitarian Law 150 Years After Solferino. Acquis and Prospects*, ed. by Stelios PERRAKIS and Maria-Daniella MAROUDA, European Centre for Research and Training in Human Rights and Humanitarian Action (Athènes- Bruxelles: A. N. Sakkoulas- Bruylant, 2009), pp. 74–107 (p. 87).

¹³ Marco Sassòli, 'La Cour européenne des droits de l'homme et les conflits armés', *Human rights, democracy and the rule of law = Menschenrechte, Demokratie und Rechtsstaat = Droits de l'homme, démocratie et Etat de droit : Liber amicorum Luzius Wildhaber*, 2007, p. 716. *Supra*, n. 7

¹⁴ Andrea Gioia, 'The Role of the European Convention of Human Rights in Monitoring Compliance with Humanitarian Law in Armed Conflict', in *International Humanitarian Law and International Human Rights Law*, ed. by Orna (ed.) Ben-Naftali (Oxford: Oxford University Press, 2011), pp. 201–249 (p. 198).

¹⁵ Marco Sassòli, 'La Cour européenne des droits de l'homme et les conflits armés', *Human rights, democracy and the rule of law = Menschenrechte, Demokratie und Rechtsstaat = Droits de l'homme, démocratie et Etat de droit : Liber amicorum Luzius Wildhaber*, 2007, p. 716.

the arguments of Turkey that stressed the political character of the property issue and the necessity to house displaced Turkish Cypriots.

The same legal reasoning was presented by the Court in the judgement of the interstate case.¹⁶ The Court addressed the general problem of the property rights of 200.000 displaced Greek Cypriots and again underlined the continuous nature of the violations, caused by the refusal of Turkey to allow the displaced to return, use and enjoy their property. The same position was adopted by the Court in *Demades v. Turkey*¹⁷, and *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey* and other cases that raised identical violations.¹⁸

The importance of the findings in the aforementioned cases lies primarily on the affirmation that private immovable property is inviolable during military occupation.¹⁹ This approach coincides with international humanitarian law and does not create different standards between the Convention and the specialized laws of occupation.²⁰ The rights of the legal owners cannot be disregarded in any case, not even in order to safeguard the needs of secondary occupants, who, in the case of Cyprus are mainly displaced Turkish Cypriots. Moreover, the Court condemned the efforts of property expropriation and ownership transfer, introduced by the “Constitution” of the “TRNC”.²¹ This condemnation has a particular application to the policy of systematic population transfer of Turkish settlers, implemented in northern Cyprus since 1974.²² In any case, transferring civilian population in occupied territories, in order to forcibly modify the demographics and achieve political goals, constitutes a grave breach of international humanitarian law.²³

So far, the above findings had a great impact on the victims, who after years of living in the oblivion, received recognition of the violations and monetary compensations. Plus, the politicians and the institutions of the Republic of Cyprus have welcomed the judgments, pronouncing that the Court supports the objectives of the Republic of Cyprus.²⁴ The findings have been used in the political discourse, in foreign policy and mainly before the Committee of Ministers of the CoE, believing that they reinforce the legal aims of the Greek Cypriots, which were seen as compatible with international and European law.²⁵

¹⁶ Cyprus v. Turkey, App. no. 25781/94 (ECtHR, 10/05/ 2001).

¹⁷ Application no. 16219/90 (ECtHR, 31/07/2003).

¹⁸ Application no. 16163/90 (ECtHR, 31/07/2003).

¹⁹ Maheta Molango, ‘Property Right During Armed Conflict: Application of Adopting Principles of International Humanitarian Law by the European Court of Human Rights’, *ILSP Journal Washigton College of Law*, 2008, 69–76 (p. 74).

²⁰ Sassòli, p. 76.

²¹ *Loizidou v. Turkey (Merits)* Application no. 15318/89, (ECtHR, 18/12/1996), paras 42-44.

²² See e.g., the Recommendation 1608 of the Parliamentary Assembly of the Council of Europe, available in <http://assembly.coe.int/documents/adoptedtext/TA03/EREC1608.htm>

²³ 4th Geneva Convention, Article 49, Para 6. Additional Protocol I, Article 85(4)(a), ICC Statute, Article 8(2)(b)(viii), ICRC Study on Customary IHL, Rule 130, http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule130.

²⁴ Rhodri C Williams and Ayla Gürel, *The European Court Of Human Rights and the Cyprus Property Issue: Charting a Way Forward* (Peace Research Institute Oslo, 2011), p. 10.

²⁵ Loukis G. Loucaides, ‘The Protection of the Right to Property in Occupied Territories’, in *The European Convention on Human Rights*, Martinus Nijhof Publishers (Leiden, 2007), pp. 121–141 (p. 135).

III. Current developments under the pilot judgment procedure

In light of the above, a large number of displaced Greek Cypriots lodged complaints before the Strasbourg Court, alleging similar violations. In 2005, the Court delivered a new judgment in the case *Xenides Arestis v Turkey* (merits), where it initiated a pilot judgment procedure, in order to deal with almost 1400 repetitive applications that had arrived at the Court's registry, raising the property issue in Cyprus. In *Xenides-Arestis*, the Court underlined the lack of progress by the respondent government, the continuity of the violations and the non creation of an adequate remedy which could guaranty effective reparation of the violations.

