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In References: Jacovides, A.J. (1977) 'The Cyprus Problem and the United Nations', in Attalides, M. (ed.), *Cyprus Reviewed*. Nicosia: Jus Cypri Association: 13-68.

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- Policy Papers should range between 4000-10000 words in length.
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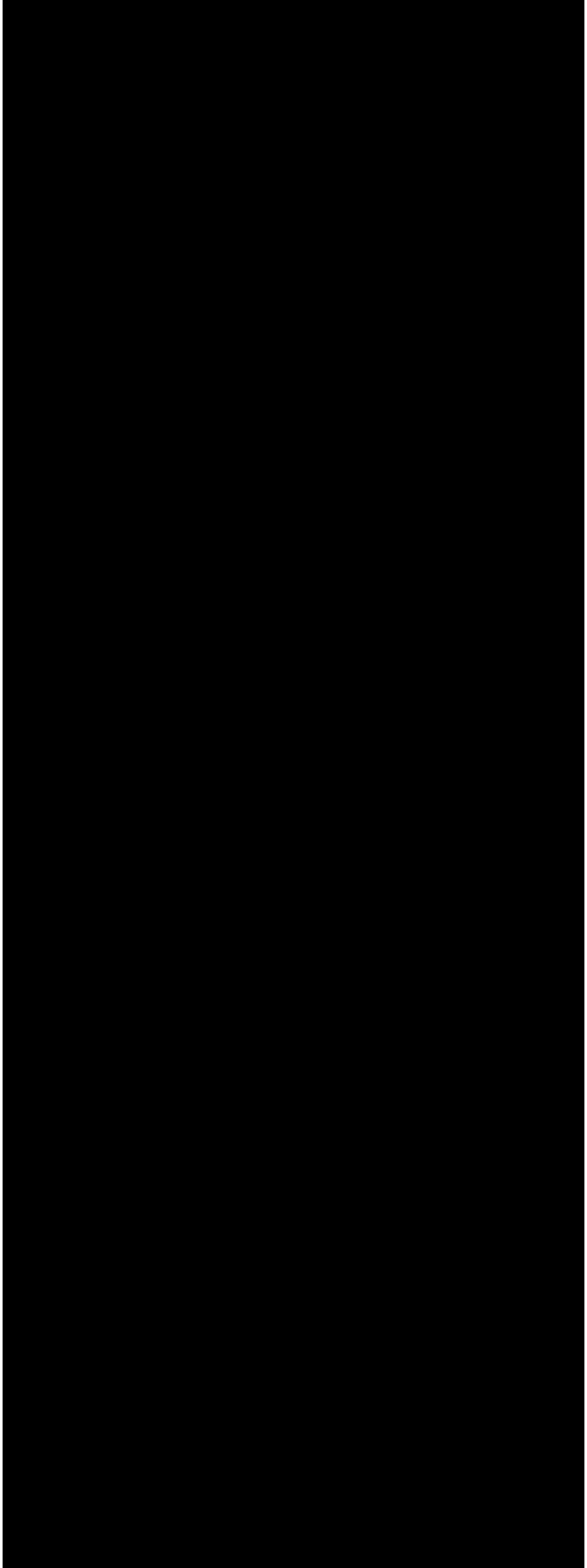
- Each author will receive a complimentary copy of the issue in which their paper appears in addition to a pdf of their contribution to use for additional reprints.



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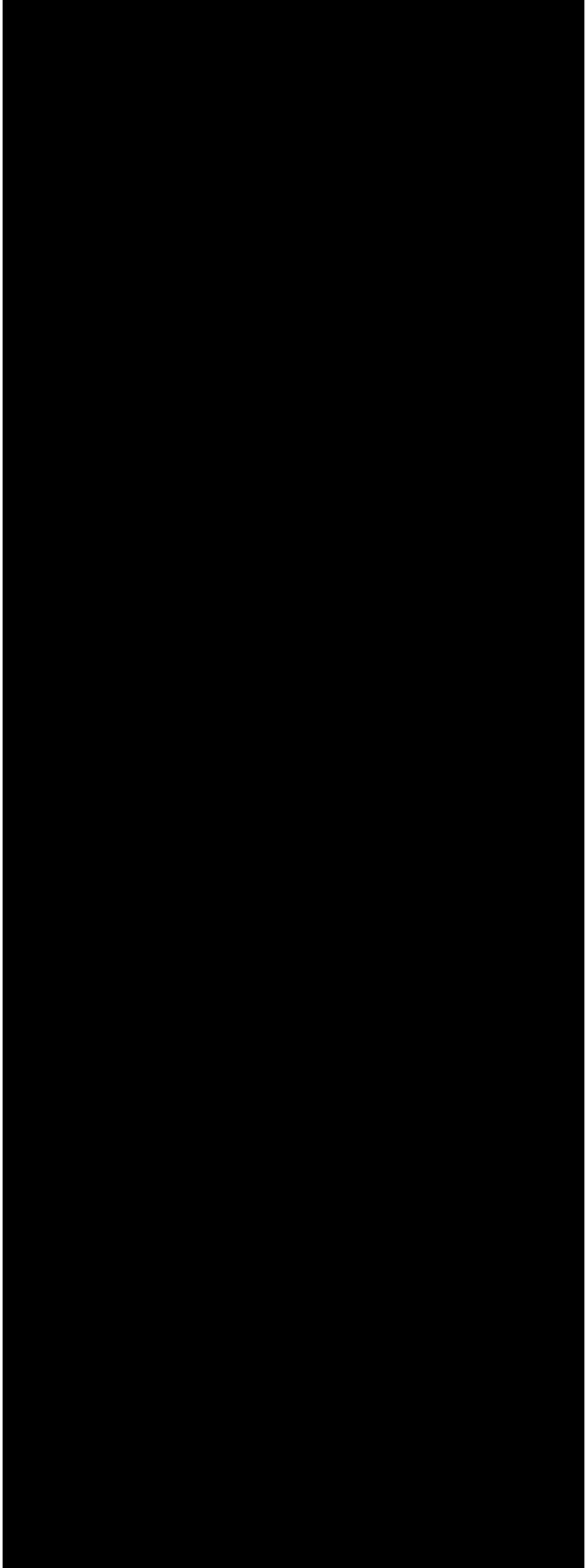

LETTER FROM THE EDITOR-IN-CHIEF

Dear Readers

As the year 2018 is about to come to its full cycle, I am proud to present you with the second issue of Volume 30. Writing this editorial note has led to a lot of introspection and retrospection; for as it dawns upon me that the Journal is turning 30 years old, I am cast back to my own first encounters with *The Cyprus Review*, when I was still a PhD student. Like me at the time, there are many Cyprological researchers that feel this Journal as their 'go-to place' to kick off their research. Indeed, in the 30 years since *The Cyprus Review* published its first issue in 1989, this Journal's papers have been read by thousands of people around the world, who focus on Cyprological research, or simply have an interest in these fields. At the end of the current issue we look back at this 30-year article collection, through the publication of a chronological index that was compiled by my Consulting Editor Achilles C. Emilianides and which contains all articles ever published in the *Review* since 1989.

This issue adopts the very familiar University of Nicosia 'Think Big' motto by extending its thematic boundaries further and featuring a Guest-Edited Section on a cutting-edge topic that goes beyond the Journal's traditional spheres of interest. As we are on the cusp of the fourth industrial revolution and a wide range of technologies are transforming the world we live in, our Journal cannot ignore the (exponential) effects that the adoption of cyber-physical systems, the Internet of Things and the Internet of Systems will potentially have at a Cyprological context at various sectors. This special section is entitled 'The Emerging Blockchain Revolution and its Implications for Cyprus', and my appreciation for it goes out to its Guest Editor, namely Prof. George Giaglis, Director of the Institute For the Future (IFF) at the University of Nicosia. Prof. Giaglis' professionalism throughout the process was exemplary and I would like to thank him for an amazing collaboration, and for giving me the chance to read manuscripts from a discipline that I would not normally have confronted in my academic routine. Special thanks are also due to Profs Makridakis and Michailidis, as well as Drs Themistocleous, P. Christodoulou, K. Christodoulou, Andreou, Stefanou and Iosif, for their inspiring contributions.

Our fall issue also features a policy paper by Prof. Andreas Theophanous, which focuses on the current state of the economy of Cyprus and discusses the challenges that still need to be addressed six years after the collapse of the country's banking sector in March 2013. In this respect, the challenges of non-performing loans, high private debt and persisting structural unemployment, as well as the need to improve the competitiveness of the economy, are examined. The author remains determined that Cyprus needs a comprehensive economic paradigm including new engines of growth; the need to adopt a new economic model requires high-calibre strategic thinking and policy implementation.

The main Articles section of this issue sets off with a stimulating piece on populism, by Charalambous, that discusses the various ways in which the discursive construction of a people and

practices of otherisation have manifested themselves in Greek Cypriot political discourse. Through a systematic analysis of populist frames on the island, the author argues that these have proved pervasive across time and political space, yet they have not so far been forcefully combined into a single, classical and above all populist, institutional agent.

Trimikliniotis' article focuses on the proliferation of 'Cypriot states of exception'. He argues that, despite signs in the early 2000s for potential for a demise of the 'Cypriot states of exception', these were not superseded by a rights-based normality via the resolution of the Cyprus problem and accession to the EU. What has been witnessed instead, since then, is a process of proliferation of 'regimes of exception' and derogation of rights. The author proposes a schematic theoretical critique to go beyond the logic of 'states of exception'.

In an article that comes from the field of law, Koukiadis examines the contribution of legal transplantation to the formation of mixed legal systems and the unique case of Cyprus, which is an amalgamation of legal cultures that transcend the traditional boundaries of civil and common law jurisprudence. In this context, Koukiadis delves into the concept of 'hybridity', which aims at analysing, and perhaps solving, the problems one is faced with when trying to bridge the gap between civil and common law, state and non-state norms, positive and natural law, legal centralization and normative polycentricity.

Turning to the public administration sphere, Kirlappos investigates the Cypriot local government system and examines the attempts for reform triggered by the implementation of the Memorandum of Understanding in the period 2013-2016. Using urban and circular Europeanisation as his main analytical tools, the author analyses the effects of European integration on the local government reform attempts and examines how alterations in capacities acted as mediating factors.

With a focus on the Cyprus Tourism Sector, Antonaras studies the idea of corporate social responsibility and how organisations of the Cyprus tourism sector perceive, understand and apply this concept. Perceptions at the Tourism Sector in relation to the global sustainable development goals are further investigated, with the ultimate aim to assist organisations of the Cyprus Tourism Sector to better understand the current challenges and set their priorities on how to align corporate social responsibility-related activities to the global sustainable development goals.

Finally, Kougioumtsidis, Lois and Repousis present the numerous and varied legislative provisions and initiatives in Cyprus to reduce illegal movement of funds and money laundering, with a focus on the issue of transparency, in order to understand the entire chain structure behind the crime of money laundering through Trusts and Ultimate Beneficial Owner. As money laundering is inextricably linked with anonymity, and under the provisions voted in 2012 Cyprus must ensure that beneficial ownership information is stored in a central registry located outside the company, the authors argue that this greater transparency over the identity of Ultimate Beneficial Owner is bound to act as a deterent to misconduct.

For this issue to become a reality a number of people have worked very hard and I wish to

thank my Editorial Team, Editorial Board, as well as the reviewers and contributors to this issue for their collective work. I am however particularly grateful for this Volume to two very special members of my Editorial Board that have been truly invaluable in the process: Prof. Constantinos Phellas, Vice Rector for Faculty and Research and Prof. Dimitris Drikakis, Vice President for Global Partnerships, at the University of Nicosia. Their drive and commitment in this endeavour in the past months have been a true motive force and I am thankful that they have almost felt an 'ownership stake' in the Journal. Last but not least, a very big thank you to all our readers for their sustained interest in our Journal in the last 30 years.

Christina Ioannou
Editor-in-Chief

Contributors

Andreas S. Andreou is Professor in the Department of Electrical Engineering and Computer Engineering and Informatics of the Cyprus University of Technology and the director of the Software Engineering and Intelligent Information Systems Research Laboratory. He received his PhD in 2000 in Computer Engineering and Informatics from the University of Patras. Prior to joining academia, he worked in industry as a programmer-analyst, a director of requirements analysis and development, and an IT consultant in banking software systems. He served as a software engineering consultant in several major software projects in Cyprus, including the integrated software system for the new Nicosia General Hospital. His research interests include Software Engineering, Web Engineering and Mobile Software Engineering, Intelligent Information Systems and Computational Intelligence in Software Engineering.

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Giorgos Charalambous is a Faculty Member in the Department of Politics and Governance at the University of Nicosia. His research interests lie in comparative European politics and he has published in such journals as *Party Politics*, *Mobilization*, *International Studies Review*, *Government and Opposition*, *South European Society and Politics,* and *European Political Science Review*. His co-edited volume, *Populism and Left Radicalism in Europe* is forthcoming in 2019 with Routledge.

Klitos Christodoulou received his PhD degree in Computer Science from the School of Computer Science at the University of Manchester, UK. From 2014 to 2015 he was a member of the Information Management Group (IMG) in the School of Computer Science at the University of Manchester, where he engaged in various research and teaching activities. In 2015 he was appointed as a lecturer and acted as a programme coordinator at the Department of Informatics, Neapolis University. He is currently a Faculty Member at the University of Nicosia. His research is mostly focused on

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Panayiotis Christodoulou holds a PhD in Computer Engineering and Informatics from the Cyprus University of Technology (CUT). He completed his undergraduate and postgraduate studies at the Manchester University, UK (MEng) and the Frederick University, Cyprus (MSc). He is a member of the Software Engineering and Intelligent Information Systems Research Lab (SEIIS), located at CUT, and his interests are focused mainly in the area of Software Engineering, and particularly in Recommender Systems and Blockchain technologies, as well as in techniques and mechanisms of Artificial and Computational Intelligence.

George M. Giaglis is General Director of the Institute for the Future at the University of Nicosia, as well as a leading expert on blockchain technology and applications and advisor to many blockchain projects and technology start-ups. Prior to joining UNIC, he was Professor at the Athens University of Economics and Business (2002-2017), where he also served as Vice Rector (2011-2015). George has been working on digital currencies and blockchain since 2012. His main focus is on new forms of industrial organization and corporate financing. He has been one of the first academics to research and teach on blockchain, having: designed the curriculum of the world's first full academic degree on blockchain (MSc in Digital Currency, University of Nicosia); led the development of blockchain credentialing technology that has resulted in the first ever publishing of academic certificates on the blockchain; taught on the disruptive innovation potential of blockchain, in both academic programs and executive seminars worldwide; organized a number of prominent blockchain conferences and events, including 'Decentralized'. He has published more than 10 books and 150 articles in leading scientific journals and conferences. He is frequently interviewed by media and invited as keynote speaker/trainer in events across the globe. He is the Chief Editor for *Blockchain Technology at the Frontiers in Blockchain Journal* and on the Editorial Board at *Ledger*.

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special journal issues on blockchain. He has served as the managing editor of the *European Journal of Information Systems* (EJIS). His current research interests include Blockchain, Smart Contracts, Cryptocurrencies, Information Systems, e-health and e-business.

Andreas Theophanous received his PhD degree in Economics from the Pennsylvania State University (1988). He served as Economic Advisor to the President of the Republic of Cyprus (1990-1993). He is Professor of Economics and Public Policy, the President of the Cyprus Center for European and International Affairs and the Head of the Department of Politics and Governance of the University of Nicosia. He visited several European, American and other universities and think-tanks as a Visiting Professor, Senior Fellow and Guest Speaker (ELIAMEP in Greece, LSE, Brookings Institution, Woodrow Wilson International Center of Scholars, Australian Institute of International Affairs, Center for European Integration Studies – University of Bonn, Hebrew University of Jerusalem, Begin-Sadat Center on Strategic Studies and the University of Tokyo). Theophanous is the author of several books, articles and policy papers, which focus on the Cyprus Problem, Cyprus-EU relations, EU-Turkish relations, Eastern Mediterranean Affairs, issues of governance in biethnic and multiethnic societies, European integration, political economy and the Euro-debt crisis.

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ARTICLES

Constructing 'The People' and Its 'Enemies' in the Republic of Cyprus: A Country of Populist Frames but not Fully Fledged Populism

Giorgos Charalambous[1]

Abstract

This essay engages with the concept of populism, situating it in the history and contemporary political setting of the Republic of Cyprus. Discussing the multiple ways in which the discursive construction of a people and practices of otherisation have manifested themselves in Greek Cypriot political discourse, the essay lays out a number of arguments about the place and evolution of populist frames on the island, arguing for their pervasiveness across time and political space but cautioning that so far they have not been forcefully combined into a single, classical and above all populist, institutional agent. In this light, the relationship between nationalism and populism is briefly considered.

Keywords: populism, otherness, Cyprus, elites, nationalism

Introduction[2]

It is commonplace to regard populism as something important, as a topical or 'hot' issue in contemporary societies. Arguably, populism occupies a central place at the top of the political agenda in Europe today in a number of ways. According to the EU and European politicians, as well as liberal intellectuals, populism is a threat, a challenge to liberal democracy, demagogic and incompatible with rational judgment. It is utilised to moralise politics and to invoke otherness and conflict devoid of substantive political reflection. According to certain parts of the left, populism can alternatively prove beneficial to democracy, a corrective to the misuses of power by political elites, essentially a tool for democratizing politics and fighting multiple forms of oppression. With the normative debate far from settled, empirical accounts converge that this is a global phenomenon with a long history, but at the same time, it is on the rise today.

Despite the proverbial claim that populism is conceptually elusive and ill-defined, the literature on the subject tends to converge towards a number of chief elements that provide analytical unity to the concept: in Cas Mudde's popular

1 Giorgos Charalambous is a faculty member in the Department of Politics and Governance, University of Nicosia.

2 The author would like to thank Gregoris Ioannou and the Journal's anonymous reviewers for comments on an earlier draft of this article.

definition, populism is characterised by a view which sees 'society to be ultimately separated into two homogeneous and antagonistic groups, "the pure people" versus "the corrupt elite", and which argues that politics should be an expression of the volonté générale [general will] of the people'.[3] Although there is disagreement whether populism constitutes a thin ideology or system of ideas, or a discursive schema, a communication style or tool, scholars of the phenomenon agree on its two chief features: people-centrism, or in other words an emphasis on the people as a sovereign, virtuous subject; and otherness, manifesting itself into both anti-elitism or an anti-establishment stance and potentially an exclusionary view of the people whereby, along with elites, other 'evil minorities' or 'parasitical others' are denigrated. At the most basic level, populism is thus the equivalent to communicating or rhetorically casting a struggle between two sides, the 'in-group' and its enemies. As a fully fledged political phenomenon, populist mobilisation has included personalistic appeals through a charismatic leader, demagoguery or emotion-based language, loose linkages to masses of heterogeneous voters, references to a crisis as well as a moralisation of politics.[4]

According to extensive empirical research, populism is a chief feature of the far right, used to stylise xenophobia and extremism but it can also be left-wing or centrist. Markedly different from right-wing populism, populist rhetoric and strategy on the left constructs the people as a progressive, forward looking, inclusive and emancipatory force and not as an exclusive, ethnically pure subject, the product of nativism, racism and anti-immigrant sentiments.[5] At the same time, it is not simply rhetoric, ideas or actors that can be studied in relation to populism but also societies or political systems; it is then logical to search for populism at the national level since the phenomenon can be diffused across the political realm. In this vein, scholars have investigated the place of populism in various European countries, both the political system and political culture or democracy more broadly.[6]

3 C. Mudde 'The populist Zeitgeist', *Government and Opposition*, Vol. 39, No. 4 (2004), 543.

4 For a review see N. Gidron and B. Bonikowski, *Varieties of populism: Literature review and research agenda*, Weatherhead Working Paper Series, No. 13-0004 (2013); see also M. Roodjuin, 'The nucleus of populism: in search of the lowest common denominator', Government and Opposition, Vol. 49, No. 4 (2014).

