

Constitutional Law and Federations

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The issue of the federal composition of a State, as a political system of government, has been of great concern to the Cypriot political life and public opinion for at least the last 40 years due to the Cyprus problem. At the same time, it is a subject of academic research and scientific work.

This book constitutes an important addition to the academic research, not only from a purely legal point of view, but because it combines elements of historiography and international relations, creating a complex scientific 'mosaic'. A distinctive feature of the book is the methodological and systematic analysis of the issues it deals with. Starting with a focus on the Cyprus issue, it highlights elements of history of law. Next, the author is engaged in an analysis of the main issue, which is the system of federal governance in the light of constitutional law, in particular human rights and how (if) this can be applied in the case of Cyprus.

The book begins with an outline of the historical-legal framework in Cyprus during the British occupation of the island (1878-1959). Of special importance are the references to historical data concerning the constitutional situation that prevailed on the island, as well as the constitutional contributions of the British on the Cyprus problem that arose during the process of independence of Cyprus and beyond (pp. 11-5).

Also, the author is not content with a simple historical account of facts, but proceeds to a scientific analysis of the special features of the Cyprus Constitution as it emerged after the Zurich-London Treaties and the establishment of the Republic of Cyprus. The author analyses in a concise but comprehensive methodological way the basic characteristics of the Cyprus Constitution, namely that it is based on the existence of two communities, namely the Greek and the Turkish community, where, despite the numerical difference of the population between these two communities, as the author notes, the Constitution treats them equally in some cases. He concludes that the Cypriot constitutional text is considered as a detailed and rigid constitution, which was imposed on the Cypriot people without a preceding process of constitutional power. According to the author, the structural features of the Cypriot constitu-

tion seem to conflict with basic principles of international law, especially the right to self-determination. At the same time, it highlights the issues of internal governance and the problems that arise with the recognition of the veto power each of the two communities has, in terms of decision-making. Finally, he states the position that the Constitution of 1960 did not provide the necessary regulatory framework for the peaceful and common coexistence of the two communities, but instead paved the way for division and conflict (pp. 25-7).

In the second part, the author presents a very informative historical analysis of federal systems (federalism) starting from ancient Greece to modern cases, such as the USA. The importance of this historical analysis lies in the fact that the author highlights those theoretical and practical characteristics of the federal states, which help the reader understand the dogmatic foundation of the federal systems, as well as his position in relation to the proposed model of solution to the Cyprus problem, namely the bizonal bicomunal federation. The author, after his comparative and historical review, sets out his theoretical background, i.e., the conditions for when it is deemed necessary to implement a federal system: based on important political parameters and for security reasons concerning a specific area (pp. 69-70). However, the author does not stop here, but cites his own approach in relation to the case of Cyprus, where the model of the bizonal bicomunal federation itself does not meet the above requirements.

Of course, the author's position is not limited to this statement, but in the third part, with important historical and comparative references to federal systems of other countries, he explains why the bizonal bicomunal federation model not only does not offer a proper system of government, but also calls into question the adequate protection of human rights (pp. 75-80). First, it raises the general question of whether a federal system can be implemented in Cyprus. The author gives a negative answer considering that such a system is very difficult to implement.

The author's analysis concludes that the proposed model of federal solution for the case of Cyprus does not meet basic historical and political criteria of the federal States, such as the common foreign policy and security issues of the state that justify the adoption of such a particular system. With reports in cases of other States, he considers that the problem in Cyprus is that an artificial separation of the population of the island has been created (due to the illegal invasion and occupation), where with the specific model of federation 'unification' is attempted, while on the contrary the practical application and the purpose of creating a federal state is to unite the already

existing local governments-states under one political union, that of the federal government (pp. 71-3).

It is noteworthy that the author does not focus only on issues of public law, but expands his critique, relating the model of bizonal and bicomunal federation to international law and arguing that this model is not compatible with the basic right to self-determination of peoples according to the Charter of the United Nations. He then goes on to explain why the specific morphology of the federation is contradictory with fundamental rights, as basic rights such as settlement and movement are restricted based on racial or community criteria. Special mention is made by the author to the right to education and how this, according to the case law of international courts, should be protected, but also effectively provided within a federal framework (pp. 75-9). Furthermore, the author adds the European Union to the scope of his analysis. Following a discussion on historical examples in the form of scenarios, he considers that European law will conflict with a future system of bizonal bicomunal federation, especially in the field of protection of rights and fundamental freedoms of the Union (p. 85).

At the same time, in the present work, with a special analysis of international law, mainly a historical interpretation of international treaties, he explains why the so-called 1977 'High Level Agreements' between Makarios and Denktas, and 1979 between Kyprianou and Denktas, cannot be considered legally binding. But also, among other things, the author, making historical references around various international treaties, considers that the context under which the 1977 Agreements took place has elements of coercion in a treaty¹, a factor that makes it legally non-binding. Also, with his references to the Roman dogma *rebus sic stantibus*, he considers that with the proclamation of the 'TRNC' in 1983 in the occupied part of the island, the facts justifying the release from the 1977 Agreements have changed (pp. 89-92).