Following this ruling, Turkey established the "Immovable Property Commission" (IPC) under Law no. 67/2005.²⁶ The Commission started examining claims for compensation, exchange or restitution of displaced Greek Cypriots in 2006. It was the "Parliament" of "TRNC" that passed the law enacting the IPC. Under the provisions of that law, all natural or legal persons claiming property rights in the north can lodge an application before the Commission by 21 December 2013. So far, the IPC has examined 358 applications, out of 4898. In the majority of the cases, the IPC awarded compensation, while it has offered exchange and restitution in no more than 8 cases in total. The law specifies that restitution can be awarded in cases where the ownership or the use of the property has not been transferred to other persons apart from the "state" and when the restitution "shall not endanger national security and public order and that such property is not allocated for public interest reasons and that the immovable property is outside the military areas or military installation".²⁷ When the Commission orders compensation or exchange, the applicants loose the ownership title of the compensated property.²⁸

In the judgment *Xenides Arestis v. Turkey* (just satisfaction) the Court found that the respondent Government took all necessary measures in complying with the Court's judgment.²⁹ In 2010, in *Demopoulos v. Turkey* case, the Court declared inadmissible a group of repetitive applications and asked the applicants to address their claims before the IPC. In other words, for the first time since *Loizidou*, the Court rejected applications for not having previously exhaust the local remedies. This was considered as a setback in the Court's approach to the property issue. The Greek Cypriots had expressed their deep disappointment, while the Turkish side saw the case as its first success, after years of continuous condemnation. Moreover, it had a serious impact on the discussions within the special meetings of the Committee of Ministers on the supervision of execution of judgments of the Court.³⁰

In *Demopoulos*, the Court found that the IPC is a legal remedy of Turkey under Article 35 (1) of the Convention.³¹ It rejected the applicants' arguments that the IPC constituted a domestic remedy of an unlawful occupier and thus it does not meet the

²⁶ For more information, see the site of the IPC <http://www.tamk.gov.ct.tr/english/index.html>.

²⁷ "Law 67/2005 for the compensation, exchange and restitution of immovable properties which are within the scope of sub-paragraph (b) of paragraph 1 of article 159 of the constitution" available in <http://www.tamk.gov.ct.tr/english/yasa.html>.

²⁸ Ibid, para 8.1.

²⁹ *Xenides-Arestis* (just satisfaction), Application no. 46347/99, (ECtHR, 07/12/2006).

³⁰ DH-DD(2011)1075E / 25 November 2011, available in

<https://wcd.coe.int/ViewDoc.jsp?id=1877143&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

³¹ Article 35(1) states that: "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken".

requirements of Article 35(1)³², underling the pivotal principle of subsidiarity in the European human rights machinery. The Court found that the admissibility obligation of the applicants to exhaust domestic remedies was applicable in that case. In fact, the European judges did not relate the obligation to exhaust the local remedies with the legality of the regime. They noted that no exception was applied to “TRNC”, invoking, inter alia, the *Namibia Principle* of the ICJ.³³

Concerning the effectiveness and the adequacy of the IPC, the Court found that it constitutes a genuinely effective and available remedy, despite the arguments of the applicants, that it does not offer recognition of the breach and it provides only limited redress. The Court did not consider restitutio in integrum, ie the return of the property to its lawful owner, as the only effective remedy. Invoking the changing political situation, the presence of settlers in the northern part and the passage of time since the invasion, the Court noted that it was not realistic to order Turkey to return all properties back to their owners. In other words, in *Demopoulos*, the Court was of the opinion that monetary compensations constitute an effective remedy for displaced Greek Cypriots, who seek a redress of their properties.

The ECtHR restated the above argument in the recent case *Meleagrou and others v. Turkey*, which challenged before the Court the efficiency of IPC.³⁴ *Meleagrou and others* constitutes the first case that arrived to Strasbourg after having been previously examined by the IPC. The applicants lodged a complaint only for restitution, which was rejected by the IPC. The Court considered the case inadmissible, for failure to comply with the admissibility requirements, by stating that the applicants have not properly used the available remedy in the “TRNC”³⁵. In *Meleagrou*, the Court clearly repeated that restitutio in integrum has not a primary role in the Strasbourg case law and it cannot be regarded as the only effective remedy for violations of the right to property.³⁶ Since the respondent States are free to choose the means of redress, the choice not to ask for compensation or exchange burdens the applicants, whose case was considered as manifestly ill-founded.³⁷

III. Conclusion: Measuring the distance from “the relevant rules of international law”³⁸

The cases presented above articulate a radical change in the Court’s jurisprudence with regard to the protection of human rights in belligerent occupation. By equalising normalcy and emergency, peace and war, the Court disregards the legal principle “ex injuria jus non oritur”.³⁹ This principle perfectly summarises that in public international law, acts

³² *Demopoulos and others v. Turkey*, Application nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04 (ECtHR, 16/04/2010), paras 87-89.

³³ *Ibid*, paras 93-98.

³⁴ *Eleni Meleagrou and others*, Application no. 14434/09 (ECtHR, 02/04/2013).

³⁵ *Ibid*, para 15.

³⁶ The Court has however, in other cases underlined the primacy and the importance of restitutio in integrum. See *inter alia*, *Papamichalopoulos and others v. Greece*, (Just Satisfaction), Application no. 14556/89 (ECtHR, 31/10/1995).

³⁷ *Supra*, note 30.

³⁸ Article 31 (3) (c) of the Vienna Convention on the Law of Treaties stipulates that international treaties should be interpreted, *inter alia*, in the light of “any relevant rules of international law applicable in the relations between the parties”. Based on this provision, the approach of the systematic interpretation of the ECHR is gaining attention, in order to reconcile norm conflicts and produce coherent jurisprudence. See e.g. Jean D’Aspremont, ‘Articulating International Human Rights and International Humanitarian Law: Conciliatory Interpretation Under the Guise of Conflict of Norms-resolution’, in *The Interpretation and Application of the European Convention of Human Rights, Legal and Practical Implications*, ed. by M Fitzmaurice and P Merkouris (Leiden: Martinus Nijhoff Publishers, 2013), pp. 3–32.