5 Y. Stavrakakis and G. Katsambekis, 'Left-wing populism in the European periphery: The case of Syriza', *Journal of Political Ideologies*, Vol. 19, No. 2 (2014); C. Mudde and C. Kaltwasser Rovira, 'Exclusionary vs. inclusionary populism: Comparing contemporary Europe and Latin America', *Government and Opposition*, Vol. 48, No. 2 (2013).

6 For example, A. Chrysoggelos, 'The people in the "here and now": Populism, modernization and the state in Greece', *International Political Science Review*, Vol. 38, No. 4 (2018); T. Pappas, 'Populist Democracies: Post-Authoritarian Greece and Post-Communist Hungary', *Government and Opposition*, Vol. 49, No. 1, 2014; C. de la Torre de la Torre, 'Populism and democracy: Political discourses and

This essay adds Cyprus to the list, first in order to provide larger ground for comparative country-level analyses of populist supply and second in order to discuss a buzzword in domestic Greek Cypriot politics which, albeit its frequency and own native meaningfulness, has never been put to the test of analytical scrutiny. Taking a historical look at the multiple ways in which populist-like schemas have manifested themselves in Greek-Cypriot political discourse, this essay lays out a number of arguments about the history and place of populism in the Republic of Cyprus. More specifically, it makes the case for the relative absence of fully fledged populism as currently understood in relevant scholarly analyses of the phenomenon, rather identifying populist frames of rhetoric, which are not forcefully combined into a single, populist above all, institutional agent, but which are nevertheless fragmented across the political spectrum and present throughout the island's contemporary history. The essay concludes that the pervasiveness of nationalism and the centrality of the national cleavage in political competition may be responsible for the absence of fully fledged populism.

Populism in the Shade of Nationalism on the Centre and Right

The establishment of the independent Greek state (in 1828) inspired, in the 'unredeemed' Greeks of the periphery with no mono-national state, movements in which the idea of freedom was identified with that of union *(enosis*) with Greece, the state of the Hellenic nation. Cyprus as an area where there existed relatively concentrated Greek populations – like Macedonia, Smyrna-Kydoniae, Kappadokia and Pontos – had fertile ground for the development of irredentist nationalism, also promoted and financed by the Greek state. Yet, in the first period of British rule (1878-1930), *enosis* as a political goal in the Greek Cypriot community was not the primary issue creating political tension with the colonial administration. In this period *enosis* had served as a symbol of the Great Idea (Megali Idea), but it was not until the 1930s that the demand for *enosis* challenged the colonial legitimacy and created mass political and organisational loyalty towards the desired goal.[7] Importantly, separate educational systems on the island contributed to nationalism, instilling a sense of person-hood into the two communities that was methodically ethnicised.[8]

From the 1930s, in so far as 'the struggle' was now unification with the 'rest of the nation', itself constituting an imagined *heartland* rather than a constitutional entity that exists or existed, British colonialism provided the background against which

cultures in contemporary Ecuador', *Latin American Perspectives*, Vol. 24, No. 3 (1997).

7 See C. Pericleous, *The Cyprus Referendum: A Divided Island and the Challenge of the Annan Plan* (London: I. B. Tauris 2009); M. Attalides, *Cyprus, Nationalism and International Politics* (London: Macmillan 1979).

8 R. Bryant, *Imagining the Modern: The Cultures of Nationalism in Cyprus* (London: I.B. Tauris 2004).

notions of the people and its enemies were to be constructed by the main forces which expressed Greek Cypriot nationalism. These forces were composed of groups that dominated Greek Cypriot politics, more specifically the urban bourgeoisie, the clergy, and the Greek educated intellectuals.[9] In its role of 'Ethnarchy', the Greek Cypriot Church was a very powerful institution, organizationally articulated and economically strong through a wide network of clerical committees and very wealthy monasteries, owning large areas of land and exercising privileged authority over the Greek educational system. In the context of the anti-colonial struggle, otherisation, emanating from the Church and other Greek Cypriot elites, expanded 'upwards' and was cultivated in political rhetoric through an anti-British language, underpinned by the steadily increasing propagation and popularity of *enosis* with Greece among the Greek Cypriots.

Especially under the late colonial rule, the anti-British dimension was a key element in constructing and communicating the heroic character attributed to EOKA (between 1955 and 1959), the guerilla 'ethnic communal independence' movement against the British. The EOKA insurgency was communicated by its leaders as the material expression of a national struggle that long pre-dated 1955; its people were Greeks and its goal was Greek Cypriot self-determination and subsequently unification with Greece. But the struggle had both an external and an internal 'other'. EOKA, and more broadly the Church during the 1940s and 1950s, did not view the Greek Cypriot community as an organic whole. Strong anti-communist views that saw the forces of the Left as 'enemies of the Church' or 'non-Greeks' were a key part of political polemics and of the motives behind the persecution of leftists. The Left-Right cleavage in Cyprus has its origins in the 1940s, when intra-communal ideological conflict manifested itself into multiple arenas of social life – journalism, sports, the labour field, the spheres of production and consumption – once the forces of the Right coalesced into a counter-force to the emerging dominance of the Left as an organised, mass political space.[10]

Archbishop Makarios, the first President of the Republic of Cyprus, established in a conflictual climate in 1960 under the external 'guarantees' of Greece, Turkey and the UK, did not diverge from the mainstream myths by and about EOKA and projected himself as the sole elected and thus true leader of the people, above and beyond parties, classes and interests, in a struggle of justice against foreign powers, chiefly

9 P. Kitromilides, 'The dialectic of intolerance: ideological dimensions of ethnic conflict', *Journal of the Hellenic Diaspora*, Vol. 6, No. 4 (1979).

10 See Y. Katsourides, *History of the Communist Party in Cyprus: Colonialism, Class and the Cypriot Left* (London: I.B. Tauris, 2014); G. Charalambous and C. Christophorou 'A society within society: Linkage in the case of the Cypriot Communist Party', *South European Society and Politics*, Vol. 18 No. 1 (2013).

Turkey, the UK and the USA, but also, at times, the Greek government. The very poor institutional and electoral structures in the newly founded Republic, complicated as they were by the political dynamics between the two main communities on the island, encouraged personalistic politics, based on charisma, clientelism and populist language. In accordance with the entrenched discursive myths about the Makarios era, 'the people' was the Greek Cypriot people and Makarios was its Ethnarch (Εθνάρχης).

Religion was a crucial binding force in casting the people, as after all Makarios was a cleric and political relations were forged largely through the Church, especially before the 1940s but also after. His national pride, religious rank and aesthetic, combined with an appealing oratory blended in well with a plea to the Greek Cypriot community as a whole; the Greek Cypriot social masses were largely a pre-modern, conservative and uneducated community, a religious and ethnically proud 'in group', which through a combination of factors that led to ethnic polarisation, became ingrained with a strong sense of Greekness. Vividly indicative among many other examples of populism as a rhetorical style or mode of communication is Makarios' last public speech in 1977, when he spoke to his audience in the second person like he always used to, as follows:

> Greek Cypriot people … In spite of all these [misfortunes], you stand up and up always you will remain at the fronts of struggle. Proud of you, proud for the privilege to be your elected leader, I direct to you the greetings of my love. I salute with feelings of honor and admiration your unslaved conviction and your militant spirit. I admire your greatness, which confronts the heart's warming up and the strength in the many challenges, in which you survived and did not kneel, heroic and great martyr, Cypriot people.[11]

After 1974, through Makarios and his followers, Greek Cypriots identified themselves with 'a just cause' in public discourse within the context of disseminating widely the notion of a 'struggle for liberation' (αγώνας για απελευθέρωση) or the 'struggle against occupation' (ο αντί-κατοχικός αγώνας). Dominant narratives overshadowed or even simply ignored the fanaticism and violence initiated by Greek Cypriot paramilitaries against Turkish Cypriots and communists, and the de facto division of the country since 1963 when, during a climax of violence and political tensions, Turkish Cypriots abandoned the state that had been established four years earlier. The dominant Greek Cypriot understanding of the so called Cyprus Problem is not only ethnocentric it is also oversimplified, twisted and biased, politicizing historical trauma and encouraging collective amnesia. The rights of the people, their passions and insecurities, their culture and customs, as well as their historical traumas, are those

11 Phileleftheros, 'Η τελευταία προφητική ομιλία του Εθνάρχη Μακάριου' [The last prophetic speech of Ethnarch Makarios], *Philenews.com* (2018, September 30), available online at http://www.philenews.com/eidiseis/politiki/article/587891/i-teleftaia-profitiki-omilia-toy-ethnarchi-makarioy.

of the Greek Cypriots alone. So strong and pervasive through education and religion is this ethno-communal perspective on politics that the other minorities on the island such as the Maronites and Armenians have been deeply imbued with a spirit that sees Greece and Hellenism and not their own 'motherlands' as the source of their national identity.

Like for Makarios, as for the more contemporary Greek Cypriot politicians of the right and the centre (the right-wing DISY and the centrist DIKO and EDEK), the classic populist binary of ordinary citizens who are done injustice by established interests appears in a modified form. On the centre and the right, the elites have been predominantly construed as being external, namely Turkey, as an expansionist and barbaric state, and its allies, and the people have been ethnically defined. A popular-national versus elitist-supra-national antagonism developed, according to which 'foreign elites are the elites of the dominant nation in multinational states … the colonizers, and the non-national elites that use supra-national politics to go against the sovereignty of the nation'.[12] Any sort of organic unity among 'the people' akin to the populist persuasion can only materialise among the ethnic group of either Greeks or Turks, but hardly across the communal divide. Ethnic antagonism as a dominant discursive logic, as a frame of electoral and social mobilisation and as a political resource is the main binary in Cyprus. Since and because of the events of 1974, this binary is circumscribed by ascertaining the right of states to territorial integrity and by condemning the politics of contested statehood in the northern part of the island, but at core, ethnic antagonism boils down to an exclusive conception of who and what constitutes 'the people' of Cyprus.

In so far as ethno-communal appeals are the primordial property of people-centrism, as it is framed in the Greek Cypriot community, our case affirms mostly a form of exclusive ethnopopulism rather than the classical populist dichotomy between the people and the elites or establishment. Ethnopopulism reflects more accurately the populist framing of ethnic appeals, construed as appeals to the true people, the ethnos, the 'centuries old' 'in group'. Above all, the forces of the Right and Centre are largely nationalist forces and only then populists. While nationalists mobilise along 'in-out' horizontal cleavages, pitting the national self against the national other, seeking to narrow the horizontal boundaries of the imagined sovereign to exclude out-groups, populists mobilise along 'up-down' vertical cleavages that pit 'the people' against the elites or the establishment.[13] As Jenne argues, 'although both discourses

12 B. De Cleen and Y. Stavrakakis, 'Distinctions and articulations: A discourse theoretical framework for the study of populism and nationalism', *Javnost – The Public*, Vol. 24, No. 4 (2017), 14.

13 R. Brubarker, 'Why populism?', *Theory and Society*, Vol. 46, No.5 (2017); De Cleen and Stavrakakis, 'Distinctions and articulations'.

serve to reframe sovereignty more exclusively, populists seek to lower the sovereignty's imagined borders (excluding 'elites' representing domestic and international power structures from political representation)'.[14]

Interestingly but unsurprisingly, in comparative terms, the politicians of the right-wing and (to a lesser extent) centre space have always constituted the actual Greek Cypriot establishment, the one designing policy, occupying key posts in the public sector, owning the means of production and sustaining wide social networks. Hence, populism as a counter-hegemonic force to the state, the few or the privileged was structurally impossible within these political spaces; how could the actual socio-economic elites of Cyprus construct the enemy of the people as an establishment from within? Instead, the otherness entailed in the politics of the Greek Cypriot centre-right has been reflected in the form of rhetorically, habitually and institutionally excluding out-groups, mostly the Turks, the Turkish Cypriots, but also other minorities, such as immigrants from non-European countries, foreigners more broadly, homosexuals, atheists, or those resisting military conscription. Hence, populist framing in the centre-right space, by both leaders and members, politicians and supporters, points also to 'downward' otherisation tendencies, in parallel to 'upward' blame-shifting towards external elites. Both forms of otherisation are historically important. Indeed, if populism as a struggle against powerful, foreign interests can be considered to be a product of the Cyprus Problem, then the populist denigration of minorities is the deeper, structural cause of the Cyprus Problem itself, which from the perspective of in-groupism, stems from the lack of tolerance on issues of ethnic identity, sexuality and religious belief within each of the two main communities on the island.

Cypriotness, Greekness and 1974

The Greek junta-instigated coup and subsequent Turkish invasion in Cyprus, the 'double crime of 1974' in political discourse, shifted public and political conveyances of 'the people' and their cause. One of the considerable effects of the 1974 division was the decline of Hellenic nationalism at the expense of Cypriotism, an ideology that emphasised the common features of the two communities: 'the common land of Cyprus', 'a common state', 'past peaceful coexistence' and especially 'the political independence of the country'.[15] With the 1974 events, there arose a novel argument, situated in Cypriotism, that Turkey as a foreign power came and invaded Cyprus, occupying its land and restricting the rights of an independent Republic. This argument was a novel one because, earlier the demand for independence of the Republic was

14 E. K. Jenne, 'Is Nationalism or Ethnopopulism on the rise today?' *Ethnopolitics*, Vol. 17, No. 5 (2018), 2.

15 See C. Mavratsas, 'The ideological contest between Greek-Cypriot nationalism and Cypriotism 1974–1995: Politics, social memory and identity', *Ethnic and Racial Studies*, Vol. 20, No. 4 (1997).

not a widespread one among Greek Cypriot officials and the idea of *enosis* dominated Greek Cypriot politics at least until 1968.

Inevitably then, as moral boundaries were redrawn into shape after the events of 1974 and, before then, during the paramilitary antagonism with the Makarios government and the establishment of the terrorist EOKA B, new divisions were generated within Greek Cypriot understandings of 'the people'. Relatively fresh social fault lines emerging in the 1960s crystallised after the events of 1974 and cut between the 'junta supporters' (χουντικοί), 'fascists' (φασίστες) or 'traitors' (προδότες) and the 'patriots' (πατριώτες), 'Makarios supporters' (Μακαριακοί), 'those who resisted' (αντιστασιακοί), or more narrowly 'leftists' (αριστεροί). This line of discourse has been inter-generationally transmitted and sustained for decades, at least within party circles. Its enablement derives from the organisational consolidation of the Left, the Centre and the Right as political spaces throughout the post-1974 period, as well as from the institutionalised commemorations of events and people related to the anti-colonial struggle, ethnic division, inter-communal violence, the events of 1974 and more broadly the Cyprus problem.

Because of the key role of its leader, Glafkos Clerides, as a political persona, the establishment of the Right as a distinct political party, DISY, in the mid-1970s, cut across the lines between Cypriotism and 'motherland nationalism'. A liberal tendency has existed ever since within DISY that is non- but not always anti-nationalist, which is sometimes projected as aligned with the legacy of Clerides himself, and argues strongly in favour of bi-communal rapprochement and a bi-zonal, bi-communal federation as the form the solution of the Cyprus Problem should take. Cosmopolitan in perspective and tolerant of cultural and ethnic diversity, this is a tendency in part reflecting the educational, age, as well as class differences that exist among the supporters of the Right. It has been vocal at times but inconsistent across time, as apparently it can be easily suppressed or co-opted by government and internal party dynamics.

In the public vocabulary of state officials as well as politicians in the Greek Cypriot community, the narration of trauma echoes a mono-communal view of the Cyprus Problem, concentrating on the defense of the rights of the Greek Cypriots, or as frequently expressed in a more absolute manner, of 'Cypriot Hellenism (Κυπριακό Ελληνισμό). However, albeit underpinned by a strong sense of nationhood, the terminology used and emphasised by nationalist forces, diverts attention from the national and appeals to the universal or panhuman, through the usage of international terms connected to the violation of human rights, such as 'the right to property' or 'the right to return', or 'refugee' (πρόσφυγας), 'missing person' (αγνοούμενος) or 'relative of missing person' (συγγενής αγνοουμένου).[16] The ethnic element that drives much

16 See V. Roudometof and M. Christou, "'1974" and Greek Cypriot identity: The partition of Cyprus

of the conflict is thus often concealed through legalistic or technocratic language; nevertheless, it remains culturally and institutionally embedded in an exclusive Greek Cypriot rather than an organically united Cypriot 'we-ness'.

The events of 1974 constituted one of the most important founding elements of a 'new homeland' for both the Greek Cypriots and the Turkish Cypriots. The consolidation of the territorial partition, entailed a large-scale population division along ethnic lines, more specifically the massive displacement of people from the south to the north and vice versa.[17] This spatial dimension of the new state of affairs in Cyprus further consolidated otherisation processes, shifting their relevance from politics to social life, everydayness and identity and creating conditions in which the Greek Cypriot and Turkish Cypriot communities, spatially alienated as they were now, could be more easily casted as a contentious pair. Indeed, the unilateral establishment of the unrecognised 'Turkish Republic of Northern Cyprus' ('TRNC') by the Turkish Cypriots in 1983, elevated Greek Cypriot narratives of otherness, blame, opposition and confrontation from the social and political to the constitutional realm. Ever since, the Turkish Cypriot state has been casted as a 'pseudo state' in dominant discourse. Seen as an 'imperial formation', the power structures in the north of Cyprus from 1974 onwards created zones of exclusion and states of exception.[18] In the context of the discussion about otherness, the space of exception can be interpreted as a social construct between an 'in group' and an 'out-group', whereby the people of each community and their political institutions maintain and commemorate this distance in order to protect what they perceive as the 'normal'. The Green Line, which demarcates the Greek Cypriot Republic of Cyprus from the north, is a product of language discourses, internalised by individuals, and favorable to the creation of a common identity, which was 'to produce and enforce a clear division between the "superiority" of a nation's domestic "us" and the "inferiority" of the foreign "them"'.[19]

The Resurgent Extreme Right

As a final argument regarding the nationalist forces, the more explicit manifestations of contemporary populist politics in Cyprus that fit well within the wider European picture are today to be found on the far right of the political spectrum. ELAM, the

as cultural trauma', in *Narrating Trauma: Studies in the Contingent Impact of Collective Suffering*, eds J. Alexander, R. Eyerman and E. Breese (Boulder: Paradigm, 2011).

17 See N. Moudouros, 'The new "homeland" and Turkish Cypriot opposition in the 1974-1981 period', *The Cyprus Review*, Vol. 29, No. 1 (2017), 139.

18 C. M. Constantinou, 'On the Cypriot states of exception', *International Political Sociology*, Vol. 2, No. 2 (2008), 158.