Of course, it should be said that the above 'agreements' were not made between states and/or recognized states, but between the President of the Republic of Cyprus, namely Archbishop Makarios, and Rauf Denktas as the representative of the Turkish Cypriot community. Also, it was not considered an international agreement, nor was it registered as such with the UN, but it is judged as a gentlemen's agreement of a

¹ The basic theoretical conception lies in the fact that an international treaty between states which are considered equal presupposes that it is done with the free will of these states. Therefore, the binding nature of an international peace agreement, after the end of hostilities where the victorious state essentially imposes its conditions on the defeated state, is called into question. See about *De Jure Belli ac Paris*, lib. II Chapter XII, section 10, Classics of International Law, Kelsey trans., p.348.

non-binding nature. In other words, the arrangements that took place in 1977 and 1979 between Makarios and Denktas and between Kyprianou and Denktas should be considered to be merely guidelines (a roadmap) for the conduct of bicomunal talks with a view to resolving the Cyprus problem and do not meet the conditions to be deemed an international agreement.

Another feature to be found in the present work is the author's comparative pervasiveness with other related systems of constitutional federation. Such a case is the analysis made on the main features of the American Constitution and its potential correlations with the case of Cyprus. With his references to important decisions of the American Courts, he explains how basic principles of constitutional law are applied, such as the separation of powers between federal and state bodies², and especially between the courts of the central government and those of the states. At the same time, the specific powers of the executive power are listed, mainly the relationship between the President and Congress, such as the authority to suspend officials³ (p. 121-5). Finally, a special reference is made to the legislative power and the ability of the Congress to legislate only on those subjects which the Constitution provides for. Mention is also made of the basic characteristics of the Congress, such as its division into two bodies, namely the Senate and the Lower House, as well as the legislative powers that these two bodies have between them.

After the above analysis, the author proposes his own position on the case of Cyprus, recording a model for Cyprus, based, on the American Constitution. Thus, on the question of the limitations of the federal states, so that they do not act at the expense of the coherence of the central government, the author suggests explicit limitations for them, such as the prohibition of the signing of international agreements on their part or even the determination of monetary policy, except if there is an express legislative authorisation to do so at the federal level. More generally, his interesting suggestion focuses on the fact that to maintain unity and cohesion between the local states and the central government there should be prohibitions in the states on certain subjects unless the federal law allows it (pp. 151-3)⁴. Also worth mentioning is his suggestion about the way the judiciary should work at the federal level but also in relation to the control of state legislation to achieve the unity and functionality of the federal state.

The last part deals with issues of international relations and, in particular, the

² See *Morrison v. Olson* 487 U.S. 654 (1988) και *Printz v. United States* 521 U.S. 898 (1997).

³ See *Myers v. United States* 272 U.S 52 (1926).

⁴ State action unconstitutional until congressionally authorised.

issue of security in the case of a solution to the Cyprus problem. According to the author, the United Nations institution failed to promote an adequate security system on the island, and this is due to the peculiarity of this international organisation that is the lack of mechanisms to enforce its will. Also, not even the system of guarantees – especially with Turkey’s right of military intervention– can provide a reliable system of political and legal security of the Cypriot State⁵. The author supports this position with references to similar examples in the international community, concluding that an agreement guaranteeing the independence of one state from another with the right of military intervention against the latter seems to conflict with the basic principles of independence, self-determination and equality of states as defined in the charter of the UN. On the other hand, he believes that the British Bases (SBA) established on the island can play a role in the external and internal security of the state. At the same time, he suggests that the security system be placed under the auspices of NATO and, to this end, he proposes that the British bases be placed under NATO administration. The author does not fail to mention the security system that was inaugurated in 1993 between Greece and Cyprus with the unified defence doctrine. Finally, in the intractable security equation, the author adds Israel and energy policy as factors that can lead to a broader security system in the Eastern Mediterranean.

The book concludes by quoting an interview of Lord Caradon, a former colonial governor. This interview includes very interesting but largely unknown historical elements of the constitutional and colonial history of Cyprus, which without a doubt constitute important and useful data for scholars.

The author’s main position is that any solution to the Cyprus problem should be based on full respect for international law and human rights, as well as consider the existence of an effective security system on the island. And this, according to him, the bizonal bicomunal federation is unable to offer. He cites the American model of federation as a basis for the form of solution of the Cyprus issue. Apart from the basic legal issues that the author tackles, especially in matters of constitutional and international law, he does not ignore the political dimension of the Cyprus issue. To this end, his scientific research and documentation is not limited to purely legal positions. This book addresses issues related to the fields of international relations and international security.

The scientific creativity and contribution of the author can also be found in the

⁵ See. I. Kareklas, ‘International Law and Diplomacy on the Turkish Military Intervention of Cyprus’, *Working Paper* No. 18/2011 (Athens: Hellenic Foundation for European and Foreign Policy, 2011).

fact that he highlights theoretical, historical, and practical elements which have occupied the international community, but these elements seem to not have occupied or are still unknown in Cypriot political thought. Elements which would undoubtedly help move in the right direction towards solving the Cyprus problem. Finally, the combination of parallel scientific fields that emerge in the present opinion make it a useful academic tool for both the legal scholar and the political scientist.

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