³⁹ International Law Commission, Draft Articles on State Responsibility, Draft Articles 40 and 41(2).

deriving from a breach of an international obligation are invalid.⁴⁰ Under this principle, the requirement to exhaust a legal remedy established by a non recognised state could eventually lead to recognition of this illegal entity, or to the normalisation of the illegality of a prolonged occupation, which is a product of aggression.⁴¹

Furthermore, the stance of the Court is inconsistent with the laws of occupation and with the relevant jurisprudence of other judicial bodies. International humanitarian law safeguards private property and forbids expropriations by the occupier.⁴² Destruction, confiscation or requisition of private property is prohibited by conventional and customary rules, except for reasons of military necessity.⁴³ Expropriations during military occupation constitute a violation of international law, even if the occupier compensates the property in question.⁴⁴ This is mainly because expropriations are often used in order to implement policies of discrimination and ethnic cleansing or to prohibit the legitimate right to return of the displaced. In that case, according to Judge Loukis Loucaides, compensation “would be tantamount to accepting that a wrongdoing State may be allowed (...) to purchase the benefits of breaches of rules of international law having a status of jus cogens”.⁴⁵

The ECtHR by not clarifying the importance of restitution in kind, whose primacy has been endorsed by the ICJ and the ILC, initiated a jurisprudential policy that contradicts with the general scope of the international humanitarian law. It is understandable, that the Court finds itself in a predicament. It faces an enormous workload and for more than a decade is continuously under reform.⁴⁶ It is logic that it would not be possible to examine such a large group of repetitive cases, even if they invoke mass violations. However, completely neglecting the other relevant rules of international law can lead to a misinterpretation of the Convention and provide lower protection to the victims.

In sum up, we argue that the new approach of the Court disorients the negotiation process from the general conduct of international law and creates confusion, as it contradicts with the findings of other judicial bodies and the precedent of the ECtHR itself.⁴⁷ Time has emerged as a decisive element in human rights protection which declines the rights of the victims and eventually allows the aggressor to purchase its legitimacy.

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⁴⁰ Oppenheim’s International Law, OUP, (9th ed) at para.54, p184.

⁴¹ For a general perception, see Aeyal M. Gross, ‘Human Proportions: Are Human Rights the Emperor’s New Clothes of the International Law of Occupation?’, *European Journal of International Law*, 18 (2007), 1–35.

⁴² Molango, pp. 73–74.

⁴³ Loucaides, p. 135.

⁴⁴ *I.G. Farben* Trial, in Dinstein, p. 225.

⁴⁵ Loucaides, p. 134.

⁴⁶ Antoine Buyse, ‘Airborne or Bound to Crash? The Rise of Pilot Judgments and Their Appeal as a Tool to Deal with the Aftermath of Conflict’, in *Margins of Conflict The ECHR and Transitions to and from Armed Conflict*, Series on Transitional Justice, Insertia, 2011, pp. 175–196 (p. 176).

⁴⁷ Mainly see *Aposolides v. Orams*, C-420/07 (ECJ, 28/04/2009).

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Going back to the basics: re-examining the usefulness of judicially protecting the right to property in Cyprus

Abstract: This paper seeks to challenge the assumption that only good things can come by protecting the right to property in Cyprus through judicial mechanisms. It does this by examining the effect of three key ECHR decisions concerning the property issue on the island – *Loizidou v. Turkey*, *Demopoulos v. Turkey* and *Kazali v. Cyprus*. In particular, it argues that judicially protecting the right to property in Cyprus has failed on two counts: firstly, it has polarized the negotiating positions of the two sides, thus making the agreement of a comprehensive settlement less possible. Secondly, the two ECHR-approved domestic remedies to property violations have done little to promote feelings of justice and reconciliation among Cypriots. The paper concludes by briefly proposing the creation of a single property commission, which will consist of Greek and Turkish Cypriot members and whose mandate will be to provide a remedy to all Cypriots, while simultaneously acting as confidence-building tool among the two communities.

1. Introduction

As the protracted negotiations of the Cyprus conflict continue, the property issue is proving particularly challenging for the successful reunification of the island. Simultaneously, it is also a much-litigated question, with a reported 1400 cases at the European Court of Human Rights (ECHR) and additional cases raised in domestic bodies.¹ The assumption driving this litigation has been that only the protection of human rights, and in particular property rights, through judicial mechanisms could ameliorate relations between the two communities in Cyprus. My aim is to critically examine this assumption by focusing on the effect of three cases – *Loizidou v. Turkey*,² *Demopoulos v. Turkey*³ and *Kazali v. Cyprus*.⁴ It will firstly be argued that human rights litigation has done little over the years to bring the two sides closer to a negotiated agreement and secondly, that it is also likely to undermine the promotion of justice and reconciliation on the island.

2. Getting to an agreement: from *Loizidou* to *Demopoulos*

The international community assumes that protecting human rights can encourage peace in ethnically divided societies;⁵ a common starting point is that protecting human rights is likely to result in a negotiated agreement and help previously warring groups to reconcile with each other. Nevertheless, an analysis of *Loizidou* and *Demopoulos* suggests that far from having these positive effects, the two cases have hardened the negotiating positions of both sides and made the possibility of an agreement more distant. In *Loizidou* the applicant successfully argued that the presence of Turkish troops in the North of the island prevented her from living in her house in Kyrenia and was therefore in violation of the right to property (Article 1, Protocol No. 1 ECHR). Turkey submitted that any case the applicant might have had should not be against her, but against the unrecognised Republic of Northern Cyprus (TRNC), which was not however a member of the Council of Europe. The Court rejected the argument and held that Turkey was exercising ‘effective control’ over the TRNC authorities and should therefore be responsible for their actions.⁶ Since then, *Loizidou* has been a reference point in the negotiations of the Cyprus problem: Greek Cypriots contend that the ECHR has confirmed their long-standing position that ‘all refugees should return to their homes’, while Turkish Cypriots argue that this interpretation of the case is in stark contrast to the agreed upon legal principle of bizonality.