19 G. Popescu, *Bordering and Ordering the Twenty-first Century: Understanding Borders* (Lanham: Rowman & Littlefield Publishers, 2011), 36.

extreme right party, which was established in 2008 and won two seats in parliament in 2016, is today the most representative example of populism in the Republic of Cyprus both within and outside of the context concerning the Cyprus Problem. As an ultranationalist far right party, ELAM has capitalised on the socially deteriorating and politically fluid environment of the post-crisis period (2012-) in all the ways that are familiar from countries like France, Greece, the UK and the Netherlands. In its repertoire, one can find the people exclusively understood ('Hellenes of Cyprus'), the corrupt elites (viewed as both internal and external), an emphasised acknowledgement of political disaffection, as well as an urgent call to 'wake up' in the midst of social, political, economic and national emergency.

The enemies of the far right fit well into the broader European picture: internally, they are chiefly the '*παλαιοκομματικό κατεστημένο*' (the old party establishment – DISY, AKEL, DIKO) and the '*τοκογλύφοι τραπεζίτες*' (loan shark bankers) and externally, 'Turkey' or 'the Attila' and other foreign interests, such as large hedge funds. Clearly moralistic because it is 'predicated on the evaluation of the fundamental worth of entire categories of people',[20] ELAM's rhetoric is defined by the prevalence of ethical codes over meaningful programmatic analysis. The former are situated appropriately within the politics of symbols and myths characterising the extreme right. More generally moralisation in the case of ELAM's rhetoric, just like that of other parties on the far right, invokes an 'uncorrupted ethos', an 'innocence', or 'ordinariness', which is pure in its morale and ethically self-legitimizing but empty in analytical content or the articulation of coherent ideational reflection.

Although the chief ideological foe justifying the party's identity is the national one, and popular sovereignty translates directly into national sovereignty, anti-political establishment rhetoric is now ELAM's key distinctive feature among the Greek Cypriot nationalist forces. In its rhetoric, the national enemy is frequently associated with a larger framework of elitist and oligarchic behaviour by foreign powers and organisations at the expense of the people's interests and desires, while at the same time the others are not only higher up in the 'social pyramid'. As a more extreme form of ethnic and nativist otherness from that expressed in the centre-right space, ELAM vocally excludes from the organic unity of 'the Greeks', the Turkish Cypriots and minorities, such as immigrant communities from non-European countries.

These 'out groups', are casted as potentially vast majorities on the island, threatening the native way of life and its cultural and belief systems. In the mythology of the extreme right, these others have specific characteristics – for example, they 'smell', or they are 'dirty', or 'less intelligent' – which in turn reflect their value in the 'hierarchy of races'. Obviously then, to the extent that ELAM is utilizing populist frames, it does

20 Gidron and Bonikowski, 'Varieties of populism', 24.

not only emphasise hostility to 'oligarchies' and 'establishments', but is also voicing an exclusive, authoritarian and nativist populism, reminiscent of fascist representations. Populist framing does not replace extremism but rather acts as its communication arm, the medium through which extremist forces can attempt to normalise their anti-democratic leanings and maximise their electoral appeal.

Imaginaries of the People and the Elites on the Left

On the left, the notion of people-centrism is reversed, since, unlike the nationalists, progressive forces have evoked the notion to address and include both Greek Cypriots and Turkish Cypriots, as well as the three other local ethnic communities; that is, to embrace all Cypriot people independent of their ethnicity and with a view to bi-communal peace. AKEL, the left-wing party, established since 1926 (as the Communist Party of Cyprus, or KKK, until 1944), has been the chief actor in calling for the reunification of the island and bi-communal rapprochement. The communists had a different 'we' than the rest of the Greek Cypriot community, which cut across ethnic lines but at the same time stopped short of including a significant part of the ideological other; especially because of actual prolonged periods of persecution, the communists formed 'a people of their own' and ingrained it with immaculate organisational articulation, intended to function in a counter-hegemonic fashion and in essence forming a 'society within a society'.[21]

Still, AKEL's version of Cypriotness and thus its conceptualisations of 'we-ness' was a fluid one in earlier years and contrasts highly with its post-1974 stance, to the extent that the *enosis* period can be seen as a 'spectre haunting the party'.[22] After its establishment, AKEL declared its support for the principle of 'self determination' and, in its 2nd congress in 1942, it defined *enosis* as the basic demand of Greek Cypriots, transforming the earlier analysis of its predecessor, the KKK. To this day AKEL's support for *enosis* and more broadly its relationship to nationalism remains an internally contested issue and story on the Left, precisely because the communist 'we-ness' was replaced with an ethnocentric one and this change created problems with the party's efforts to bring together Greek and Turkish Cypriots in the unions. The adoption in 1947 of self-government as a first step towards *enosis* signaled evolving intra-party dynamics on the Left as well as the changing balance of power between the Left and the Orthodox Church.

The rise of Ezekias Papaioannou to the leadership of AKEL by the end of the

21 Charalambous and Christophorou, 'A society within society'.

22 L. Karakatsanis, 'Repositioned/re-signified: Echoes of violence, aporias of solidarity between Cyprus, Turkey and Greece', in *The politics of Culture in Turkey, Greece and Cyprus*, eds L. Karakatsanis and N. Papadogiannis (London: Routledge, 2017), 93.

1940s was accompanied with a change in party line from 'self-determination-*enosis*' to 'immediate *enosis*' (or, '*enosis* and only *enosis*') in 1949, which subsequently led to the party's fully fledged support to an envisioned, just, national (not simply popular) goal in the 1950s. The complete erasure of *enosis* from AKEL's discourse was not to come until 1974.[23] During the 1960s, *enosis* in AKEL's discourse had a legitimising element which saw better conditions for the communists than their being excluded from power in a united Cypriot state.[24] *Enosis* still meant different things on the Left and the Right; while for the former it was a tactical position, always riddled with tensions within AKEL, for the latter it carried a 'messianic' aura, a clear, sacred desire.[25] Yet, within the wider narrativisation of Cypriotness, AKEL's 'in-group' shifted between applying class criteria in official ideology, which by definition transcend ethnicity, and national ones, which highlight connections with Greece and Hellenism.

If today the Greek Cypriot left applies anti-nationalist and inclusionary people-centrism to the Cypriot peace process, it also utilises populist-like schemas to social justice struggles. As a self-proclaimed defender of lower and working class interests, the party has diachronically identified an economic and political establishment, or elite, within and outside of the island, blending social justice with political modernisation and patriotism with anti-imperialism. The most frequent terms are ones that allude to a mass, but more often than not this is a mass embedded in labourism and its many occupational interests: above all, 'the working people' and then 'the farmers', 'the new employees', 'the hotel employees' and various other types of industry-based workers' interests. At the same time, as a reformist party, AKEL has systematically prioritised, especially during electoral periods, a rhetorical appeal to the 'common people', above a vocal defence of particular classes or sections of society. Indeed, class is much less of a signifier in AKEL's discourse than 'the people'. The latter is a very common frame in the left's slogans in the 1980s and 1990s: 'ΑΚΕΛ, ΑΚΕΛ. Το κόμμα σου λαέ' (AKEL, AKEL. People, your party); 'Ο λαός δεν ξεχνά τους φασίστες και τα τανκς' (the people do not forget the fascists and the tanks); 'Ο λαός απαιτεί, πρώτο κόμμα στη Βουλή' (The people demands, first party in parliament); 'Λαέ μην σκύβεις το κεφάλι, με την Αριστερά αντίσταση και πάλι' (People don't lower your head, with the left resistance again); 'Ο λαός είναι εδώ, ενωμένος δυνατός' (The people is here, united and strong); 'Λαός ενωμένος, ποτέ νικημένος' (People united, never defeated). The 'we' of the left, its people, did change according to the issue at hand, from alluding to party supporters

23 Karakatsanis, 'Repositioned/re-signified', 93.

24 S. Tombazos, 'AKEL: Between nationalism and anti-imperialism', in *Nationalism in the Troubled Triangle*. Basingstoke: Palgrave Macmillan, 2010), 227-229.

25 See A. Panayiotou, 'Border Dialectics: Cypriot Social and Historical Movements in a World Systemic Context', in *Beyond a divided Cyprus*: *A State and Society in Transformation*, eds N. Trimikliniotis and U. Bozkurt (New York: Palgrave Macmillan, 2012), 87-88.

to those condemning the 1974 coup and Turkish invasion, to encompassing the whole of society. It is a relatively flexible 'we', yet it is also non-discriminatory in ethnic or other cultural terms, progressive in outlook and inclusive in scope.

AKEL's relation to populism can be differentiated from the so called archetypical cases of left-wing populism, such as Podemos in Spain, the Labour party in the UK, France Insoumise in France or SYRIZA in Greece, on the basis of four features of the Greek Cypriot left that concern both the party itself and the broader context in which it has operated recently: First, AKEL hesitates to designate an all-encompassing establishment, while otherisation is less accentuated in electoral periods where coalition building (traditionally with the forces of the centre) is considered necessary. Additionally, AKEL has not been in the post-1974 period a 'true outsider'; rather it is a party navigating the thin line between protest and the establishment.[26] Both the exclusivity of its 'we-ness' and the antagonism implied in its anti-elitism are constrained by its reformism and more specifically its connection to the state since the late 1980s.

Second, the crisis environment in Cyprus entailed a different sequence of events, very dissimilar to those in Greece, Spain or the UK. On the one hand, the events of 2011-2013, involving the bail-out of the Cypriot government by the troika (IMF, ECB and European Commission), included wide and intensified use of the people-elite binary by AKEL, casting the 'average person', the 'common man', the 'consumer' or the 'loan-taker', as members of a political body upon which the private banks bestowed a debt for which it has no responsibility. In the context of debate over the crisis and the distribution of blame over the exclusion of Cyprus from the international markets, AKEL disseminated a strong element of anti-establishment discourse. The Left's 'others', who bore responsibility for the crisis, were big financial capital and mainstream media outlets. While the centre-right, DISY and DIKO, who were in opposition to the government, narrowed down the scope of its otherisation processes to alternative distinctions, such as between the 'hard-working and tax-paying private employees' and the 'lazy public servants', the only true beneficiaries of an 'overblown state'. Yet in the first years of the crisis, AKEL was the central party in government, and in fact its former leader, President Dimitris Christofias, applied for financial assistance from the troika. In a context where the Left could be perceived as the de facto elite or establishment, fully fledged populism by AKEL could have been casted by the opposition as a contradiction in terms.

Finally, a third reason why AKEL is not really a populist force is that Marxism-

26 G. Charalambous and C. Christophorou (2015) 'The Cypriot communists between protest and the establishment: A second look at AKEL's linkages with society', in *Party-Society Relations in the Republic of Cyprus: Political and Societal Strategies*, eds G. Charalambous and C. Christophorou (London: Routledge, 2015).

Leninism, prominently present in the party's organisational and ideological identity, sits uncomfortably with the people as an organic unity from which one can deduct a 'general will'. In the Leninist understanding, it is the working class (or the working people) who are the prime agent of progress and system change. The poststructuralist elements entailed in the strategic articulation of left-wing populism signal a radical democracy that appears foreign to the Bolshevik notion of the vanguard or the organisational logic of democratic centralism, upon which AKEL has functioned in practice until today. To the extent that class struggle and class analysis avoid the dichotomy between the people and the elites and in so far as 'the people at large' can never be an organic unity, AKEL's profile resembles more a 'populist temptation', analogous to that of communist parties in earlier decades, such as the 1930s or the Eurocommunist years in the 1970s and 80s;[27] rather than populism as the central political strategy inside the communist Left.

Conclusion

Although the populist phenomenon in Cyprus can neither be understood nor explained without reference to the Cyprus Problem, Cyprus is, like many other cases, a country of manifold populist frames across both time and political space. Populist rhetorical schemas or populist-like narratives are to be found across church, state and party actors; across the political system through the pattern of left-wing inclusionary and right-wing or nationalist exclusionary appeals to a people; as well as in the presence of unspecific, vague, catchy but crude and oversimplified political language characterizing public dialogue and the mainstream media.

Moreover, populism is a phenomenon conjoined with nationalism, whereby there is a general hesitation in the utilisation of absolute dichotomies that move beyond ethnic lines or the Cyprus Problem. Nationalism, both a factor and a product of inter-communal conflict, has been widely present in the political arena, institutionalised in educational and administrative practices and widely disseminated by clerics, opinion leaders and intellectuals to the extent that both the embrace of a collective people's will and the antagonism against 'the others' has been more often than not mixed with nationalist and religious allegiances. At the macro-historical level, therefore, populist framing has been articulated on the island by both Left and Right mostly, although not exclusively, within the context of ethnic division, violence and efforts to overcome conflict between the Greek Cypriots and the Turkish Cypriots and to unify the island.

27 Y. Balampanidis 'Historicizing the populist temptation: the case of Eurocommunism', in *Left Radicalism and Populism in Europe*, eds G. Charalambous and G. Ioannou, London: Routledge, forthcoming; F. Escalona, 'Social democracy and the temptation of populism between the world wars: France in a comparative perspective'. In *Left Radicalism and Populism in Europe*.

These particularities have diluted the appearance of populism to the extent that Cyprus stands out among southern European countries in so far as it has both a strong Left and a powerful Right and Far Right, but there has not emerged a single populist player in the political playing field, at least yet. Populist mobilisation with its traditionally accompanying features of a charismatic leader with loose ties to voter masses who evokes a struggle by the people against a heterogeneous and evil oligarchy with orthogonal distinction from the sovereign subject and who speaks of urgencies and uses simplistic, crude language is not the chief behavioural or identity trait of each of the main political actors. Hence Cyprus is not a good example of a successful populist challenge, either during these times when the sense of populism is everywhere, or earlier. But it is yet another example of multiple locally specific populisms. Both people-centrism and otherness cut across ideological lines and political spaces and vary over time in terms of defining either the 'in-group' or the 'out-group'.

The high salience of the ethnic cleavage and consequently its constraining effects on the supply of populism may be a useful explanation for the relative absence of populists close to the ideal type, or put differently, fully fledged populism. This 'crowding out' hypothesis would assume that nationalism as a belief system is embedded in the Cypriot polity in such a way as to produce patterns of social conflict and political competition conducive to populist moments and performances but obstructive to a single, forceful populist political agent, which is firstly populist and only then nationalist or leftist. Comparative, empirical studies of populism in ethnically divided countries or in situations of ethnic conflict would be one way to advance the issue further.

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The Proliferation of Cypriot States of Exception: The Erosion of Fundamental Rights as Collateral Damage of the Cyprus Problem

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Abstract

This paper argues that, despite some promising signs in the early 2000s that the 'Cypriot states of exception' might be superseded with a rights-based normality via the resolution of the Cyprus Problem together with accession to the EU, we instead have witnessed a proliferation of regimes of exception and derogation of rights. After briefly discussing the diminishing potential for solving the Cyprus Problem and the faltering EU integration process as a rights-based democratic space, the paper focuses on developments within the Republic of Cyprus. It demonstrates that, despite some welcome developments in the institutional frame as a result of acceding to the EU as well as implementing the Charter of Fundamental Rights, there are two tiers of problems the Republic of Cyprus faces. As an EU member, it is plagued by a triple crisis undermining fundamental rights in the Union and its members: securitisation, particularly after 9/11 and recent terrorist attacks; austerity measures following the financial crisis; and the post-2015 'refugee crisis', which has unleashed disintegration processes, right-wing anti-Europeanism and leaving the EU. This second tier of problems relate to the Cypriot states of exception. The paper illustrates that these processes have intensified the deteriorating situation at the expense of fundamental rights, particularly since the financial crisis-and-austerity packages in post-2013, into four distinct areas: (1) many aspects involving Turkish-Cypriots; (2) migration and free movement; (3) economic and financial aspects relating to the causation and management of the financial crisis; and (4) environmental issues. Finally, it proposes a schematic theoretical critique of how to go beyond the logic of 'states of exception'.

Introduction

The potential for peacefully resolving the Cyprus Problem is diminishing with new tensions over the exploitation of gas in horizons, but also, the EU integration processes is increasingly a faltering project; despite some positive developments with the Charter of Fundamental Rights a decade ago, there is triple crisis plaguing the enhancement of fundamental rights in the Union and its members: securitisation after 9/11 and the recent terrorist attacks; austerity measures following the financial crisis; and, the post-

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2015 'refugee crisis', which has unleashed processes of disintegration, right-wing anti-Europeanism and members' desire to leave the EU. This paper illustrates that these processes have intensified the deteriorating situation at the expense of fundamental rights, particularly since the financial crisis-and-austerity packages in post-2013. In particular, it has affected (a) many aspects involving Turkish-Cypriots; (b) migration and free movement; (c) economic and financial aspects relating to the causation and management of the financial crisis; as well as (d) environmental issues.[2]

After summarising the basic argument about the location of the Cypriot states of exception, this paper illustrates how this operates, primarily focusing on the first three spheres. The *Cypriot states of exception* derived from the particular historical antecedents that shaped the 'Cyprus Problem'. It must be noted from the outset that the law of necessity cases, in view of the judgments of the ECHR, are somewhat different from the 'economic crisis cases', as, in the latter cases, necessity was a sort of 'background' issue. Nonetheless, the issue of 'economic necessity' due to 'exceptional circumstance' was invoked and was discussed in the cases, and as such it forms an important dimension of the necessity and exception arguments in Cypriot jurisprudence.

This article argues that the proliferation of states of exception has three interconnected aspects:

- First, there is a ready-made tradition in the form of Supreme Court jurisprudence from the 1960s that is the so-called doctrine of necessity, which provides the foundation for the court's granting wide discretion to the executive, and is derived from the ethnic/state conflict of a small island state, which is semi-occupied.
- Second, there was a strategic decision to facilitate rapid economic development, particularly after the devastation of the conflict and the 1974 war, that generated a broader socio-legal foundation as part of it. This is how Greek Cypriot policy-makers understood their mission in government; it was Greek Cypriots, who, *de facto*, formed the Government after 1963 when Turkish Cypriots 'abandoned' the consociational power-sharing posts of the Republic. Policy-makers in this small divided state saw themselves as having a 'national mission' to rebuild the country. In the immediate aftermath of the war in 1974, this logic took the form of 'crisis management', subsequently, managing rapid economic development for the 'survival' of a small country under external threat. This has meant that 'development' was to be achieved by 'any means necessary', with

2 This article does not address this issue, as it requires considerable discussion on environmental issues and law. For more on this see M. Hajimichael and K. Papastylianou, *Environmental Protection and Cooperation in an (Ethnically) Divided Island: The Case of Cyprus* (Oslo: PRIO Cyprus Centre Report, 2019); N. Trimikliniotis, «Υπόθεση Αστρασολ και το Κυπριακό καθεστώς εξαίρεσης στο περιβάλλον», in Περιβαλλοντικές Προκλήσεις και τα Κοινά, ed. A. Zissimos (Nicosia: Promitheas, 2019).

loose and flexible possibilities for capital expansion and accumulation at the expense of labour rights and the environment, whilst simultaneously guarding the notion of sovereignty and broadly interpreting executive discretion and authoritarian control of immigration and borders.