¹ Nikos Skoutaris, ‘Building transitional justice mechanisms without a peace settlement: a critical appraisal of recent case law of the Strasbourg Court on the Cyprus issue’ (2010) *European Law Review* 35(5) 720-733, p.725.

² *Loizidou v. Turkey*, App. No. 15318/89, Judgment delivered 18 Dec. 1996.

³ *Demopoulos and Others v. Turkey*, App. No. 13751/02, Admissibility decision delivered 1 Mar. 2010.

⁴ *Kazali and Others v. Cyprus*, App. No. 49247/08, Admissibility decision delivered 6 Mar. 2012.

⁵ This is part of the international community’s assumption that human rights can bring about peace. See for instance the preamble of the ECHR which states that human rights are the ‘foundation of justice and peace in the world’.

⁶ *Loizidou*, para. 52.

This profound disagreement about the case's interpretation has polarized each side's demands and contributed to people's unwillingness to accept a compromise solution. On the one hand, *Loizidou* has led Greek Cypriot politicians to argue over the years that nothing short of restitution of *all* properties could satisfy the European Court's demands. In *Loizidou* the Court insisted that it 'does not consider it necessary, let alone desirable ... to elaborate a general theory concerning the lawfulness of legislative and administrative acts of the "TRNC";⁷ yet, Greek Cypriots have understood the case to mean that the property issue is a matter of rectifying an 'illegal situation', a task that could only be achieved through full compliance with international law. While Greek Cypriots feel that they have the law on their side, so do Turkish Cypriots, which in turn polarizes their demands as well. The starting point for them is not to protect human rights, but the principle of bizonality, which they interpret to mean that Cyprus should be divided in two entities, or zones, and that each community should have primacy in one of them. Turkish Cypriots argue that in order for them to remain a majority in their zone in the North, and therefore to exercise that primacy, it is necessary to restrict Greek Cypriot property and settlement rights there. Bearing in mind these realities on the ground and the passage of time since the beginning of the conflict, they contend that the most appropriate solution is the mass payment of compensation to the displaced and the exchange of properties between the two zones. Thus, instead of providing a common ground, the use of international law by both sides has made them feel that their demands should be met in full and any concession they make is necessary because of the other side's unreasonableness. *Loizidou* has convinced Greek Cypriots that Turkish Cypriots will ignore something as basic as human rights in their quest for power and the principle of bizonality has created similar feelings among the other side. With this background in mind, the slow or non-existent progress of the negotiations is unsurprising.

The success of the *Loizidou* case from the Greek Cypriot perspective has resulted in a large number of similar cases being submitted to the ECHR, which for a number of years issued judgments in the applicants' favour. This trend changed with *Demopoulos*, a case that further undermined the possibility of a negotiated solution being achieved. In that case, the ECHR commented on its unwillingness and inability to deal with numerous cases with identical facts and, pointing to the principle of subsidiarity, held that domestic bodies should deal with them instead.⁸ These comments stemmed from the creation of the Immovable Properties Commission (IPC) in the TRNC, which, it was contended in *Demopoulos*, created an effective domestic remedy and the consequent obligation on Greek Cypriots to exhaust it before turning to the ECHR. The IPC, made up of Turkish-Cypriot judges in the TRNC, hears cases from displaced Greek Cypriots and, if the facts of their claim have been established, provides remedies for the property and the loss of its use since 1974. The effectiveness of the IPC had first been examined in *Xenides-Arestis v. Turkey*,⁹ in which Turkey argued that it would be paradoxical to find it responsible for violations in Cyprus, but prevent it from remedying them. The ECHR accepted that Turkey should be allowed to provide redress for property violations in Cyprus, but held that the IPC did not provide an effective remedy, partly because of its inability to offer

⁷ *Loizidou*, para. 45.

⁸ *Demopoulos*, para.69.

⁹ *Xenides-Arestis and Others v. Turkey*, App. No. 46347/99, Admissibility decision delivered 2 Sep. 2004.

restitution of at least some of the properties in question.¹⁰ The Court acknowledged that the passage of time since the original dispossession could mean that restitution was neither desirable nor fair in every case, but it rejected Turkey's argument that a blanket rule in favour of compensation was adequate. Although *Xenides-Arestis* was found admissible, it turned on the green light for a TRNC domestic mechanism dealing with Greek Cypriot property complaints. As a result, soon after, the TRNC amended the legislation in question in accordance with the ECHR's recommendations: in addition to compensation, the IPC can now also offer restitution and exchange of Greek Cypriot properties in the North with property of equivalent value in the South.¹¹

The effectiveness of the amended law was examined in *Demopoulos*, where for the first time the Court found a Cypriot property case inadmissible due to a failure to exhaust all domestic remedies, including the now approved IPC.¹² Since then, all cases to the ECHR have been blocked and the only way a new case can be brought to the ECHR is if the applicant has exhausted all domestic remedies and still feels that she is not adequately remedied. These were the facts in *Meleagrou v. Cyprus*,¹³ in which the applicant challenged the Commission's decisions all the way to the TRNC Supreme Court and unsuccessfully argued that the remedies provided by the IPC were in violation of the right to property and to a fair trial. *Meleagrou* sealed once and for all the future of Greek Cypriot property cases: for an applicant to obtain a remedy before the two sides have signed a comprehensive peace agreement, she will have to go through the IPC, and will most probably be unable to successfully challenge that decision to the ECHR.

However, this change in the tide after *Demopoulos* has arguably further hardened the Turkish Cypriot negotiating position. The Court in *Xenides-Arestis* had claimed that the IPC should at least provide the possibility for restitution, but in *Meleagrou* it chastised the claimants for demanding restitution instead of compensation for their properties.¹⁴ If however the IPC provides the opportunity to the TRNC to resolve the overwhelming majority of claims through *its* preferred remedy, this removes any incentive from the Turkish Cypriot side to negotiate an agreement, which is likely to require the return of considerable areas of land back to the Greek Cypriots. A correct interpretation of the property saga should focus on what the Court does not consider acceptable, rather than on what it allegedly demands from the applicants. The ECHR has clearly indicated that only providing restitution or only providing compensation is unsatisfactory,¹⁵ irrespective of Cypriots' selective reading of the case law. However, this idea that an agreement requires compromise between the two ideal approaches is 'Conflict Negotiation 101'. The fact that it took the ECHR a decade to reach the same conclusion, while managing to further polarize the two communities in the process, raises questions about whether human rights litigation is the best way to settle the conflict on the island.

¹⁰ *Xenides-Arestis*, section 3(d).

¹¹ For a summary of the legislation, see *Demopoulos* para. 35-7.

¹² *Demopoulos*, para. 127.

¹³ *Meleagrou and Others v. Turkey*, App. No. 14434/09, Admissibility decision delivered 2 Apr. 2013.

¹⁴ *Meleagrou*, para.14.

¹⁵ *Demopoulos*, para. 119.

3. The inefficiency of domestic remedies: *Demopoulos* and *Kazali*

Perhaps this disadvantage of the case law would have been an acceptable price to pay if human rights protection induced a feeling of justice to the applicants while they are waiting for the final settlement of the conflict. Nevertheless, both *Demopoulos* and the equivalent Turkish Cypriot case, *Kazali v. Cyprus*, fall short of this expectation as well. *Kazali* arose due to the Custodianship legislation, passed by the legislature of the Republic of Cyprus, which applies to all Turkish Cypriot properties in the South. The Law, which was implemented in 1991 and amended in 2010, states that all abandoned Turkish Cypriot properties will remain the responsibility of the Custodian until the end of the ‘abnormal situation’ on the island.¹⁶ Even though the rationale of the legislation was the protection of these properties,¹⁷ the pre-2010 legislation provided no mechanism for reclaiming them if Turkish Cypriots returned to live permanently in the South and no longer needed the Custodian’s protection. The applicants in *Kazali* challenged the old law for preventing their use of the property, but before the case could be heard in the ECHR, the Republic amended the legislation allowing, in principle, those who wanted to return to their properties to apply for the lifting of their custodianship. The ECHR examined the domestic courts’ practice since the amendment of the law and found *Kazali* inadmissible because the applicants had not conclusively proven that the domestic courts could not provide an inadequate remedy.¹⁸

Ultimately, *Demopoulos* and *Kazali* should be read together because it would have been strange indeed if the Court opened one door to the Cypriot property problem with *Kazali*, shortly after it had closed another with *Demopoulos*. Combined, the two approaches make the property problem a Cypriot rather than a European one and empower domestic bodies to take action. However, the remedies that the ECHR has blessed with these two decisions are unlikely to create feelings of justice and willingness to reconcile among Cypriots.

On the one hand, the IPC offers compensation in the overwhelming number of cases it decides, usually at a small fraction of what the property is worth. It is therefore likely that applicants turn to the IPC because they have lost faith in the political negotiations or because they are in need of money, rather than because they see the remedy as a just outcome of their displacement. Moreover, it is unclear what happens when restitution is provided and whether applicants are allowed to move in their properties immediately. The remedy of exchange is also hugely problematic, as illustrated through *Tymvios v. Turkey*.¹⁹ In that case, the applicant exchanged his property in the North with Turkish Cypriot property in the South on which two schools had been built. This move arm-twisted the Republic into buying the land from Tymvios, thus confirming that this remedy cannot be used in good faith on a regular basis unless the Republic indicates to the IPC which land can be exchanged, something which is unlikely to happen. Cases like *Tymvios* and allegations that many applicants turn to

¹⁶ Turkish-Cypriot properties (Administration and Other Matters) (Temporary Provisions) Law of 1991(as amended), Section 3. [henceforth, Law 139/1991].

¹⁷ Law 139/1991, preamble.

¹⁸ *Kazali*, para.152-153.

¹⁹ *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey*, App. No. 16163/90, Judgement delivered on 22 Apr. 2008.

the IPC due to financial difficulties do little to promote the sense of justice that human rights are supposed to be all about.

On the other hand, the provisions of the Custodianship Law only apply to a small section of Turkish Cypriots, thus implying that the remedy approved of in *Kazali* is also problematic. In particular, the practice of the Cypriot domestic courts so far suggests that those living in the TRNC and who are unwilling to move to the South, in other words, the vast majority of potential applicants, will be unable to lift the Custodianship. Furthermore, both the IPC and the Custodianship remedies are suffering from a lack of trust among the people about the reliability and impartiality of the other side's remedy-providing body. This, in addition to the fact that applying to the other side's authorities is accompanied by a stigma as applicants are perceived as doing something unpatriotic, prevents a number of people from applying. Thus, while the remedies are technically available, important psychological barriers compromise their effectiveness. Even in cases where applicants receive some material benefit from these processes, the facts that they often have to do it in secret and with little trust in the decision-making bodies, makes it unlikely that the remedies will leave them with the feeling that justice has been done and it is now time for reconciliation.