- The third relates to the diminishing prospects for solving the Cyprus Problem and the potential for an escalation of conflict, as a result of the failure to utilize the 'opening' provided by what is referred to as the 'Euro-Cypriot conjuncture', which is a manifestation of the combined transformations at local levels as well as broader regional and global world order since the late 1990s.[3] There is currently a new 'closure' with potential tensions emerging over the natural gas issue, the faltering of the EU integration process, the rise of authoritarianism in Turkey and the Middle East (Israel, Egypt, etc.), and the regional geopolitical alliances between the RoC and Middle Eastern autocratic regimes, such as Sisi's Egypt and Netanyahu's Israel.[4]

The Peculiarities of Cyprus and the Case of *Ibrahim*

The peculiarities of the Cypriot constitutional history and development is the starting point of a post-colonial state a society with a number of peculiar and problematic features: it was set up as consociational republic, a bicommunal state, which prohibiting amendment of certain articles of the constitution and imposing external 'guarantors' of the constitutional order.[5] However, the games played by actors within and outside played rather than iron out and resolving the political and constitutional problems, they did the exact opposite, accentuating and generate the long-drawn conflict that followed.[6]

The Cyprus Supreme Court, 54 years ago in 1964, when the Republic was facing a 'crisis government',[7] declared for itself that it is performing the function of reflecting

3 N. Trimikliniotis, *The Nation-state Dialectic and the State of Exception—Sociological and Constitutional Studies on the Eurocyprian Conjuncture and the National Question* [in Greek], (Athens: Savalas, 2010).

4 N. Trimikliniotis, 'The Cyprus Problem and imperial games in the hydrocarbon era: From a place of arms to an energy player?', in *Beyond A Divided Cyprus: A State and Society in Transformation*, eds N. Trimikliniotis and U. Bozkurt (MacMillan Palgrave, New York, 2012); N. Trimikliniotis, 'The national question, partition and geopolitics in the 21st century: the Cyprus Problem, the social question and the politics of reconciliation', *Global Discourse,* Vol. 18, Nos. 2/3 (2018), 303-320, DOI.org/10.1080/23269995.2018.1461440; N. Trimikliniotis, 'Η Εποχή της Φρίκης: Ένας παγκόσμιος απολογισμός της πενταετίας' ["The era of horror: A five year global review"], ΕΠΙΘΕΩΡΗΣΗ Ιστορίας, Κοινωνίας και Πολιτικής (*Promitheas Annual Review, History, Society and Politics* (Nicosia: Promitheas Research Institute, 2018, January).

5 S. A. De Smith, *The New Commonwealth and Its Constitutions*. London: Stevens, 1964. Constantinou, 2008; N. Trimikliniotis and U. Bozkurt, *Beyond A Divided Cyprus.*

6 N. Trimikliniotis and U. Bozkurt, *Beyond A Divided Cyprus.*

7 S. Kyriakides, *Cyprus Constitutionalism and Cyprus Government* (Philadelphia: University of Pennsylvania

on the social situation of a crisis-ridden society and is obliged to seek legal solutions to continue the very functioning of the state. In 1963, the Cypriot President Archbishop Makarios proposed 13 amendments to the Constitution, which, if accepted, they would have by and large removed many consociational element from the Constitution by limiting the communal rights of the Turkish Cypriots. The Turkish Cypriots withdrew from the State administration in protest. Since then, Greek Cypriots have administered the Republic. With the Turkish Cypriots out of governance, the control of the Republic remained in the hands of the Greek Cypriots. In July 1964, a law was enacted to provide that the Supreme Court should continue the jurisdiction of both the Supreme Constitutional Court and of the High Court.[8]

Half a century later, the doctrine of necessity was invoked for economic reasons. The court had to deal with the argument the case of *Alexandros Phylaktou v. the Republic of Cyprus,*[9] in the context of the austerity package deducting salaries of public sector employees, discussed in detail later in this paper: the attorney general unsuccessfully invoked the case of *Ibrahim*, which invented the 'doctrine of necessity', in arguing that the imperative 'economic necessity' for the austerity salary cuts of all public servants, including judges, was part of the doctrine of necessity. In contrast, back in 1964, the then attorney general, the occupier of the this all-powerful post in the Cypriot legal order,[10] succeeded in his argument and the Supreme Court assumed authorship of the doctrine of necessity so that 'the state must go on' in a protracted ethnic/state conflict that continues to this day as 'the Cyprus Problem'.[11] This is how 'the Cypriot states of exception' was born.[12] One remarkable excerpt of *Ibrahim* is indicative of how the Court considered its own 'extraordinary social function':[13]

> This court now, in its all-important and responsible function of transforming legal theory into living law, applied to the facts of daily life for the preservation of social order, is faced with the question whether the legal doctrine of necessity discussed earlier in this judgment, should or should not, be read in the provisions of the written Constitution of the (RoC). Our unanimous view, and unhesitating answer to this

Press, 1968).

8 Administration of Justice (Miscellaneous Provisions) Law 33 of 1964.

9 Αλέξανδρου Φυλακτού, Επαρχιακό Δικαστήριο Πάφου και Κυπριακής Δημοκρατίας, μέσω Γενικού Λογιστή Υπόθ. 397/2012397/2012 και 480/2012.

10 D. Kyprianou, *The Role of the Cyprus Attorney General's Office in Prosecutions: Rhetoric, Ideology and Practice* (Heidelberg: Springer, 2010).

11 See N. Trimikliniotis, 'The Cyprus Problem and imperial games in the hydrocarbon era: From a place of arms to an energy player?', in *Beyond A Divided Cyprus*, eds Trimikliniotis and Bozkurt.

12 Constantinou, 2008.

13 *The Attorney-General of the Republic v Mustafa Ibrahim and others*, Criminal Appeals No. 2729, 1964 Oct. 6, 7, 8, Nov. 102734, 2735, (1964) CLR 195. The matter was considered to be of such significance that it was placed in the summary judgment, 97.

question, is in the affirmative.

In the leading case of *Ibrahim* 1964, the Supreme Court ruled that the functioning of the government must continue on the basis of the 'doctrine of necessity'. In his reasoning, Judge Josephides said: [14]

> In the light of the principles of the law of necessity as applied in other countries and having regard to the provisions of the Constitution of the Republic of Cyprus... I interpret our Constitution to include the doctrine of necessity in exceptional circumstances which is an implied exception to particular provisions of the Constitution and this to ensure the very existence of the State. The following pre-requisites must be satisfied before the doctrine may become applicable:
>
> 1. An imperative and inevitable necessity of exceptional circumstances;
> 2. No other remedy can apply;
> 3. The measure taken must be proportionate to the necessity; and
> 4. It must be of a temporary character limited to the duration of the exceptional circumstances.

Admittedly, the absence of Turkish Cypriots from the State administration, irrespective of how it came about, led to a multi-layered crisis that had to be addressed. The Greek Cypriot judiciary found the doctrine of necessity as the most suitable way to address this crisis as regards the functioning of the Courts and, ultimately, the functioning of the State itself. A decade later, this doctrine was extended to cover the measures adopted in order to address the situation created by the Turkish invasion.

Through the years, the judicial approach to this doctrine took several forms but it was invariably upheld by judges, often unanimously, in order to deny rights to Turkish Cypriots because of their ethnicity. Even though the judicial approach to the doctrine of necessity cannot be summarized in a few lines, below are a few examples, selected either for their significance or because they represent the most recent trends.

Ibrahim, Half a Century Later

On the 50th anniversary of the decision of *Ibrahim Mustafa* sparked an interesting debate amongst academics and lawyers in Cyprus. During the previous decade, the

14 Attorney General of the Republic v Mustafa Ibrahim (1964) CLR at 264-265. See Nedjati (1970); C. M. Pikis, *Constitutionalism, Human rights-Separation of Powers, The Cyprus Precedent* (Leiden/Boston: Martinus Niijhoff, 2006), 27-40; C. M. Constantinou, 'On the Cypriot states of exception'. *International Political Sociology*, Vol. 2 (2008), 145–164.; N. Trimikliniotis and C. Demetriou, 'Evaluating the anti-discrimination law in the Republic of Cyprus: A critical reflection', *The Cyprus Review*, Vol. 20, No. 2 (2008); N. Trimikliniotis, 'Exceptions, Soft Borders and Free Movement for Workers', in *Free Movement of Workers: The European Challenges Ahead*, eds P. Minderhoud and N. Trimikliniotis (Nijmegen: Wolf Legal Publishers, 2009): 2010a.

first serious challenges to the 'doctrine of necessity' occurred within Greek Cypriot academia.[15] Turkish Cypriot academics had questioned the validity of the doctrine.[16] However, the dominant Greek Cypriot paradigm remained essentially as apologetics for the order produced following the collapse of the bicommunal Republic and the running of the Republic by Greek Cypriots.[17]

The interest in the subject was revived amongst Greek Cypriot and Greek academics and lawyers over the last five years with public debates and publications. There are some interesting and critical insights by scholars who delved deeper to uncover the inner Schmittean logic of the 'necessity' in Cyprus, coming from two Greek academics who are based in Cyprus, Costas Stratilatis (2016) and Christos Papastylianos (2016).[18] The arguments of Stratilatis has much to do with Carl Schmitt. According to an interpretation, which has a general concern for his interest in territoriality, it could be taken as an indirect link to Schmitt's interest in geopolitics in his Nomos of the Earth. Papastylianos' arguments are not Schmittian, rather they form a possible line of argumentation to transcend Schmitt.

The other scholars who intervened had some critical comments but overall are defenders of the doctrine. Kombos provides of a dense and ambivalent legalism with some side-criticisms, but essentially defends the doctrine,[19] whilst Emilianides, Loukaides and Polyviou consider the doctrine to be a legitimate *extension of the rule of*

15 Constantinou, 'On the Cypriot states of exception'; N. Trimikliniotis, «Το Κυπριακό «δόγμα της ανάγκης»: Μια (μη-)δημοκρατία σε κατάσταση εξαίρεσης;», Περιπέτειες Ιδεών, *Politis*, Vol. 15 (2007, September 2), 'Exceptions, Soft Borders and Free Movement for Workers', 2010; 2013.

16 K. Özersay, 'The Excuse of State Necessity and Its Implications on the Cyprus Conflict', *Perceptions* (Winter 2004–2005), available at http://sam.gov.tr/wp-content/uploads/2012/02/KudretOzersay.pdf.; A. Sozen and K. Özersay, 'The Annan Plan: State Succession or Continuity', *Middle Eastern Studies*, Vol. 43, No. 1 (2007).

17 C. G. Tornaritis, *Cyprus and its Constitutional and Other Legal Problems*, 2nd ed. (Nicosia, 1980), «Η Γένεση της Κυπριακής Δημοκρατίας και οι Συνέπειες Αυτής», in *Κύπρος- Ιστορία, Προβλήματα και Αγώνες του Λαού της*, eds G. Tenekides and G. Kranidiotis (Athens: Hestia, 1981), *Το πολιτειακό δίκαιο της Κυπριακής Δημοκρατίας* (Nicosia, 1982); C. Christostomides, *Το κράτος της Κύπρου στο διεθνές δίκαιο* (Athens: Sakkoulas, 1994); Pikis, *Constitutionalism*; L. Papaphilippou, *Το Δίκαιο της Ανάγκης στη Κύπρο* (Nicosia, 1995); E. Nicolaou, *Ο έλεγχος της συνταγματικότητας των νόμων και της κατανομής των αρμοδιοτήτων των οργάνων του κράτους στην Κύπρο* (Athens, Sakkoulas 2000), A. C. Emilianides, *Η υπερβαση του Κυπριακού Συντάγματος* (Athens: Sakkoulas, 2006).

18 C. Stratilatis, 'Η άδοξη καριέρα του στη Κύπρο: Η δημιουργία και τα πρώτα έτη του βίου της Κυπριακής δημοκρατίας από σμιτιανή σκοπιά', in *Η Κυπριακή Δημοκρατία και το δίκαιο της ανάγκης* eds A. Emilianides, C. Papastylianos and C. Stratilatis (Athens: Sakkoulas, 2016); C. Papastylianos, 'Το δίκαιο της ανάγκης και τα θεμελιώδη δικαιώματα των Τουρκοκυπρίων: Η εδαφικότητα και η κυριαρχία ως προϋποθέσεις άσκησης των δικαιωμάτων', in *Η Κυπριακή Δημοκρατία και το δίκαιο της ανάγκης*.

19 C. Kombos, *The Impact of EU Law on Cypriot Public Law* (Athens: Sakkoulas 2015), *The Doctrine of Necessity in Constitutional Law* (Athens: Sakkoulas, 2015).

law.[20] Polyviou raises questions which could undermine the legalistic approach to the doctrine of necessity if taken seriously: for instance his chapter on the relation of *Ibrahim* with the question of constituent power could undermine the whole 'rule of law' based reading of *Ibrahim*. Polyviou's 'legalism' is a peculiar mixture of an empiricist politics of convenience and a kind of professionalised deference to law over politics that derives from the privilege position as one of the major law firms in Cyprus, rather than a serious and systematic academic analysis.

Emilianides, on the other hand, adopts primarily a Hartian approach rather than a Kelsenian approach.[21] The significance of this is that the ground of the rule of recognition in Hart has to do not only with the stance of state organs but also with some sort of popular acquiescence in the rule. Kombos is only remotely connected to Kelsen and Hart for that matter.[22] It is questionable whether Kombos' overall argument is that *Ibrahim* should be read as an application of Kelsen's understanding of a legal revolution. In any case, Kelsen devoted just a few lines on this issue as, in reality, Kelsen hardly has a developed theory about a 'legal revolution'. Kombos' approach is a rather commonsensical legal positivism, and he does not frame his theory within the premises of Kelsen or any other theoretical. Little can be made from the few lines Kombos refers to Kelsen so as to distinguish *Ibrahim* from cases the theory of legal revolution.

More serious engangement with theory would certainly be welcome and would open new ways of reading the Cyprus Problem, legally, sociologically and politically. It is necessary to make connections and common threads. In this sense, one can identify a common approach that denies any connection or lineage to Schmitt and prefers to place themselves within the positivist frame of 'pure law' or other positivist law arguments that can be traced to Hart, Kelsen etc.. Their argument is in fact squarely placed within the logic of legitimising the 'state of exception' and 'decisionism', i.e. Schmittean logic. There are indeed common ideological threads which also correspond to ideological shifts of dominant sections of the Greek Cypriot establishment, such as the establishment connected to the administration of post-1963 regime in

20 Emilianides, *Η υπερβαση του Κυπριακού Συντάγματος*, 2015; Emilianides, 'Το δίκαιο της ανάγκης 50 χρόνια μετά: Σκέψεις επί του Κυπριακού «μηδενικού νόμου»,' in *Η Κυπριακή Δημοκρατία και το δίκαιο της ανάγκης,* eds Emilianides et al., Loukaides (2015), P. Polyviou, *The case of Ibrahim the Doctrine of Necessity and the Republic of Cyprus* (Nicosia: Chrysafinis and Polyviou, 2015).

21 Emilianides, *Η υπερβαση του Κυπριακού Συντάγματος* and '*Το δίκαιο της ανάγκης* 50 *χρόνια μετά*'*Το δίκαιο της ανάγκης* 50 *χρόνια μετά*'; H. L. A. Hart, 'Positivism and the Separation of Law and Morals', *Harvard Law Review*, Vol. 71 (1958), *Essays on Bentham: Jurisprudence and Political Theory* (Oxford: Clarendon Press, 1982), *The Concept of Law*, 3rd ed. (Oxford: Oxford University Press, 2012); Kelsen 1967; 1982; 1991; B. H. Bix, 'Kelsen, Hart, and legal normativity', *Revus*, Vol. 34 (2008), DOI.org: 10.4000/revus.3984.

22 Kombos, *The Impact of EU law and The Doctrine of Necessity*.

Republic of Cyprus. The status quo of the Greek Cypriot-run Republic of Cyprus with Turkish Cypriots as a minority at best, should constitutional order 'return' to the Republic, is the entrenched legal position of the state. This is the imposition of the post-1964 regime, not as a 'necessary' and 'limited' deviation from the rule of law of the constitutionalism of the Republic but as 'transcendence' of the Republic of Cyprus Constitution.[23] This is based on denialism of any ideological elements, as if constitutional reality is free from ideology, which is something impossible.[24] It rests on *their word* as the key argument that their approach is not ideological – simply their argument is as follows: 'The approach is not ideological because we are based on pure law', and 'Ideological are those who critique the pure law approach, as there is no ideology in pure law'.[25]

The hegemonic view is premised on the opinion that that judiciary, on the advice of the attorney general, who at the time was none other than Criton Tornaritis QC, had discharged its constitutional duty in resolving the constitutional crisis that had started earlier with the dissolution of the Supreme Constitutional court and its merger with the High Court.[26] In the context of Cyprus, despite the different opinions and perspectives derived from the point of view of being a holder of a legal office of the Republic's administration serving a different function, there is a blurring and convergence between the executive, the judiciary and the high level administrative officers, such as the attorney general, particularly when it comes to major 'national' constitutional issues. The ethnic conflict between the Greek Cypriot and Turkish Cypriot ruling elites is such an instance. Of course the conflict was not confined to the ruling class but it extended to the popular classes. Moreover, the blurring of the distinction of who holds what view is illustrated in the case of *Ibrahim*: the attorney general, who is in independent legal advisor to the Government (i.e., the executive), is a legal personality whose function and role in the juridical and constitutional affairs made him interwoven within the judicial echelons.

Tornaritis is the most prominent example. He was born in 1908, and graduated from the University of Athens, obtaining a distinction of excellence, and was nominated for a doctorate in 1923. He went on to postgraduate studies in London and become

23 Emilianides, *Η υπερβαση του Κυπριακού Συντάγματος*; *Το δίκαιο της ανάγκης*.

24 D. Dimoulis, *Το Δίκαιο της Πολικής, Μελέτες Συνταγματικής Θεωρίας και Ερμηνείας* (Athens: Ellinika Grammata, 2001); G. Frankenberg, *Political Technology and the Erosion of the Rule of Law, Normalizing the State of Exception* (Cheltenham: Edward Elgar, 2014).

25 Rather than engaging with the critique of the doctrine of necessity Emilianides, *Το δίκαιο της ανάγκης*, brands the critiques as ideological. Contrary to this Stratilatis, 'Η άδοξη καριέρα του στη Κύπρο', illustrates the contradictions and seriously engages with the arguments.

26 Tornaritis, *Cyprus and its Constitutional and Other Legal Problems;* «Η Γένεση της Κυπριακής Δημοκρατίας», in *Κύπρος- Ιστορία*; *Το πολιτειακό δίκαιο της Κυπριακής Δημοκρατίας*.

a barrister-at-law in 1946. In 1940, he was appointed as a district judge in Nicosia and thereafter, in 1942, he became the first Cypriot to be president of the District Court of Famagusta. He served as solicitor general from 1944 until 1952 and then as attorney general from 1952-1960, under the British colonial rule.[27] From 1960 to 1984, he was the RoC's attorney general. Tornaritis had the opinion that any deviation from the rule of law by invoking the doctrine of necessity, which derived somehow from the 'inner logic' of constitutionalism, would restore the rule of law. Of course there is another interpretation here: the argument in *Ibrahim*, as advanced by Tornaritis and accepted by the Court, is *not* premised on the fact that there is something called 'rule of law' in the first place, and then we try to accommodate the legal situation within this something. The doctrine of necessity is not an expression of rule of law, classically understood, so to speak. For the defenders, or better the apologist of the dosctrine of necessity, it is more a transformed notion of the rule of law within the particular (political, legal and geopolitical) situation in which history brought the Republic. Hhowever, this is not just a matter of opinion. It is an issue of fundamental disagreement about the nature of the democratic order and the will of the people. Fifty years later we find the same basic position as essentially an apologetics of the 'doctrine of necessity' with some criticisms on the application in later times. Kombos does not offer anything *substantially* different from the established apologetics of *Ibrahim*: there is no fundamental questioning of the validity and adequacy of the reasoning. In this sense, it is part of same Greek Cypriot legal scholarship mentioned earlier. However, Kombos does engage in criticisms about how the application of the doctrine developed later lacked consistency and systematisation and was 'often bordering on conservative formalism'.[28] Most significantly, he is critical of the jurisprudential inconsistency in the reversal of the Supreme Court's opinions on the constitutional amendment. Nonetheless, he considers the *Ibrahim* decision to be 'the apogee of the discharge of the constitutional function and responsibility'.[29]

The Kelsen-Schmitt disagreement over *who is the sovereign*, i.e. the executive leader versus the Court, in declaring the 'state of exception', has to be seriously adapted to see it in the Cypriot context and to examine the deeper logic, rather than to examine matters at a formal level, although it is significant in general terms as to the nature of liberal democracy.[30] There are three key elements that must be taken into account: (a)

27 During the period of 1955-1959, he was detached as Legal Adviser to the Colonial Office in London and as Commissioner for the Reviewing of Cypriot Legislation.

28 Kombos, *The Impact of EU Law* and *The Doctrine of Necessity*. Neither does Emilianides (*Η υπεροβαση του Κυπριακού Συντάγματος* and *Το δίκαιο της ανάγκης*) or Polyviou, *The Case of Ibrahim*.

29 Kombos, *The Doctrine of Necessity*.

30 See L. Vinx, *The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law* (Cambridge: Cambridge University Press, 2015), DOI.org:10.1017/CBO9781316136256.2015.

the historic subservience of the courts to the executive since colonial times;[31] (b) the consensus amongst the Greek Cypriot political, legal, administrative and economic elites pertaining to Greek Cypriot control of the Republic as 'a national issue' contra the challenge by the Turkish Cypriot elites and Turkey; (c) the blurring and intermingling of the judicial, legal and political elites, who are currently facing serious controversy about nepotism, favouritism and corruption between judges, large legal firms and political figures.

At the level of the theoretical debates, there are references to Kelsen to legitimise the doctrine of necessity and rejections of any Schmittean connections; however, the only serious engagement with the Kelsen-Schmitt debates is made by Stratilatis, who wrestles with the two 'alternative' approaches in Cyprus. He concludes that whilst Kelsen's 'pure law' approach prevails at a formalistic and referential level, he nonetheless considers that underlying the Kelsian surface in the *Ibrahim* case are critical Schmittean moments.[32] It is beyond the scope of this paper to discuss the debate on constituent power and who had the power to exercise it in the context of Cyprus during colonial and postcolonial times: this is a crucial debate that underlies not only the historical issue of the doctrine of necessity but also as to how to resolve the Cyprus Problem.

The European and Cypriot States of Exception Reloaded: The Example of the Migration States of Exception

We need to unravel certain aspects of the Cypriot regime that are particularities of the 'Cypriot states of exception' and that are part of a much broader argument.[33] The basic argument is as follows: the Cypriot migration regime must be within a broader frame, which is both the paradox of processes which is simultaneously both increasingly *Europeanized* but increasingly *localized*. The Cypriot migration regime is operating largely under the general rubric of 'the state of exception',[34] as part of the 'Cypriot states of exception'[35] which can be typically found in liberal capitalist states: immigration control, which grants immigration authorities wide discretion as executive prerogative, is perceived as a manifestation of the sovereignty of the state. When it

31 This is a subject that requires serious research to be elucidated further. Future research could examine specific indices to uncover how this operates.

32 Stratilatis, '*Η άδοξη καριέρα του στη Κύπρο*', 79.

33 For a more comprehensive approach of the broader argument, analysis, and empirical backing see Constantinou, 'On the Cypriot states of exception'; N. Trimikliniotis, *Η Διαλεκτική του Έθνους-Κράτους και το Καθεστώς Εξαίρεσης: Κοινωνιολογικές και Συνταγματικές Μελέτες για την Ευρω-Κυπριακή Συγκυρία και το Εθνικό Ζήτημα* [in Greek]. (Athens: Savalas, 2010); Trimikliniotis and Bozkurt, *Beyond a Divided Cyprus*.

34 G. Agamben, *State of Exception* (London: University of Chicago Press, 2005).

35 Constantinou, 'On the Cypriot states of exception'.

comes to immigration and asylum, the EU legal order has by and large *supplemented* and *modified* rather than *replaced* the national legal order.

This was followed by the 'economic miracle', which needed managing, until the economic meltdown in 2013. In the late 1980s, the Government, responding to labour shortages, introduced a system of migrant labour. However, the system was, and continues to be, based on two distinct classes of migrants: (a) elite migrants, who would invest and/or bring their entrepreneurship, know-how, and networks, and whose presence would be as stable and permanent as possible; (b) the vast majority of migrant workers, who would be temporary and cover the basic low-skilled jobs which Cypriots were not interested in. These migrants were thought to be temporary; their employment was short-term and precarious, and hence, they are also referred to as *subaltern migrants*. The legal and policy framework is premised on this distinction. With this context in mind, one can understand the marginality of the latter, the second class of migrant workers. Third-country nationals (TCNs) have a worse situation than European Union Nationals (EUNs), however they are both subaltern migrants, as is shown in this paper.

When it comes to controlling migration and populations, that is, controlling who enters the borders and who belongs to the nation, States of the liberal capitalist type tend to consider this control as a vital expression of sovereignty. Thus, authorities are generally granted wide discretion as an essential ingredient of their prerogative powers. Migration control is the policy field where *authoritarian statism* thrives, and it can be seen as a state of exception par excellence in perpetuity. This is largely, but not exclusively or exhaustively, regulated by legislation and EU Directives, particularly in the case of detention, expulsion, deportation, and entry bans of foreign citizens, including EU nationals. For EU citizens, however, the free movement of workers is safeguarded, as provided by the EU acquis (as per Art. 45 of the TFEU). Only in exceptional situations, restrictions are allowed on the right of free movement and residence on grounds of public policy, public security, or public health. Expulsion of EU citizens and their family members is permitted only 'on grounds of public policy or public security'.[36] The scope for such measures is 'limited in accordance with the principle of proportionality to take account of the degree of integration of the persons concerned, the length of their residence in the host Member State, their age, state of health, family, and economic situation and the links with their country of

36 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, *Official Journal of the European Union* L 158/77.

origin'.[37] To expell EU citizens, the situations must be exceptional – a subject we return to later on to examine how this is applied in the context of Cyprus. The EU acquis, codified in the *Return Directive 2008/115/EC* on common standards and procedures in Member States for returning illegally resident TCNs, introduced rather low standards[38] merely referred to as 'common standards' rather than *minimum safeguards*. Moreover, when it comes to migration and citizenship, Courts typically grant the executive residual powers well beyond those provided by the regulations in the form of the wide margin of discretion afforded. It is no surprise that the acquis regulating the migration of TCNs is particularly weak, despite pledges to develop a common immigration and asylum policy.

Unfortunately, the Strasbourg Court, which is bound by the ECHR rather than the EU legal order, is often also trapped in the very same logic. The ECtHR case of *Saudi v. UK* is said to 'exemplify the limits and blind sports of the contemporary European system of the protection of human rights to those who are "out of place" in the global territorial waters'.[39] The notion of 'community' is increasingly 'globalized', but simultaneously in an ever more fragmented world is 'a blind spot in constitutionalism', ultimately failing in its universal human rights and the rule of law goals: 'By failing to question the way in which territoriality implicates the interests of the individual, modern constitutionalism silences and obscures claims for justice by those who are affected by State power whenever its exercise is based upon territorial sovereignty'.[40] Moreover, ECtHR case law on the detention of immigrants is 'exemplifying the blind spots of a constitutionalism, despite paying lip service to the universality of human rights [and] has serious difficulties accommodating claims for individual justice that cannot be fitted neatly within the traditional Westphalian frame'.[41] Paradoxically, the relation between 'illegal migration' and globalization has enhanced the role of immigration law and immigration regimes. Under globalizing forces, migration law has been transformed into the last bastion of sovereignty, which explains the worldwide crackdown on extra-legal and irregular migration and informs the shape of this crackdown that is taking place.[42] As States pursue what they refer to as combating

37 Ibid.

38 Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member Status for returning illegally staying third-country nationals, *Official Journal of the European Union* L 348/98.

39 *Saudi v.. UK*, ECtHR case no.13229/03, 2008. G. Cornelisse, 'A New Articulation of Human Rights, or Why the European Count of Human Rights should Think beyond Westphalian Sovereignty', in *Are Human Rights for Migrants? Critical Reflections on the Status of Irregular Migrants in Europe and the United States*, eds M. B. Denbour and T. Kelly (London: Routledge, 2012).

40 Ibid.

41 Ibid.

42 W. Walters, 'Anti-illegal Immigration Policy: The Case of the European Union', in *Governing*

'illegal migration', the phenomenon becomes more significant legally, politically, ethically, and numerically: migration law is in this sense crucial to understanding globalization in what is a paradigm shift in the rule of law. Having recognized this, it must be stressed that we are dealing with a dynamic situation, which is prone to pressure from below and above. There is certainly scope for challenge, resistance, and struggles, which may well shift the frontiers of the law in the direction of enhancing the rights of migrants and non-citizens *vis-à-vis* nation-states; it may, however, go in different directions. There are limits, but we are far from exhausting them. Indeed, in the recent case of *M.A. v the Republic of Cyprus,*[43] the ECtHR goes well beyond the EU acquis to force a nation-state to provide an effective remedy with automatic suspensive effect to challenge the applicant's deportation.

In the global context, matters become more complicated and negative for migrant rights as public order is increasing 'securitized', particularly after the so-called war on terror since 2001. Caution must be exercised so as not to fall in the trap of assuming that the problem suddenly appeared, particularly after September 11, 2001, dubbed as 'the terrorism-immigration nexus'.[44] There is certainly an all-encompassing vigour about security and antiterrorism; however, as various scholars illustrate, securitization is common, and in fact, *central to liberalism*.[45] This is connected to the changing function and meaning of borders, which interconnects questions of security to migration control. The 'securitization of migration' is an issue of concern in European and international literature over the last years. Invoking the 'dangers' posed by migrants, especially by certain categories deemed as 'dangerous migrants', which cultivates fears and insecurity amongst the host population, is hardly novel. The alleged connection between terrorism and migration, including the use of 'racial profiling' as a police method to 'predict behaviour' of 'potential terrorists', is a controversial issue for civil libertarians.[46] Such debates have been taking place in the EU and USA recently, which uses anti-terrorism as an excuse to pass measures curtailing civil liberties.

However, it is superficial to assume that the changes occurred merely or primarily

International Labor Migration, Current Issues, Challenges and Dilemmas, eds C. Gabriel and H. Pellerin (London: Routledge, 2008); C. Dauvergne, *Making People Illegal, What Globalization Means for Migration and Law* (Cambridge: Cambridge University Press, 2008).

43 *M.A. v. the Republic of Cyprus,* ECtHR case, application no. 41872/10 (23 July 2013).

44 A. Tsoukala, 'The Terrorism-Immigration Nexus in the EU, in the Post-11 September Era: An Analysis of the Political Discourses in the British Press', in *Irregular Migration, Informal Labor and Community: A Challenge for Europe*, eds E. Berggren, G. T. Likic-Brboric and N. Trimikliniotis (Maastricht: Shaker, 2007).

45 D. Bigo and A. Tsoukala, *Terror, Insecurity and Liberty, Illiberal Practices of Liberal Regimes after 9/11*, (London: Routledge, 2007), 198.

46 Tsoukala, 'The Terrorism-Immigration Nexus'.

due to the programme of particular heads of state. The changes are deeper and of a longer term. In the current climate, there seems to be an increasingly frequent use of the alleged connection between 'migration' and 'security': 'illiberal practices' are used by so-called liberal regimes, particularly but not exclusively after 9/11.[47] The 'war on terror' is 'a state of exception', invoked as a justification for liberal states to suspend civil liberties and human rights. Migrants and asylum seekers bear most of the brunt of these tough measures. In Cyprus these measures add further discretion to the immigration authorities to act with impunity. Perhaps there is more continuity than rupture in the current Supreme Court ruling than what appears at first sight: whilst the Supreme Court *rejected* the attorney general's invocation of the 'doctrine of necessity' to counter the judicial claim to be exempted from the general public sector austerity cuts, the ruling in fact was exactly the opposite: it defined a new exception. Paradoxically, in the very rejection of the logic articulated as an *imperative economic necessity* in the rubric of the doctrine of necessity, the Court generated yet another 'Cypriot state of exception', precisely reasserting the Court's claim to the Schmittean logic: 'Sovereign is he who decides on the exception'.[48]

The Cypriot Courts and the Proliferation of the Cypriot States of Exception

This article will now use Cypriot cases which went before the Supreme Court in recent years to illustrate the proliferation of states of exception and the extension of the logic of the doctrine of necessity. Many of these cases are cases involving discrimination.[49] It critically evaluates the rare cases where the attorney general invoked necessity arguments but the Court rejected them. Those cases involved cuts in benefits and pay for judges themselves or privileged high-earners' pensions as part of the austerity packages agreed with the troika. Therefore, the Supreme Court legitimised the highly privileged receiving treatment that differed from the rest of the population: Unlike the rest of population who faced severe cuts in wages and pensions due to austerity measures, no salary cuts were allowed to occur for high-earners, including the judges themselves.

We first briefly discuss the case of *Aziz*, which went to the ECtHR and set out a frame for limiting the doctrine of necessity, before examining the various cases.

47 Groenendijk, 'Legal concepts of integration in EU Migration Law'; 'Integration of Immigrants'.

48 C. C. Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Chicago: University of Chicago Press, 2005), 5.

49 See C. Demetriou, Report on measures to combat discrimination Directives 2000/43/EC and 2000/78/EC Country report 2017, Cyprus. (European Network of Legal Experts in the Non-Discrimination Field, 2017). For a discussion of discrimination in Cyprus see N. Trimikliniotis and C. Demetriou, 'Evaluating the anti-discrimination law in the Republic of Cyprus: A critical reflection'. *The Cyprus Review*, Vol. 20, No. 2, (2008).

The Case of Ibrahim Aziz

One of the very first cases to challenge the doctrine of necessity was that of Ibrahim Aziz, a Turkish Cypriot with a long-term residence in the areas controlled by the Republic of Cyprus. In 2001, Aziz applied to be registered on the electoral roll in order to vote in the forthcoming elections. His request was refused on the ground that, under the Constitution,[50] Turkish Cypriots could not be registered in the Greek Cypriot electoral roll. Indeed, the Constitution did provide for separate electoral lists for Greek Cypriots and for Turkish Cypriots, but this was suspended in 1963. Following the rejection of his application, the complainant appealed to the Supreme Court, relying on Article 3 of Protocol No. 1 of the European Convention on Human Rights and arguing that, following the dissolution of the Communal Chambers in 1963, the Republic failed to set up two separate electoral lists to protect the electoral rights of members of both communities. The Supreme Court rejected his application, holding that the applicable legislation[51] did not provide for Turkish Cypriots living in the south to be included in the Greek Cypriot electoral list and that the national Courts had no power to reform the Constitution. Following this rejection, the complainant applied to the European Court of Human Rights who ruled in favour of the complainant.[52] The Court found that Cyprus was in violation of Article 3, Protocol 1 of the ECHR for denying the complainant 'the very essence of the applicant's right to vote', and in violation of Article 14 of the same Convention, as the difference in treatment Aziz complained about was a result of the complainant's ethnic origin, and such difference could not be justified on reasonable and objective grounds. The Republic's failure to pass legislation to resolve the problem which arose in 1963 from the suspension of several constitutional rights of Turkish Cypriots produced a clear inequality of treatment in a citizen's right to vote.[53]

The Case of Arif Mustafa

The Court's approach in the case of Arif Mustafa remains unique in the sense that most subsequent decisions consciously choose to sidestep the reasoning behind the case. The government adopted a new policy following this decision that allowed Turkish Cypriots to access their properties on certain conditions and subject to restrictions in order to contain a potential crisis that would erupt if Turkish Cypriots would seek en

50 Article 63 of the Cyprus Constitution.

51 Article 63 of the Constitution and Article 5 of Law No. 72/79, relating to the election of members of parliament.

52 *Ibrahim Aziz v. Republic of Cyprus*, ECHR/no. 69949/01 (22 June 2004), available online: http://www.echr.coe.int/eng/Press/2004/June/ChamberJudgmentAzizvCyprus220604.htm.

53 On 23 January 2006, a new law was enacted purporting to comply with the ECtHR decision. The law grants Turkish Cypriots the right to vote as part of the same electoral roll as Greek Cypriots.

mass to reclaim their properties in the Republic-controlled areas. Arif Mustafa was a Turkish Cypriot residing in the Republic-controlled south of the island since 2002. He had sought to recover possession of his property in Limassol, which was administered by the Interior Minister in his capacity as 'Guardian' of Turkish Cypriot properties; his application was rejected. He applied to the Supreme Court for cancellation of the minister's decision, and the Supreme Court ruled in favour of the applicant.[54]

The Court accepted the applicant's arguments that he does not fall within the definition of 'Turkish-Cypriot' as enshrined in the law, because since 2002 he had his ordinary residence in the south, and that with the lifting of the restrictions in movement from north to south, the need on which the law is based, which is to protect the properties in the owners' absence, has expired; and that the law contravenes Article 28 of the Constitution, which embodies the equality principle and the prohibition of discrimination. The Court rejected the Government's argument that the criterion to be used in order to determine 'ordinary residence' is where the applicant was resident at the time of the law entered into force. The decision was controversial at the time, and the then attorney general filed an appeal against the Supreme Court decision. Arif Mustafa told the press that he was ready to take his case to the ECtHR if the decision was overturned. Realising that an ECtHR ruling against Cyprus could prove very awkward for the government, the appeal was subsequently withdrawn.

Following this decision, a new policy was put in place, allowing Turkish-Cypriots residing in the south for at least six months to repossess their properties. This case established that the law on Turkish Cypriot properties can be challenged on the basis that it is discriminatory, which could potentially have far-reaching legal implications. Since then, several Turkish Cypriots sought to repossess their properties in the south and many reached the Courts, including the ECtHR. Most cases were settled out of court settlements to avoid establishing precedents that would lead to far reaching consequences. To this date, the discriminatory treatment of Turkish Cypriots as regards their access to their properties remains an open issue.