The most persuasive explanation for these limitations is that there are two independent redress mechanisms rather than a single combined effort between the two communities. As a result, each side does enough so as not to get caught by the Court's minimum standards, but this half-baked remedy does little to really offer redress to the applicants. Perhaps a more appropriate body that could deal with the concerns raised in terms of legitimacy and willingness to offer adequate remedies to all is a single high-profile and transparent committee, being composed of both Greek and Turkish Cypriots. Being faced with claims from both sides, it could strike a balance between demands for compensation and restitution, while also taking into account the wishes of the individual applicants. Such a committee would not necessarily follow a comprehensive peace settlement, but could be its predecessor, a confidence-building measure that could lead to the gradual rather than one-off resolution of the property issue. This would not be the first time that the two communities have cooperated with each other and logic and sheer proximity between them suggests that it will not be the last either.²⁰ However, despite the ECHR's persistent urging for a swift political agreement on the Cypriot property issue,²¹ its vindication of the two remedies is unlikely to do much to push things in that direction. Even more worryingly, *Demopoulos* and *Kazali* are probably the best outcomes that we could have expected from the ECHR. Despite dissatisfaction with the domestic remedies, leaving the cases to be decided by the European judges would have been more problematic. Moreover, the artificial division between the two remedy-providing bodies dealing with the same problem is the unavoidable result of the way litigation works and nothing could have been done by the ECHR to avoid it. Like with *Loizidou*, this raises questions as to whether human rights litigation is really the way to peace.

²⁰ The first such cooperation project, the Nicosia Sewage Water Treatment Plan, started in 1978. Other joint projects have followed, most notably the Committee for Missing Persons, which has been described as a 'model of successful cooperation' by the UN.

²¹ *Demopoulos*, para.85.

4. Conclusion

This paper focused on three cases – *Loizidou*, *Demopoulos* and *Kazali* – in an attempt to challenge the orthodoxy that ‘a bit more human rights can never make things worse’.²² On the one hand, the combination of *Loizidou* and *Demopoulos* have made the reaching of a negotiated agreement less likely because of the way each has hardened the positions of the two sides and negatively affected people’s willingness to accept a negotiated outcome. On the other hand, the combination of *Demopoulos* and *Kazali* are weakening rather than promoting the possibility that applicants will receive redress in the absence of a negotiated agreement. While they meet the Court’s minimum standards of rights protection, they do not create a sense that justice has been done, thereby undermining reconciliation among Cypriots. This is not an argument against the protection of human rights in general since humanity as a whole would have been worse off without them; however, we should go back to the basics and reconsider the assumption that in addition to being valuable in and of themselves, human rights should also be protected because of their peacebuilding potential. Such an exercise could be valuable to the extent that it allows us to overcome the almost theological appeal that human rights exert so that we can focus our attention and resources to peacebuilding tools that have proven more effective.

²² David Kennedy, ‘The International Human Rights Movements: Part of the Problem?’ (2002) 15 Harvard Human Rights Journal 101, p.124.

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Summary of Paper Bicommunal Constitutionalism to Multicultural Citizenship

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Abstract

Bicommunal constitutionalism is the basis of the constitution of the Republic of Cyprus. This paper questions whether it is still relevant 53 years after its initial conception. In the first part, ethnically-based bicommunalism is explained and deconstructed. Then, the relevance and legitimacy of bicommunalism is questioned in light of the changes, internal and external, theoretical and practical, that emerged since 1960. The overall argument is that bicommunalism should be replaced by multicultural citizenship; a new model of constitutionalism focused on protecting all the minorities of the island and not only the two dominant ones.

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Introduction

The aim of this paper is to question whether the justification for the bicomunal state is still valid today, 53 years after its inception. This paper will summarise the main arguments found in my article-long exploration of the matter. The overall argument is that we need to move past the model of bicomunal constitutionalism, towards a model of multicultural citizenship.

What this paper argues is that the reasons that supported the bicomunal exceptionalism of the constitution are no longer valid and as such we need a new constitutional model that protects all the minorities present in the island and not only the two dominant ones. The negotiated constitution should be based on multiculturalism rather than on bicomunalism. It must be sensitive to different lifestyles and different conceptions of the good and should not try to impose a specific set of values – either national or religious – on those living within it.

The paper is advanced in three stages. The first explains how ethnically based bicomunalism emerged and what makes the two communities special. The second, examines what has changed both internally and externally since the drafting of the constitution in the late 1950s. The final part provides an alternative model that will respond to the current challenges found in Cyprus.

The Basis of Bicomunalism

In the first part, I explain the basis of bicomunalism. I explore how bicomunalism came to be the basis of the 1960s constitution of the Republic of Cyprus. In order to do that I outline how ethnic nationalism was established in the island, tracing its historical evolution from the religious classifications of the Ottoman Empire to the ethnic division of the British, and finally, to the events of the 1950s. The main question in this section, is what, if anything, makes the two groups, Greek- and Turkish-Cypriots, special. I argue, contrary to popular belief, that it is not ethnicity, history, language or religion that makes the two communities special, but rather their size and security considerations.

To make this argument, I examine each of the cultural identity markers (language, history, religion and ethnicity) and trace their presence in the rest of the

groups found in the island. Thus, I explain how Maronites have a language specific to their culture that is protected by UNESCO and how their ethnic identity is Lebanese, despite the fact that they have been forced (misrecognised) into the Greek ethnic group. Similarly, I explain how ethnicity is an alien concept for Latins, who experience Cyprus as their motherland and how each of the minorities discussed have religions specific to their cultures and presence in Cyprus traced prior to the Ottoman Empire.