Court Decision on the Right of Turkish Cypriots to Vote in the May 2014 European Parliament Elections

In 2013, the Law on electing members of the European Parliament was amended to provide the right to vote to those Turkish Cypriots who reside in the areas which are not under the control of the Republic of Cyprus, i.e. the northern part of Cyprus (hereinafter 'the north'). The amendment provides that the Civil Registry Department may record in a special electoral register those Cypriot citizens residing in the north

54 Supreme Court of Cyprus, *Arif Mustafa v. The Ministry of Interior through the Limassol District Administration*, Case No.125/2004, 24.09.2004.

provided they are over 18 and are in possession of an identity card of the Republic. The law further provides that the persons listed in this special electoral register must, on the date of the elections, submit a written statement on a special specimen stating their address in the north,[55] whereas persons not listed in any electoral registers would not be allowed to vote.[56] All persons who were already on the register of the Civil Registry Department on 6 February 2004 (the date on which the law came into effect) were also automatically registered on the permanent electoral register (Scenario A). Alternatively, persons entitled to vote could submit an application to be registered on the electoral register (Scenario B). A third option was the automatic registration, by way of data transfer from the register of the Civil Registry Department onto the electoral register (Scenario C). The public announcements issued by the Ministry of the Interior ahead of the 2014 elections did not clarify that Turkish Cypriots residing in the north were required to make any prior registration in order to be allowed to vote. The public announcement issued by the office of the European Parliament in Cyprus stated that those Turkish Cypriots who were in possession of the 'new type' of identity card and had declared an address in the north would be automatically registered in the special electoral register of the European elections. The announcement urged those Turkish Cypriots who were not sure if they had declared an address in the north to contact the authorities to declare their current address of residence by 2 April 2014.

The applicants, like many other Turkish Cypriots, did not think it was necessary to take steps to register themselves in any electoral registry. Since they had identity cards of the Republic, they assumed they would be able to vote using those cards, just like the Greek Cypriots, and that they would be able to fill out the special specimen form on the spot. On the day of the election, a number of Turkish Cypriots appeared at electoral centres to vote but were prevented on the justification that their names were not registered on any electoral roll. They were also denied the opportunity to register on the spot and vote. The applicants applied to the Court claiming that they should have been allowed to register on the spot and vote under scenario C, since they were already included in the registry of the Civil Registry Department and were in possession of identity cards of the Republic. They argued that the authorities' interpretation of the law on the day of the elections amounted to an infringement of the non-discrimination principle because of the applicants' ethnic origin, in violation of articles 6 and 28 of the Constitution, of article 21 of the EU Charter for Fundamental Rights, of Council Directive 2000/43 as incorporated into Law 59(I)/2004 and article 14 of the ECHR.

55 Law on the election of members of the European Parliament N. 10(I)/2004 as amended, Article 9(1A), available at www.cylaw.org/nomoi/enop/non-ind/2004_1_10/full.html.

56 Law on the election of members of the European Parliament N. 10(I)/2004 as amended, Article 10(3).

They further claimed that the authorities' interpretation of the law led to a violation of their right to vote in European Parliament Elections, violating articles 31 and 63 of the Constitution, articles 39 and 40 of the EU Charter, Council Directive 94/80 and article 3 of Protocol 1 to the ECHR. The claim also referred to the ECtHR ruling in the case of *Aziz v Cyprus*[57] which concluded that the failure of the Cypriot authorities to secure the right of Turkish Cypriots to vote in national parliamentary elections amounted to a clear inequality of treatment in the enjoyment of the right to vote, in violation of Article 14 of the Convention in conjunction with Article 3 of Protocol No. 1.

The Court rejected the claim on the grounds that the act they complained of, i.e. preventing the applicants from voting at the elections, could not be challenged through judicial review because it was merely an 'executory' act of informatory nature. It was, according to the Court, merely an act of communicating to the applicants the contents of the regulation in place and implementing the said regulation. The law is clear that no one could vote unless they were registered, and the applicants were not on any electoral register under scenarios A, B or C. As for scenario C, which according to the applicants should have been utilised to automatically place them on the electoral register, the Court concluded that this gave the Civil Registry Department *discretion but no duty* to register persons residing in the north on the electoral roll. The filling out of the special specimen allowing Turkish Cypriots to vote would have been possible only if the Civil Registry Department had exercised its discretion to register persons, which was not the case at present. The applicants had failed to prove that the authorities had any clear legal duty to act in a certain way. The Court did not respond to or made any reference to the discrimination component of the claim.[58]

It is noted that the Turkish Cypriot applicants were holders of identity cards of the Republic of Cyprus. These identity cards are sufficient for Greek Cypriots to vote and there is little justification for the reason why special provisions and procedures were put in place for Turkish Cypriots. Each identity card carries a unique number and there can be no error as to the identity of the holder, irrespective of the address of residence. The problem affecting Turkish Cypriots was aggravated by the fact that the special provisions applying to them were complex and not clearly defined in the various announcements published. The announcements the Cypriot authorities published only contained the text of the law, which offered no indication as to what Turkish Cypriots should do in order to be able to vote.

The Court's decision and its failure to consider the issue of discrimination raises

57 *Ibrahim Aziz v. Republic of Cyprus*, ECHR/no. 69949/01 .

58 Administrative Court, Senner *Hassan et al v. The Republic of Cyprus*, Cases 989/2014, 1103/2014, 1104/2014, 1105/2014, judgement delivered on 25 July 2018.

important legal questions with regard to the implementation of the equality acquis and the equality principle in general, as enshrined in other instruments (the Constitution, the EU Charter, etc.). The law transposing the Racial Equality Directive (hereinafter 'the law') contains a number of obscure provisions regarding the courts' competency as well as what to do about discriminatory provisions contained in laws or regulations.

The law states: Without prejudice to the *exclusive* jurisdiction of the Administrative Court under Article 146 of the Constitution (emphasis added) the competent court for examining disputes under this law in relation to discriminatory treatment is the District Court (verbatim translation by the expert).[59] The law further states that in the event of an action before the District Court *under Article 146(6) of the Constitution* (emphasis added) and provided the preconditions of the substantive right to fair and reasonable compensation are met, the District Court grants compensation.[60] Article 146(6) of the Constitution gives rights of compensation to persons aggrieved by an administrative decision declared void under paragraph 4 of this Article, i.e. a decision successfully challenged through a judicial review procedure. Since the judicial review process of article 146 is so intrinsically linked to the operation of the law transposing the Racial Equality Directive, it is necessary to examine whether the preconditions of Article 146 are in line with the quality acquis. In this case, the judge found that the judicial review process should fail because the act complained of was not executory and because the claimants had failed to show there was any legal duty on the authorities to act in a particular way. The judge decided the authorities had discretion to register or not register the claimants in the electoral register and they had no legal duty to use that discretion or to interpret the regulation in a manner that would be in line with the equality acquis, the EU Charter, the ECHR or the Constitution.

The judicial review process has additional disadvantages over and above the restriction regarding executory acts. Judicial review is available only to those persons who have a 'legitimate interest', i.e. legal standing,[61] which ipso facto excludes organisations acting on behalf of victims. There is a 75-day limit following which the right to apply to Court is lost.[62] Also, no legal aid is available for administrative recourses (save in specific circumstances such as asylum or return). More importantly, the judicial review process is intended to challenge administrative decisions on the basis of the decision-making process (proper investigation, sufficient justification etc.)

59 Law on equal treatment (racial or ethnic origin) N.59(I)/2004, article 8(1), available at www.cylaw.org/nomoi/enop/ind/2004_1_59/section-sc9e9ad049-e62a-2597-2aca-9eacd8c587bd.html.

60 Law on equal treatment (racial or ethnic origin) N.59(I)/2004, article 8(3).

61 Constitution of the Republic of Cyprus, article 146(2). www.cylaw.org/nomoi/enop/ind/syntagma/section-sc26b4a5c6-5493-b01e-9d76-560d2e45d284.html

62 Constitution of the Republic of Cyprus, article 146(3). Available at www.cylaw.org/nomoi/enop/ind/syntagma/section-sc26b4a5c6-5493-b01e-9d76-560d2e45d284.html

and not on its merits. Challenging the merits of a decision would, in the eyes of the Court, amount to an interference with the mandate of the legislative branch of the state, that is, Parliament.

The restrictions surrounding the judicial review process are very likely to lead any discrimination claim to fail. Because of this, it is necessary for the legislature, on the one hand, to clarify under which circumstances a claimant is obliged to use the judicial review process to challenge a discriminatory administrative act and, on the other hand, to amend Article 146 so as to remove the restrictions that lead to an infringement of the equality acquis.

The second question that requires clarification is the process through which a discriminatory law or regulation may be amended. The law regulating the mandate of the Equality Body provides for a procedure whereby the Equality Body must refer to the attorney general all laws, regulations and practices containing discrimination, following which the attorney general is obliged to advise the minister concerned and to prepare the necessary amendment in the discriminatory law or practice.[63] This is far from being a guarantee that the discriminatory provision will be annulled, and in fact the Equality Body's referrals to the attorney general, under Article 39, were in many cases ignored. Beyond the Equality Body's domain, the law transposing the Racial Equality Directive provides for another vague procedure for amending discriminatory laws and regulations which has also failed to bear fruit. According to the law:

- Every provision in force at the time of adoption of this law (April 2004) is anulled to the extent that it contains discrimination.[64] This seems to exclude provisions enacted after this date, as was the case at hand.
- The competent authority is under a duty to recall or modify any administrative act which is contrary to the provisions of this law.[65]
- *Without prejudice to the exclusive jurisdiction of the Administrative Court under Article 146* (emphasis added), if there is doubt as to whether a certain law was annulled or not, the matter is to be resolved by the District Court. Nevertheless, any other Court may, in the course of exercising its own powers also adjudicate on this matter if this is necessary for the completion of the procedure before it.[66]

The above provision raises a number of questions on the procedure for annullment and the redress mechanism when the competent authority does not recall a

63 Law on Combating Racial and Other Forms of Discrimination (Commissioner) N.42 (I)/2004, article 39. Available at www.cylaw.org/nomoi/enop/ind/2004_1_42/section-sc225d534d-b19b-b3e2-748b-a68d02297762.html

64 Law on equal treatment (racial or ethnic origin) N.59(I)/2004, article 10(1), available at www.cylaw.org/nomoi/enop/ind/2004_1_59/section-scc41c9869-9de2-31bc-8b0b-d3b776a58c88.html

65 Article 10(2), Law on equal treatment (racial or ethnic origin) N.59(I)/2004.

66 Article 10(3), Law on equal treatment (racial or ethnic origin) N.59(I)/2004.

discriminatory decision or the Court fails to adjudicate on the compliance of a certain law with the equality acquis. Prior to this decision, case law had established that the Court will not interfere with acts of Parliament, as that would infringe on the doctrine of the separation of powers. This long judicial tradition comes into direct conflict with the above provision of the law that requires the Court to check that laws comply with the equality acquis. This decision has widened this problem by establishing that the Court will not interefere in how the administration chooses to exercise its discretion, even if such exercise results in discriminatory treatment of persons on the ground of a protected charactristic.

The Family Exception to the Exception

An interesting issue arises over the Family Appeals Court decision on the jurisdiction of the Courts to try disputes between members of the Turkish community. The Court found that courts in the Republic of Cyprus have no jurisdiction to try disputes between members of the Turkish community. The appellant and the respondent are Cypriot citizens and members of the Turkish community. In 2003, they got married in the office of the Islamic community and resided in the RoC controlled-area (the south). They subsequently split up and the wife (the appellant) applied to the Family Court to resolve property differences with her estranged husband (the respondent). The appellant also sued a third party as a trustee of property to whom the respondent had allegedly transferred property. The trustee argued that no court had jurisdiction to try the case.

At first instance, the Family Court decided that it had no jurisdiction to try the case. In support of this, the court cited Article 152(2) of the Constitution, which provides that civil disputes relating to personal status are matters for the Communal Chambers and are under the jurisdiction of the Communal Courts of each Community. Although a law adopted in 1965 abolished the Greek Communal Chamber and the Greek Communal Court, providing that the jurisdiction of the Geek Communal Court should pass to the District Court,[67] no equivalent provision was made for the Turkish Communal Court. When the sealed barbed wire was opened in 2003, making it possible for Turkish Cypriots to move and /or settle in the south, a law was adopted providing for the District Court to replace the dissolved Turkish Communal Court but only in matters relating to the dissolution of marriages.[68] The trial court found

67 Law on the transfer of the exercise of jurisdiction of the Greek Communal Chamber and on the Ministry of Education of 1965 (Ο περί Μεταβιβάσεως της Ασκήσεως των Αρμοδιοτήτων της Ελληνικής Κοινοτικής Συνελεύσεως και περί Υπουργείου Παιδείας Νόμος του *1965*) N. 12/1965, available at www.cylaw.org/nomoi/enop/non-ind/1965_1_12/index.html.

68 Law providing for the application of the marriage law of 2003 to the members of the Turkish Community (Νόμος που προνοεί για την προσωρινή εφαρμογή του Περί Γάμου Νόμου του

that the scope of the 2003 law does not cover property disputes, as it is restricted to 'marital disputes' defined in the law as alimony and custody issues. The application was rejected at first instance and the applicant (the appellant in this case) was ordered to pay half of the costs of the respondents. The appellant filed for an appeal arguing that the failure of the court to try her claim infringes articles 13 and 14 of the ECHR (right to an effective remedy and prohibition of discrimination). No invocation was made to the Racial Equality Directive or the national law purporting to transpose it.

The Appeals Court rejected the appeal, upholding the Trial Court's findings. It concluded that the Turkish Communal Courts have not been officially dissolved and upheld the Trial Court's finding that the marriage law of 2003 could not be extended to cover property differences between spouses. The Appeals Court concluded that the legal gap cannot be remedied through a court decision but only through a legislative act and recommended that a procedure be introduced for the resolution of property disputes between Turkish Cypriots. The Appeals Court did not consider the question of discrimination and did not take into account the appellant's references to ECHR articles 13 and 14.[69]

The right to equality before the law is spelled out in preamble Article 3 of the Directive; the failure to safeguard the Turkish Cypriots' access to justice is not an apparently neutral provision but a directly discriminatory practice specifically targeting a group of persons identified through their common ethnicity. The Racial Equality Directive does not foresee any exceptions in cases of direct discrimination. Furthermore, according to Article 2(2) of the Racial Equality Directive, discrimination is established where there is less favourable treatment, without the need to prove prejudicial motive.

A number of Equality Body decisions in the past have also established discrimination in the differential treatment of Turkish Cypriots when trying to access state services, such as to exercise the right to marry and to register their newborn children in the official Registry. It is recalled that in the ECtHR ruling in *Aziz*,[70] Cyprus was found guilty of violating Article 14 of the ECHR for its failure to regulate the right of Turkish Cypriots to vote; the justification offered by the Cypriot government at the time, which was the irregular situation that emerged following the Turkish invasion, did not satisfy the criterion or reasonable and objective justification. The ECtHR has repeatedly ruled that the sensitive nature of peace processes or post-conflict

2003 σε μέλη της Τουρκικής Κοινότητας) N. 120(I)/2003, available at www.cylaw.org/nomoi/arith/2003_1_120.pdf.

69 Family Court, Appeal Jurisdiction, *G.M. v. H.V. and L.A.* (2018), Appeal No. 38/2015, judgement delivered on 10 September 2018, available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2018/1-201809-38-15fam-anony.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202018.

70 *Ibrahim Aziz v. Republic of Cyprus*, ECHR/no. 69949/01

arrangements do not justify differential treatment on the grounds of ethnic origin.[71]

As regards the field of application and the definition of 'services available to the public' in the case of *CHEZ Razpredelenie Bulgaria AD,*[72] the CJEU concluded that all state services available to the public are covered by the scope of the Directive. The approach taken by the Cypriot courts was that, although they recognised that a gap existed, they were unwilling to take steps to deliver justice by examining the appellant's claim. In essence, the non-discrimination principle foreseen under legislation which ranks higher than national law, such as the EU acquis, the ECHR and the Constitution, was not applied because there was no specific law specifically granting the Greek Cypriot courts the jurisdiction to try disputes between Turkish Cypriots.

Article 14 of the Directive requires member states to take the necessary measures to ensure that discriminatory laws and practices are abolished. The Cypriot government did not take measures to bring national legislation in line with this principle and to safeguard the Turkish Cypriots' access to justice in the same way as it did for the Greek Cypriots. In the case at hand, the courts failed to give effect to the principle established by the CJEU in *Mangold*,[73] that national courts are responsible for safeguarding the full effectiveness of the general principle of non-discrimination in respect of age, setting aside any provision of national law which may conflict with Community law.

By refusing to try the dispute between the two parties, the Court denied the Turkish Cypriot applicant access to justice which is available to all Greek Cypriots, essentially treating her in a less preferential manner on account of her ethnic origin. In most issues affecting Turkish Cypriots' access to state services, the differential treatment is sanctioned by a law, such as with Turkish Cypriot properties in the south, which are managed by the state until 'resolution of the Cyprus Problem'. In the case at hand, the reason for denying the applicant access to justice was the failure of Parliament to specifically legislate on the jurisdictional transition from one court to another. However, given the hierarchy of the EU acquis over national law, the Court could have tried the case in order to safeguard the applicant's right to non-discrimination.

Arbitrary 'Economic Necessity': Crisis, Banking and Double Standards

The appellant was senior executive director at the Bank of Cyprus (the bank) from 2005 until 2012. Following the 2012 EU-level decision to increase all banks' Tier 1 capital, the

71 European Court of Human Rights, Sedjic and Finci v. Bosnia and Herzegovina, Applications nos. 27996/06 and 34836/06; European Court of Human Rights, Dokic v Bosnia and Herzegovina (Case No. 6518/04), 27 May 2010, available at https://hudoc.echr.coe.int/webservices/content/pdf/001-98692.

72 Court of Justice of the European Union, Case C-83/14 (2015, July 16), available at http://curia.europa.eu/juris/celex.jsf?celex=62014CJ0083&lang1=en&type=TXT&ancre=.

73 C-144/04, Mangold, 22 November 2005, available at http://eur-lex.europa.eu/legal-content/EL/TXT/HTML/?uri=CELEX:62004CJ0144&from=HR.

bank's deficit was found to be €1560 million, which had to be covered by 30 June 2012. The bank announced that it was lacking €673 million, which, however, it was planning to secure through various actions. A few months later, the bank announced that its deficit was reduced to about €200 million. However, the deadline of June 2012 was approaching, and meanwhile, another large Cypriot bank had received state support which led to the zeroing of the value of its shares. A few days before the deadline of 30 June 2012, at the shareholders' annual ordinary meeting, the shareholders demanded to know the bank's shortfall for its recapitalisation. The atmosphere at the meeting was described as 'explosive', because if it turned out that the bank could not cover the shortfall, this would lead to state support and to a reduction of the value of its shares. The appellant responded to the shareholders' questions claiming that the deficit was €200 million, which would be covered by the bank and that 'there was no reason for concern'. It turned out that the appelant's statement regarding the bank's shortfall was inaccurate; the real shortfall was at least €280 million and was expected to rise further. On the day following the shareholders' meeting, the appellant drafted and signed a statement estimating the capital shortfall at €400.

Both the bank and its senior executive director were charged and convicted under national law on market manipulation,[74] which purports to transpose EU legislation on market abuse,[75] for knowingly disseminating misleading information about the bank's capital shortfall, which was closely connected to the value of the shares. The appellant was sentenced to two and a half years in jail and the bank was fined €120,000.

They appealed their conviction on a number of grounds, including the principle of lex mitior as enshrined in Article 15(1) of the International Covenant on Civil and Political Rights, recognised in the CJEU ruling in *Silvio Berlusconi et al*[76] and codified in Article 49(1) of the Charter. The appellant argued that the lower court had applied the 2005 law on market manipulation, however this law had meanwhile been replaced by a subsequent law in 2016 which is more favourable to him. The 2005 law had transposed the Market Abuse Directive (MAD) which gave the member states discretion to decide whether to introduce criminal sanctions. Cyprus exercised this option and did introduce criminal sanctions, which were embodied in the 2005 law. In 2014, a new Directive was adopted, namely 2014/57, known as MAD II in combination with Regulation

74 Cyprus, Law on the actions of persons in possession of confidential information and on actions of market manipulation (market abuse) of 2005 [Ο περί Πράξεων Προσώπων που Κατέχουν Εμπιστευτικές Πληροφορίες και των Πράξεων Χειραγώγησης της Αγοράς (Κατάχρηση Αγοράς) Νόμος του 2005], N. 116(I)/2005, available at http://cylaw.org/nomoi/arith/2005_1_116.pdf.

75 Directive 2003/6/EEC, Directive 2003/124/EC, 2003/125/EC, Directive 2004/72/EC and Regulation 2273/2003.

76 CJEU, Joined cases C-387/02, C-391/02 and C-403/02, Criminal proceedings against Silvio Berlusconi et al., 3 May 2005.

596/2014. In order to transpose the new legal order of the EU, in 2016 the national law of 2005 was replaced with the new law transposing MAD II,[77] which introduced additional criteria in order for an act to be classified as criminal market manipulation: the act must have been committed with intent; the case must be serious, including having a serious impact on the integrity of the market; and, the dissemination of the information must be aimed at deriving a personal benefit. The appellant argued that the criteria introduced by the 2016 law were not met in his case and therefore his conviction had to be quashed.

The issue at stake here was whether the principle of lex mitior may extend beyond the confines of the imposition of the penalty in order to reverse a Trial Court decision which had convicted the appellant of a criminal offence. The appellant argued that under the 2016 law, which was adopted four years after he had made the misleading statement to the shareholders, the criminal offence for which he was convicted could not be established, as the prerequisites of the 2016 law were not met. The Court did not endorse the appellant's argument that the principle of lex mitior extends beyond the penalty to cover the entire criminal classification of the act. Instead, it found that neither Article 49 of the EU Charter nor Article 7 of the ECHR was interpreted as meaning that lex mitior could be used to annul a criminal offence except where this is explicitly provided for in the law.

The principle of lex mitior acquires retrospective force as far as the penalty is concerned, leading to the conclusion that the lesser penalty, foreseen in the 2016 law, may be imposed even if the offence took place in 2012. In support of this conclusion, the Court also cited Article 15(1) of the International Covenant of Civil and Political Rights, which was ratified in 1969; the interpretation of Article 49(1) of the EU Charter offered by the CJEU in the *Berlusconi* case;[78] the interpretation of Article 7 of the ECHR, offered by the ECtHR in the *Scoppola* case, which had established that the state's failure to grant the applicant the benefit of a more lenient penalty, foreseen in a law which had come into force after the commission of the offence, amounted to a violation of Article 7(1) of the ECHR;[79] and the interpretation of Article 29(1) of the EU Charter offered by the CJEU in the *Berlusconi* case.[80]

Nevertheless, although rejecting the argument that the conviction should be

77 Cyprus, Law on market manipulation of 2016 (Ο περί Κατάχρησης της Αγοράς Νόμος του 2016) N. 102(I)/2016, available at www.cylaw.org/nomoi/arith/2016_1_102.pdf.

78 CJEU, Joined cases C-387/02, C-391/02 and C-403/02, Criminal proceedings against Silvio Berlusconi et al., 3 May 2005.

79 European Court of Human Rights, available at https://hudoc.echr.coe.int/eng#{%22dmdocnumber%22:[%22853866%22],%22itemid%22:[%22001-94135%22]}.

80 CJEU, Joined cases C-387/02, C-391/02 and C-403/02, Criminal proceedings against *Silvio Berlusconi et al.*, 3 May 2005.

quashed on the basis of the lex mitior principle, the Court found another ground for quashing the conviction, which had not been invoked by the appellant. It concluded that the appellant's action lacked the subjective element of a guilty conscience, known in law as mens rea, as his statement before the shareholders was not intended to manipulate the market but rather to respond to pressing questions put to him in the context of an explosive environment. The Court found that the appellant's statements were intended to appease everyone and especially the shareholders in order to avoid negative reactions or market repercussions. Therefore, although the statement was knowingly false and misleading, it was not intended to manipulate the market. The Court allowed the appeal and quashed the appellant's conviction.

The decision was endorsed by two of the three judges on the bench. The third judge delivered a dissenting opinion, disagreeing with the other two judges on the lack of mens rea. Instead, the dissenting judge found that the appellant's statement to the sharesholders was intentionally misleading and specifically intended to manipulate the market projecting inaccurate data intentionally presented as accurate. The decision established that convicted persons may benefit from a more lenient penalty foreseen in a law adopted subsequent to the commission of the act for which they were convicted, but a subsequent law may not be used to overturn a criminal conviction unless its text explicitly provides for it. Given that the UN Covenant on Civil and Political Rights was used in the judgement as an additional and alternative source of the same principle, then this applies also to convictions relying on laws which do not necessarily transpose the EU acquis.

A Public Law Encounter with Labour and Austerity: Exception for Judges to Necessity Arguments

In *Alexandros Phylaktou versus the Republic of Cyprus,*[81] the Supreme Court ruled that the Law imposing pay cuts on judges in the effort to save the economy was contrary to the Constitution; the 'doctrine of necessity' cannot be invoked. The majority of district court judges had filed appeals citing Article 158.3 of the Constitution, which states that 'the remuneration and other conditions of service of any such judge shall not be altered to his disadvantage after his appointment'; however, many judges subsequently withdrew their claims.[82] The cuts were imposed by two laws.[83] It is noteworthy

81 Α. Φυλακτού, Επαρχιακό Δικαστήριο Πάφου και Κυπριακής Δημοκρατίας, μέσω Γενικού Λογιστή Υπόθ. 397/2012397/2012 και 480/2012.

82 From the 84 appeals initially filed, 47 were later withdrawn 'in light of the deterioration of the state's general financial condition without however, the applicants accepting the legality of the contested decisions.'

83 By *The Special Contribution Officers Employees and Pensioners of the State and Public Sector Laws* (i.e. Ν.112(Ι)/2011) [Ο περί Έκτακτης Εισφοράς Αξιωματούχων Εργοδοτουμένων και Συνταξιούχων της

that law N.112(I)/2011 (dated 31.8.2011) had originally exempted members of the judiciary, the President and members of the Supreme Court, inter alia; however, judges were subsequently included on the basis of N.191(I)/2011 dated 30.12.2011. Law 193(I)/2011[84] provides for various pay cuts introduced as a result of the austerity package. Art. 3 of Law 112(I)/2011 provides for monthly pay cuts of officers and employees as an extraordinary contribution, whilst Law 113(I)/2011 provides for 3% monthly pay cuts of the employee's salary; Art. 5 provides for an additional 2% deduction of social insurance, despite previous laws or regulations.

In its decision, the Supreme Court considered that it was undisputed that 'the object of the article was to safeguard the independence of the judiciary as well as the separation of powers', and the matter could not be construed as a matter of equal treatment. The Court rejected pleas from the attorney general, who argued that given the country's imminent economic collapse and the imposition of pay cuts on all public servants, by exempting judges from pay cuts, the Supreme Court would be making an untimely and grave error in failing to appreciate the dire economic reality the country is facing. In his initial submission, which he subsequently retracted, the attorney general argued that any decision would directly affect the judges' interests and, given that there was no other Constitutional provision for the Supreme Court judges, they ought to be excluded from the case as adjudicators with personal interest, and adjudication amounts to a violation of the principle of natural justice, according to which *no one* should be a *judge* in *their own cause*. It was not a claim of personal bias from the judges, but from the point that justice should be seen to be done, he alleged. The court's rejection of the attorney general's arguments was outright devastating.[85] Such reduction could only be imposed through taxation that indirectly affected remuneration – the tax should be enforced across the board without discrimination.

The judgment is one of the most important decisions of the Cypriot Supreme Court so far that is related to the economic crisis and the austerity-driven policies imposed by the troika and agreed upon with the Cypriot authorities. The case brings out a number of aspects of as a global and European crisis, as legalised, localised and socially embedded in the Republic of Cyprus context. The subject matter cannot remain as exclusive to the specific situation in Cyprus, but must be placed within the

Κρατικής Υπηρεσίας και του Ευρύτερου Δημόσιου Τομέα Νόμων, N.112(I)/2011 και 193(I)/2011] and *The Pension Benefits for Government Employees and Employees of Public Sector including Local Authorities (Provisions of General Application) Laws* (i.e. N.113(I)/2011) [περί Συνταξιοδοτικών Ωφελημάτων Κρατικών Υπαλλήλων και Υπαλλήλων του Ευρύτερου Δημόσιου Τομέα περιλαμβανομένων και των Αρχών Τοπικής Αυτοδιοίκησης (Διατάξεις Γενικής Εφαρμογής) Νόμων, N.113(I)/2011 και 191(I)/2011].

84 Published in the *Cyprus Gazette* on 30 December 2011.

85 The court considered the attorney general's arguments were emotional but 'poor in legal arguments'.

broader European and global debates over the crisis of welfare.

This must be placed in a wider context: it is an instance with its own particularities of a global phenomenon. Since neoliberalism became the orthodoxy we have witnessed the receding of labour law and the welfare state as the social functions of the state have been howling out, it is claimed that these days there is little 'sensitivity over the economic and class dimension of social conflicts', and what before was 'an aspect inscribed in constitutional, administrative and public policy instruments' which had imbued European constitutions with 'a powerful passion of the second post-war period'.[86] By the same token, the very notion of 'the value of labour' appears to be losing the central role it had once occupied in those constitutions', to the extent that was 'stably still connected with the model of democracy'.[87] Other scholars remark on how hollow the post-Second World War social democratic and welfare state settlement resonates today, which perceived the first function of labour law[88] as being 'to provide the basic conditions for effective political participation'.[89] Particularly, before the current economic (and multiple) crisis, it is a near consensus amongst public law and political philosophy scholars that the receding of labour law, hence 'sensitivity over the economic and class dimension of social conflicts is reduced', an aspect inscribed in constitutional, administrative and public policy instruments which had imbued European constitutions with 'a powerful passion of the second post-war period'. This was explicitly connected to the 'fiscal crisis of the state', which as very much based on the doctrine reflecting a wider cultural setting where the private sector was prioritised and seen as superior and more efficient, once 'freed from the chains of an excessively interventionist public sector'.[90] This process has intensified with the current crisis, particularly in the context of the EU's austerity-stricken periphery, such as Cyprus. The welfare and social rights are eroded, as provided by the successive Memoranda of Understandings with the troika and approved by the Governments and to some extent national Parliaments. A revised version of the Memorandum was recently agreed upon

86 See P. Ridola, *Τα θεμελιώδη δικαιώματα στην ιστορική εξέλιξη του συνταγματισμού*, eds Ch. Anthopoulos and Ch. Akrivopoulou (Athens: Papazisis, 2010), 122.

87 Ibid., 122. Ridola cites art. 1 of the Italian Constitution as an example of this.

88 The likes of H. Laski, *The Grammar of Politics* (Allen and Unwin) for instance is specifically referred to. However this was the logic of the welfare state since Beveridge (see C. Skidmore MP, *A New Beveridge: 70 years on - refounding the 21st century welfare state*, available at http://chrisskidmoremp.files.wordpress.com/2012/11/beveridge2.pdf), the entire Western European post-war welfare regime and in some ways the post-Roosevelt USA.

89 E. Christodoulides (2007) 'Against substitution: the constitutional thinking of dissensus', in *The Paradox of The Constitutionalism, Constituent Power and Constitutional Form*, eds M. Loughlin and N. Walker (Oxford: Oxford University Press, 2007), 199.

90 Ridola, *Τα θεμελιώδη δικαιώματα στην ιστορική εξέλιξη του συνταγματισμού*, 122.

in Cyprus with the Government:[91] very much in mould of the IMF traditions of 'tied aid' and 'structural adjustment programs', the release of the bailout funds agreed is tied to the progress in the implementation.

A summary of the Court's decision arguments is the following. Firstly, the Court considered that principles underwritten in the Constitution cannot be undone without the Supreme Court's close scrutiny and supervision; the Court had no doubt that the reason the drafters of the Constitution inserted Article 158.3, safeguarding both the independence and impartiality of the judiciary as well as the separation of powers, which is in any case disseminated widely throughout the Constitution.[92] Secondly, the Court decided that judicial independence and the separation of powers is above other political concerns; however, how a pay cut in the salary and benefits of judges, when everyone's pay is being cut, would undermine judicial independence was never discussed in the case. The issue of judges' remuneration and how constitutional principles are affected is not unique to Cyprus. The Cypriot Supreme Court cited the US Constitution, which has a similar provision to the Cypriot Constitution, and extensively discussed the two landmark cases[93] which dealt with the subject. Also, it cited the recent decision of the Constitutional Court of the Republic of Latvia.[94] The Court quoted the following excerpt from the *Hatter* case:

> We also agree with *Evans* insofar as it holds that the Compensation Clause offers protections that extend beyond a legislative effort directly to diminish a judge/s pay, say, by ordering a lower salary. 253 U.S., at 254. Otherwise a legislature could circumvent even the most basic Compensation Clause protection by enacting a discriminatory tax law, for example, that precisely but indirectly achieved the forbidden effect.

Thirdly, the Court rejected outright the attorney general's arguments that the decision would affect their immediate and direct interests, therefore judges should not have made such claims in the first place and, in any case, the Court ought to decline to deal with the subject. In addition, given the dire economic climate, judges themselves should voluntary contribute as per everyone else. Moreover, justice would be damaged irrevocably, no matter the outcome of the case. The Court went on the offensive and cited case law in Cyprus which illustrates how the Court had managed and regulated the affairs of judges with caution in the past.[95]

Fourthly, if there was imperative necessity, surely, the Court reasoned, the small

91 Full Text of the Memorandum of Understanding with the troika (Cyprus News Agency, 2012, November 30), available at http://www.cna.org.cy/webnews-en.aspx?a=06c552055fc54f508d6581b91d5bdbcc.

92 As the Court asserted in the case of *Laoutas v. The Republic*, 48.

93 *United States v Hatter* 532 U.S. 557 (2001) and *Evans v. Gore*, 253 U.S. 245 (1920).

94 Case No. 2009-11-01, dated 18 January 2010.

95 *Λαούτας ν Κυπριακής Δημοκρατίας* (2001) 2 ΑΑΔ.

numbers of judges allows for such an exception. After the decision, those who held the view that 'whilst children are hungry, judges are not accepting pay cuts'[96] may feel vindicated by this argument: the cynical view is that the decision is a reflection of the interests of a small privileged group anxious to defend their privileges, whilst there is increase in unemployment and poverty for the rest. The Court quoted Lord Dyson in *R. V. Abu Hamza* stating their decision may be unpopular and may be disliked by the public and the state, however 'as Judges, we can and should do only one thing, ignoring all else, and this is to administer the law whatever the consequences'.[97]

Remarkably, what is missing from the decision is any reference to the crucial question relating to the status of judges, not only as *holders of office* but also as *employees*, particularly given the CJEU's decision in *O'Brien v. Ministry of Justice (2012) Case C393/10*, in response to a reference from the United Kingdom's Supreme Court. A part-time judge claimed that he had been discriminated against on the grounds that he was not entitled to a pro-rata judicial pension on retirement as he was a fee paid part-time judge. But he claimed he should be entitled to the same pension as full-time judges and salaried part-time judges.[98] At least one of the matters referred to by the Court of Appeal is relevant to the Cypriot case: *Are Judges 'workers' according to EU law?* The British court ruled that 'judicial office partakes of most of the characteristics of employment' (Para. 27); however, it refused to rule conclusively on the subject, saying it is not possible for domestic law to be 'readily disentangled from EU law'. Therefore, it referred the matter to the CJEU. The relevant question is:

> Whether it was for national law to determine whether or not judges as a whole are 'workers who have an employment contract or employment relationship' within the meaning of clause 2 (1) of the Framework Agreement, or whether there was a European Community norm by which this matter must be determined.[99]

The CJEU at (paragraph 41) then held:

> [T]he sole fact that judges are treated as judicial office holders is insufficient to deny them rights under the European legislation.

96 See 'Κληρίδης v. Δικαστές: Παιδιά πεινούν και δικαστές δεν δέχονται αποκοπές', *Alithia* (2013, March 12).

97 Not yet reported, April 2013.

98 Under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 ('the Regulations').

99 The second question was 'If judges are workers who have an employment contract or employment relationship within the meaning of clause 2 (1), whether it was permissible for national law to discriminate (a) between full-time and part-time judges, or (b) between different kinds of part-time judges in the provision of pensions.'

This is also the position in English law as per Lord Nicholls [Para. 21]:[100]

> If 'office' is given a broad meaning, holding an office and being an employee are not inconsistent. A person may hold an 'office' on the terms of, and pursuant to, a contract of employment.

However, what we are discussing in the current case is not the distinction between full-time judges and part-time judges remunerated on a daily fee-paid basis and whether such a difference in treatment is justified by objective reasons. We know as a matter of law that *judges are also workers*. We are interested here in the broader question of *the rights and obligations of judges as workers or employees in EU and Cypriot law*. This matter has attracted significant attention throughout the globe.[101] The particular questions that the Court failed to address are the following:

- First, how the employment relationship/status of judges relates to their constitutional position and vis-à-vis other public sector employees, including holders of office. Are there any reasons that their specific constitutional position generates exceptions when it comes to austerity measures for all?
- Second, how does the fact that they are judges of their own affairs vis-à-vis other branches of Governance complicate or alter matters?

Administrative law scholars have dealt extensively with the question of the judge's vicarious liability in tort, which as Wade and Forsyth point out 'the relationship between the Crown and the judges is entirely unlike the relationship of employee and employer on which liability in tort is based', given that 'judicial independence is sacrosanct'.[102] Yet, *the employment relationship as such,* in terms of rights and obligations of judges *as workers,* remains underexplored, despite the more recent interest in the matter.[103]

There may be a more sympathetic approach, at least in part: the above absence may lend itself to another interpretation. The decision may be seen as displaced articulation of the right to decent standards of social welfare and labour, albeit limited to a privileged group of 'workers': a kind of 'workers of a special type', as uniquely defined by the constitutional principles. The Court decision can be construed as an attempt to halt the generalised logic of austerity, albeit for a narrow group, even if the

100 *Percy v Board of National Mission of the Church of Scotland* [2006] 2 AC 28.

101 See for instance 'A Comment On Justice Malcolm Wallis's Paper, "Judges As Employees"', JCA Colloquium, Fremantle, 6 October 2012, available at http://www.jca.asn.au/colloquia/2012/Judges%20as%20Employees_commentary.pdf.