Thus, I conclude the section by arguing that the only two aspects that make the Greek and Turkish groups special when compared to the rest of the 'old immigrant' groups (national minorities) in Cyprus, is that they are numerically superior and that their cultural identities have been highly securitised.

Bicommunalism today

In the second part, I examine what has changed since the 1950s. I divide the analysis into the internal and external changes; that is, between changes that happened in Cyprus and changes that happened internationally that affected Cyprus, either directly or indirectly.

Internal Changes

The most important internal changes that took place since the declaration of the independence of the Republic of Cyprus are four. Firstly, the intensification of the conflict during the 1960s, which led to the geographical retreat/isolation of the Turkish Cypriots. Secondly, the military invasion and subsequent division of the island into the North and the South; the former controlled by the Turkish Cypriot authorities and the latter by the Greek Cypriots. Thirdly, the 1983 self-declaration of the administration of the North to an independent state. Finally, the opening of the checkpoints in 2003, which enabled people to cross over to the other side for the first time since 1974.

The overarching problem that can be traced through these four periods is the different nation-building that each community has followed. The two communities have utilised the mechanisms of their states to instil upon their citizens a com-

mon sense of belonging; in other words, their ethnic identities have been state-sponsored in order to maintain their distinctiveness. When a state apparatus plays such an active role in the construction of cultural identities, it acts as a constraint to the internal diversity of its cultural members.

External Changes

The external changes that took place are of more interest to the argument defended here and they can be divided into two broad categories: those that directly affect Cyprus and those that indirectly do so.

Directly Affecting Cyprus

Since 1974 and up to March 2013, Cyprus has been stable both politically and economically. No politically-motivated collective act of violence took place since then and the country enjoyed economic and political prosperity. The economic and political prosperity of Cyprus along with political developments in the area attracted inward migration, which is described here as an 'external' change that directly affects Cyprus.

The external changes can be divided into four categories. Firstly, Cyprus attracted an influx of foreign capital and foreign investors, mostly Russian and recently Chinese, who moved their businesses and their families to the island. Secondly, it attracted inward migration from countries of the European periphery, especially from economically challenged countries like Greece, whose nationals migrated to Cyprus to seek employment. Thirdly, non-European political migrants migrated to Cyprus following turmoil in their home countries who are in geographical proximity to Cyprus. Finally, the demand for cheap work force, especially for domestic work and construction, attracted non-European migration, with the largest groups being Sri Lankans and Filipinos.

If security considerations and size are indeed the two reasons that distinguish the dominant cultural groups (Greeks and Turks) from the rest, then new immigration challenges both. The fact that these groups migrated to the island is a solid indication of the desecuritisation of cultural relations in Cyprus. At the same time, the size of the biggest of these groups, which are comparable to those of the consti-

tutionally recognised minorities, raises questions as to whether size is a legitimate justification for claims of self-government.

The Greek and Turkish migration is of special interest, since it is altering the composition of the two dominant cultures. The recent Greek migration has two opposite effects, since it inspires either ethnocentric sentiments or anti-Greek racism. The first is expressed as follows. As more Greek nationals migrate to the island and Cypriots have the chance to show allegiance to their ethnic brothers-in-need, the gap that separates Greek- and Turkish-Cypriots widens and Greek Cypriots emphasise their ethnic rather than their local civic identities. The second is pre-occupied with those negatively inclined towards Greek economic migrants. The problem there is that racism towards the Greeks, irrespective of whether it will cause a Cypriocentric shift in local identities, is unwelcome because it promotes racism. Racism is an obstacle to a constitution that wants to facilitate diversity and encourage a common sense of belonging.

The case of Turkish migration is more complicated. Greek Cypriots mistakenly consider all migrants from Turkey to be settlers. This is so because after 1974 Turkey encouraged many Turkish nationals to move to the North of Cyprus. For the sake of the analysis, I differentiate between state-led and individually-led migration, to provide a coherent way of distinguishing between those that were given economic motives by Turkey to move to Cyprus, from those that migrated to Cyprus for private reasons, thus distinguishing between settlers and economic migrants. Finally, I make a further distinction for the children of Turkish migrants, who cannot be refused residency and nationality. The case of Turkish Cypriots is complicated because it is difficult to make the distinction between the state-led and the individually-led migrants. The fact that these migrants are given TRNC nationality and are allowed to vote, further complicates the situation. Turkish migration is a threat to the Turkish Cypriots because it can artificially alter the demographic composition of their culture and potentially make them a minority within a minority, effectively destroying their local cultural character.

Thus the external changes that took place since 1960 that directly affect Cyprus is new migration of investors, EU and third country nationals, as well as nationals from the two motherlands.

Indirectly Affecting Cyprus

Let us now proceed to the external changes that took place since 1960 and indirectly affect Cyprus.

The Universal Declaration of Human Rights adopted in 1948 is important because it marked the discontinuation of the hierarchy of ethnic and 'racial' identities. In Article 2, the *Declaration* specifically states that 'everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. Although the *Declaration* itself does not explicitly mention multicultural rights, subsequent conventions and declarations – the UNESCO Universal Declaration on Cultural Diversity (Article 4), the UN Declaration on minority rights (Article 8(2)), the International Labour Organization's Convention on the right of indigenous peoples – place the rights of minorities on a human rights basis. Thus minority rights are now a matter of human rights.

The creation of the European Economic Community and eventually the European Union is another milestone development that altered the international political arena. The most important change regarding the EU is the incorporation of a clause on the treatment and respect of national minorities as part of the Copenhagen criteria that every country must meet prior to its accession to the Union. Thus, the EU provides action-guidance as to the treatment of minorities and most importantly, the responsibilities of the member-states towards them.

What the example of the EU and UN demonstrates is the widespread acceptance of the values of political liberalism. Fundamentally, what has changed since the 1960s is the Western approach to the rule of law and to individual rights.

Joseph Raz in 1977 has used an apt description that captures this shift, by arguing that the rule of law resembles a knife. The knife itself is neutral. It can be used to cut bread and also to kill. Thus the law ought to be neutral. Similarly, John Rawls, the father of political liberalism, with his seminal 1971 book *A Theory of Justice*, promoted an idea of justice as fairness, where impartiality and fairness ought to be the foundations of a just society. The condition of political neutrality was further emphasised in his later book *Political Liberalism*. The underlying idea is that

of the 'overlapping consensus', where 'reasonable pluralism' should prevail in the society. According to Rawls, a just society must allow for different and competing comprehensive doctrines and should be united by a common political conception that is nonetheless endorsed for different reasons by those in the society; reasons that are compatible with their own conception of the good.

Thus, after the 1970s we have a shift in the understanding of the rule of law. This new narrative understands the role of the state and its laws as the maintainer of a *neutral* order rather than as the protector of some conception of the good life, or the maintainer of a certain national vision. This shift from a morally charged to a morally neutral rule of law, is underpinned by a specific *liberal* conception of rights.

This means that it is now difficult to provide a political justification for the continuation of the ethnocentric policies of the two administrations in Cyprus, since the newly-found character of the state, requires that it is *neutral* towards the different cultures that exist within its borders. Thus, the requirement of neutrality, precludes the maintenance of the monocultural rhetoric that aims at the sustenance of a sense of ethnocentric national belonging. In light of these changes, updated justifications for the bicomunal state are needed. Reasons are needed to explain *why* should the state maintain the two dominant cultures and not the rest. *Why* should the members of the Greek or the Turkish cultures enjoy more constitutional rights than the member of the Armenian, Maronite or Roma culture, and then, why them and not the members of the new immigrant cultures that are found on the island.

Multicultural Constitutionalism

The multicultural challenges present in Cyprus cannot be addressed by bicomunal constitutionalism. The double role of the Turkish Cypriot culture as both a dominant and a minority group, cannot be captured by bicomunalism. Turkish Cypriots are a minority culture when compared to the Greek Cypriots and a dominant culture when compared to the other minority groups.

The group-differential treatment expressed through bicomunal constitutionalism that Turkish Cypriots are entitled to aims at guaranteeing the survival of their culture; it protects their culture from being assimilated by the majority Greek-

Cypriot one. The survival of one's culture is important because culture is a context-of-choice. This is what the political theorist Will Kymlicka argues in his work on multiculturalism. Culture provides the translational abilities by which an individual makes sense of the world. Without access to culture an individual is less likely to understand the options available to him or her. Thus without a cultural structure as a context-of-choice, the individual will be less likely to make *autonomous* choices. This justification is a distinctly liberal one, because it defends group rights based on the liberal value of autonomy. By doing so, it manages to formulate a defence of multiculturalism that is compatible with the contemporary language of individual rights, which has been adopted in the West, both by nation-states and by international and intergovernmental institutions, like the United Nations and the European Union.

What causes the complications in the case of Cyprus is that the Turkish Cypriots can also be considered a dominant culture. This is the case when they are compared with the rest of the minority cultures of the island, both national and immigrant groups. The fact that the authority in the 1960s constitution is divided between Greek and Turkish Cypriots, makes the two cultural groups dominant over the minority national groups – Armenians, Latins, Maronites, Roma – who are mis-recognised and forced to join one of the two bicomunal ethnic groups.

Where does that leave us? To the conclusion that future solution plans must be framed around the following two premises: principled justification of group-differential treatment and adherence to the values of political liberalism.

The current model of bicomunal constitutionalism is no longer legitimate because it does not explain *why* Turkish Cypriots enjoy different treatment that is not available to the rest of the minority cultures of the country. Thus, according to the first premise, a principled justification for any preferential treatment must be given, in order to be able to be extended to other minority groups as well. The second reason that bicomunal constitutionalism is no longer legitimate, is that it does not comply with the values of political liberalism. There are now strong normative justifications for arguing against the assimilation of all cultures into the dominant Greek one. The work of Rawls and the work of Kymlicka explain why the state needs to guarantee that all citizens are treated equally. Thus, according to the second premise, the negotiated constitution must be based upon the values

of political liberalism, currently not guaranteed under the model of bicomunal constitutionalism, which is unable to facilitate or even host what Charles Taylor calls 'deep diversity'.

Conclusion

Before concluding this summary, a clarificatory remark must be made. A solution of multicultural constitutionalism is one where *more* diversity is encouraged, not less. As such, it is not an argument for a unitary state or an argument against a federal solution. It is not an argument against the differential treatment of Turkish Cypriots. On the contrary, it is an argument for *more* preferential treatment, that extends to the rest of the minority cultures found in the island. Most importantly, it is a call for a constitution that protects minority cultures from the nation-building of the two communities.

A multicultural constitution is one that allows for competing comprehensive visions of the good life to coexist under the same society. It is one that empowers diversity and reasonable pluralism and one that enables individuals to have access to a cultural structure in order to be able to make sense of the world. The current bi-communal model fails to realise this potential, since it provides the two dominant cultures the ability to continue their subjection of diversity through their ethno-centric nation-building.

If you would like to read the complete paper contact me at george@iordanou.org or through www.iordanou.org