102 H.W.R. Wade and C.F. Forsyth, *Administrative Law* (Oxford: Clarendon Press, 1994), 830.

103 See for instance 'A Comment On Justice Malcolm Wallis's Paper, "Judges As Employees"', which deals with the Australian context; E. Volokh, 'Are Judges "Employees" Covered by State Antidiscrimination Law?', *The Volokh Conspiracy* (2011, February 9), available at http://www.volokh.com/2011/02/09/are-judges-employees-covered-by-state-antidiscrimination-law/, which deals with the situation in the USA.

cynics have it their way that this is motivated by self-interest. If we are to believe the promise of the Lisbon Treaty to deliver a process to meet 'the objective of gradual convergence inside a common "European administrative space"',[104] then the Supreme Court decision can be interpreted as contributing to the creation of a multi-level governance in the form of a networked, multi-dimensional administrative law. The shadow of Cypriot and European Labour law encounters on the one hand *public law, both constitutional and administrative law*, and on the other what can be seen as *constitutionally inscribed social rights*, which are regulated by labour law and welfare law and social/public policy, in the era of financial crisis in the Eurozone, as manifested in Cyprus.

Conclusion: A General Critique of the States of Exception

A genealogy of the 'states of exception' or other 'necessity-related' Schmittean ideas for suspending 'normal' rights and the rule of law illustrates their authoritarian core and lineages. The logic poses general dangers for democracy, ingrained with its usage within the current sovereignty debates. There is a trend in the jurisprudence and the praxis of governance that a critical approach cannot but decisively reject such vicious cycles of thinking that erode any notion of democratic rights and progressive politics. This is why beyond the legal critiques, one requires the political perspective, and hence, this author proposes an alternative Poulantzian schema that brings back to fore 'authoritarian statism'.

Frankenberg provides a brilliant critical legal and sociology of law alternative by rejecting the Schmittean reactionary logic, which covers the space between extreme conservatism, Nazism and various authoritarian restoration approaches.[105] Frankenberg rightly argues that the 'fascination with the exception' and 'preference for the extraordinary' is an account which rests on rather soft foundations which is an oxymoron:[106] the logic of suspending the 'norm' of the legal-constitutional order as a necessity so that the norm is preserved and can be implemented after the erasure of the danger, is highly problematic. First, the whole fascination ends up in a mystification rather than providing a rational reading of the actual phenomenon of erosion of 'rule-law', as Frankenberg calls the Anglo-American '*rule of law*', the German *Rechtsstaat* and the French *L'État de droit*. Second, once the legal order is suspended, it can never generate the same level of trust. Third, the suspension of the legal normality undermines the very foundations of its validity, even when the decision-maker of the state of exception revokes the suspension, as the old order resurrected is in reality

104 See C. Harlow, 'Three phases in the evolution of EU administrative law', in *The Evolution of EU Law*, eds P. Craig and G. de Burca (Oxford: Oxford University Press, 2011).

105 Frankenberg, *Political Technology*.

106 Ibid., 114.

'merely a zombie'.[107] Fourth, once imposing a regime of emergency powers as rule, there is 'a permanent alteration, always in the direction of an aggrandizement of the power of the state'. Once regimes of exception and emergency de facto suspend rights, they unleash broader and sociological implications and longer-term consequences on the sociolegal and political settings. They set in motion social processes that extend and proliferate the same regimes well beyond the populations they are supposed to be intended for, in other situations and for times well beyond those initially declared or planned for.

Political technology is a method that permeates the legal interventions and the exercise of political power that goes to the heart of 'good governance' and 'statecraft'. This is highly relevant to migration and border regimes as particular 'states of exception'. In Frankenberg, political technology, or its German original *Staatstechnik,* does not extend the argument to migration and border regimes of exception but the approach has an excellent application. Foucault's 'governmentability' is the key influence on Frankenberg, who augments the Foucauldian notion of technology and applies it in a legal-constitutional and sociology of law setting. Frankenberg reads political technology as a method that 'stresses statehood as a sphere activity and intervention for intersecting goals and operative strategies', and law as a 'form of intervention and basis of authority in the exercise of power'.[108] This is broad 'techniques of government' that encompass 'the various mechanisms and measures of governing' covering areas beyond the public sector, agencies and networks now operating in the private sector and civil society, including emerging areas loci and practices of exercise of power.[109] Four ideal types as methods for the exercise of power are identified, which bundle together various thinkers to illustrate the normalisation of states of exception with particular application to the justification of torture and combating terrorism. Frankenberg examines in depth the realm of sociology proper by formulating four ideal types of 'political technology as mindsets', to read them as 'the mentality of engineers'. This captures the political technicians operating, i.e. thinking and acting as 'engineers' who 'show primarily a technical interest in and a utilitarian and instrumentalist understanding of the exercise of power':[110] statecraft is perceived as an instrumentalist 'efficient and up-to-date use of power', as US Department of State's '21st century Statecraft' programme reveals. The key here is the supposedly 'value neutrality' and 'legitimacy of expertise', where legal evaluations and monitoring are avoided, concentrating instead on locating what is 'technically

107 Ibid., 114.
108 Frankenberg, *Political Technology*, 1.
109 Ibid., x.
110 Frankenberg, *Political Technology*, 5.

feasible', the 'functionality and success'. In the engineers' 'ideology', as aptly described by Frankenberg:[111]

> Success is measured by the effective functioning of institutions and efficient implementation of policies; it can be assessed via the discrepancy between the defined and achieved goals as well as the ratio of costs and benefits of, for instance, sweeping surveillance measures, brutal interrogation methods or the military intervention in Iraq.

In this context, the engineer's mentality is 'little bothered by institutional or legal constraints, civil rights or proportionality', as 'public engineers' consider that they are authorised to act and derive their 'mandate from a superior good, their supposedly superior knowledge and technical expertise'.[112] In this context there is a flexible exercise of power, often delegated to private agencies to deliver, but often it is not specially empowered by law. Yet they are operating 'in the shadow of hierarchy', where the new public-private partnerships between state, supra-state agencies, private companies and NGOs are blurring the distinctions between legality and informality, 'because it is always possible to fall back on the imperative arsenal of steering instruments in case of informal cooperation fails'.[113] Discretion is extended and stretched to the limit, but at the same time we have 'a shift from prevention to pre-emptive measure or "hyper-prevention"'.[114] We can see this mindset underlying the operation of hot spots, where identification and security issues are at play for the so-called 'mixed migration' populations.

Frankenberg's sociology of law is based on a re-reading of four ideal type methods of the exercise of power: First, 'the method Machiavelli'. Of course there are issues with the construction of Machiavelli, who has been falsely equated with manipulative intrigues, even in Shakespearian times, when Machiavelli was equated with the devil. We find the usage of *method Machiavelli* in instances of invoking a state of exception, in what Frankenberg describes as a 'camouflage' of 'pseudo-democratic' or 'pseudo-legalistic masquerades',[115] which was the case when the European Central Bank Governor Mario Draghi argued that the ECB is 'ready to do whatever it takes to save the euro'. The second is '*method Hobbes*', where state sovereignty becomes paramount, given that the state is designated as 'a peace machine', the *Leviathan*, which for the first time introduces *security* as the most important consideration in the calculation of political technology. The social contract is based on the subject's waiver of rights to

111 Ibid.
112 Ibid., 6.
113 Ibid., 8.
114 Ibid., 9.
115 Frankenberg, *Political Technology*, 13.

the ruler to secure internal and external peace. Frankenberg considers Hobbes to be 'the father of security' but considers it unfair to reduce his work when designated as 'the godfather of the preventive security state'.[116] In contrast to the *method Machiavelli*, where all pivots around the ruler, i.e., the Prince, in the *method Hobbes*, we have a state technology where the 'art of government' is justified on the basis of the 'mutual benefit of sovereign and subject'. He cites Hobbes' *Elements of Law* as containing a 'dual strategy', i.e., the preservation of the state and the safety of people, which 'can be read as a manual for the sovereign to prevent revolt'. The notion of the threat to security, internal and external, is the Leviathan's key task, which has survived its author in the modern era more successfully than the *method Machiavelli* by thriving on the mistrust of one's neighbour. Prone to this mistrust are 'most conservative political philosophers and security policy-makers', a practice observed 'even in consolidated constitutional democracies'. Hence, 'conservative security "engineers"' or other self-declared 'fixers'[117] would 'constantly update the Hobbesian question of how political rule can be protected from dangerous individuals (*Gefahrder*), harmful elements and exuberant, untamed initiatives of the citizenry'.[118]

Frankenberg's third type is the '*method Lock*', which reorganises the key elements in a triplex 'property, liberty and security' without vanishing security as *topos*, but receding it to the background. Frankenberg argues that the same frame is shared by other major Western philosophers, such as Montesquieu, Kant, Sieyes and Mills, in what he calls 'the liberal moment' constituted on the logic of a social contract.[119] This is because the liberal paradigm contains within it a twin logic of the ordinary and the exception. The *logic of the ordinary*, the norm, legally regulating the state of freedom, is constituted on the notions of Parliamentary sovereignty, limited government and fundamental rights for citizens. However, the *logic of exception* is 'the dark side of the paradigm', which may not be the centerpiece of the liberal paradigm, but nonetheless is an essential element 'still claimed to be legal' which rests on the prerogative derived from the monarch's untamed and unrestrained power. In *the method Lock*, 'martial law and executive powers as explicit emergency powers' are very much part of the design; in the democratic logic, this seems quite absurd, but practiced in the 19th and 20th centuries '[t]hey appear as deviations from regular law – or more precisely, as exceptions to the law – and indicate the illiberal woven into the fabric of the liberal paradigm and its political rational'.[120] We find the development of a variant of the *method Lock* which has the

116 Ibid., 16-17.
117 Sitas, 2014.
118 Frankenberg, *Political Technology,* 17.
119 Ibid., 18.
120 Frankenberg, *Political Technology,* 20.

Hobbesian security logic emerging as fallback in crisis situations.

Finally, '*the method Foucault*', according to Frankenberg breaks with the previous traditions by refusing to enter the terrain of legitimation and justifying the use of power and its limits. Instead, strategies and mechanisms, the technologies and 'microphysics' of power are analysed in the Foucauldian dispositive, which entails the heterogeneous ensemble of discourses and institutions, legislative rules and administrative measures, disciplinary techniques and practices.[121] This is a logic inscribed by seeking 'to extract time and labour out of bodies rather than goods and services': this is a method based on the mechanism for 'continued monitoring, control and registration as well as discontinuously via the tax system and recurring obligations to pay charges and provide service'. In the Foucauldian world, society is enmeshed and soaked in power, the notion or relational power, hence there is a dissolution of sovereignty 'into various manifestations ofdisciplinary power. Foucault, unlike Schmitt's binary logic of defining the extraordinary situation vis-à-vis the enemy, is based on justifying and covering up 'their extra-legal character' which 'ought not appear arbitrary or an abuse of power', appearing as 'an expression of care': 'this ubiquitous care is the face that the state exposes to its citizens'.[122] After all, rights, in Foucault, are results of 'struggles for life' of living bodies: 'It was life more than the law that became the issue of political struggles, even if the latter were formulated through affirmations concerning rights'.[123]

Frankenberg's contribution to overcoming the Schmittean-Agambean schema not only allows us to read sociologically and critically the proliferation of the European states of exception as erosion of the rule-law, but to transcend its very logic. There is a second important contribution of Frankenberg's argument pertinent to transcending the Schmittean exceptionalism cul-de-sac that serves as apologetic of the ruler's decisionism. Frankenberg's core argument is that in the so-called state of exception is essentially the justification of the erosion of the rule of law in the way 'the war on terror, organised crime and other targets has been normalised, the extraordinary has been reduced to a phenomenon of the everyday and even the taboo of torture has been breached upon – also under the cover of rule-law'.[124] The difference between Frankenberg and the Schmitt-Agamben-Arendt approach is another important aspect of the dissensus argument made in this book. There is a divide, a fundamental disagreement, a contestation as to the very logic of *what rule-law is about*. There is ambivalence over *what exactly constitutes rule-law*, the boundaries of rule-law (i.e., what is 'in' and what is 'outside' its remit), how to define, read and more importantly, what terms

121 Ibid., 20-21.

122 Ibid., Foucault quoted by Fankenberg, 24.

123 Ibid., Foucault quoted by Fankenberg, 20-21.

124 Ibid., Foucault quoted by Fankenberg.

do we use to 'defend democratic legitimacy against the phantasies of the extraordinary threats and extraordinary practices of power'.[125] Hence, we have the importance of dispelling the Schmittean 'romance' and 'mystification' of exception, which is shared by 'latter days Schmitteans' of different political and ideological persuasions. Even committed liberal democrats, such Hans Kelsen, who vehemently opposed Schmitt's reading, are prone to the same security-locked logics in the 'Grundnorm', or 'the Basic Norm', in Kelsen's *Pure Theory of Law*, which essentially allows for the erosion of rule-law.[126] Frankenberg convincingly argues that his approach 'prepared the transition from method Hobbes to method Lock'.[127] Legal positivists, such as Kelsen, with their apolitical ideology of law, not only replaced societal legitimation of law to adherence to a formalist self-mandating of the state itself but have developed legal schemas essentially operating as apologetics for state acts legitimised by the state itself.[128] The legitimising of authoritarian states of exceptions, which take us back to the Leviathan, is very much a manifestation of this.

Nation-states define their policies pertaining to security, migration and crime-control as requiring wide discretion as part of the executive prerogative and as a manifestation of the sovereignty of the state. The invocation of 'exceptional' and 'emergency' circumstances blurs the distinctions between 'legality' and 'illegality', and 'normality' and 'abnormality'. It opens up opportunities for those in power to extend their discretion, which is part of *authoritarian statism*.[129] The alternative, which is a conservative and outright reactionary schema, was offered by Schmitt, who underlined, long established regimes of exception that allow the sovereign to decide *when* and *how* to invoke the emergency situation.[130] In emergency situations, the normal democratic order and rights are suspended, and power is exercised by the very forces who determine that it is an emergency situation and how long this would last. They may decide that this will last indefinitely.

However, the Schmittean-Agambean schema cannot capture the migration regimes which are generic, rather permanent and vary immensely from favourable treatment for some categories of immigrants, whilst being draconian and exclusivists

125 Frankenberg, *Political Technology*, x.

126 H. Kelsen, *Pure Theory of Law,* trans. M. Knight (Berkeley: University of California Press, 1967); *General Theory of Norms,* trans. M. Hartney (Oxford: Oxford University Press, 1991); 'The Concept of the Legal Order,' *American Journal of Jurisprudence*, Vol. 27, No. 1 Article 6, available at: https://scholarship.law.nd.edu/ajj/vol27/iss1/6.

127 Frankenberg, *Political Technology*, 74.

128 C. Thornhill, *The Sociology of Law and the Global Transformation of Democracy* (Cambridge: Cambridge University Press, 2018), 66-77.

129 N. Poulantzas, *State, Power, Socialism* (London: Verso, 1980).

130 Schmitt, *Political Theology*.

for others. Thus, we ought to dispel some of the common assumptions about the state of exception. The 'balancing act' between 'liberty' and 'security', the constitutional device Courts are supposed to utilise in order to protect liberty is but a myth, as Neocleous persuasively illustrates rather provocatively that 'liberalism's key category is not liberty, but security'.[131] For modern liberal states, even the Lockean 'liberal' alternative to the Hobbesian insecure world is *always* subordinated to security. The 'prerogative' granted to the rulers means 'powers which are legally indeterminate at best' or 'at worst, prerogative serves to place rulers beyond law'. Since the days of John Locke it was illustrated that when the maxim '*Salus Populi Suprema Lex*' (the safety of the people is the supreme law) is invoked, then the praxis of the ruler is magically legitimised: 'The Prerogative is certainly so just and fundamental a Rule that he who sincerely follows it, cannot dangerously err'.[132] In other words, prerogative 'is, and always will be just so long as it is exercised in the interest of the people.' Thus, there is generic tension in all 'liberal' and 'illiberal' states, which is located in the methods of governance, as elaborated by Frankenberg.[133]

This critique is pertinent in developing further the critique of the Cypriot states of exception. In this sense, the proliferation of Cypriot states of exception is a manifestation of a broader Cyprus Problem. Hence, the erosion of fundamental rights as collateral damage of the Cyprus Problem. Therefore, the point is to eradicate the Cypriot states of exception, but it will require that we resolve the Cyprus Problem first.

131 M. Neocleous, 'Security, liberty and the myth of balance: Towards a critique of security politics', *Contemporary Political Theory 6* (2007). Also see M. Neocleous and G. Rizakos, 'Anti-security: A Declaration', in *Anti-Security*, eds by M. Neocleous and G. Rigakos (Ottawa: Red Quill Books, 2011).

132 J. Locke, *Two Treatises of Government* (1690) (Cambridge: Cambridge University Press, 1988), 373–375, 377, 405.

133 Frankenberg, *Political Technology*.

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Legal Transplantation's Contribution to the Formation of Mixed Legal Systems, and the Paradigm of Cyprus' Legal System as a 'Polyjural' System

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Abstract

Legal transplantation has been a powerful process for a 'foreign' legal rule or an entire legal system to be either imposed or to be'willingly' applied to the recipient legal system. This practice has been present for centuries and is perhaps a reason for the establishment of highly sophisticated legal systems from Roman law to the European Union's legal order. Legal transplantation has given birth to the concept of mixed legal systems based on the symbiosis of, in most cases, civil and common law rules. Cyprus is a unique amalgamation of legal cultures that transcend the traditional boundaries of civil and common law jurisprudence. Thus, the concept of 'hybridity' comes into the foreground aiming at analyzing and, perhaps, solving the problems we are facing in our attempt to bridge the gap between civil and common law, state and non-state norms, positive and natural law, legal centralization and normative polycentricity.

Keywords: legal transplantation, mixed legal systems, positive/natural law, Cyprus' legal tradition, European Union law, globalization, hybridity

Introduction

According to Alan Watson, the Scottish-American comparative law scholar (among other legal expertise), 'as a practical subject Comparative Law is a study of the legal borrowings or transplants that can and should be made. Comparative Law as an academic discipline in its own right is the other side of the coin, an investigation into the legal transplants that have occurred'.[2] In the same spirit, according to Mark van Hoecke and Mark Warrington, 'it has been a constant element in legal history that legal systems influence each other'.[3] More broadly approaching the concept of 'legal transplantation', it could be argued that the universal evolution of law – from

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2 A. Watson, 'Legal Transplants and European Private Law', *Electronic Journal Of Comparative Law*, Vol. 4.4 (2000, December), available at http://www.ejcl.org/ejcl/44/44-2.html; See also R. B. Schlesinger, H. W. Baade, P. E. Herzog and E. M. Wise, Comparative Law – Cases, Text, Materials, 6th ed. (New York, NY: Foundation Press, 1998), 13-14.

3 M. van Hoecke and M. Warrington, 'Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law', *International and Comparative Law Quarterly*, Vol. 47 (1998), 533.

the time of the Codex Hammurabi,[4] Egypt's law scriptures,[5] Aristoteles' concept of Constitution,[6] and Roman perception of private law[7] to the time of the French and German Civil Codes[8] in nineteenth and twentieth centuries respectively, and the most recent European Union's General Data Protection Regulation (GDPR)[9] – has been a continuous process of legal borrowings and legal transplantations.

The comparative study of legal transplants focuses on the interactive communication between legal systems and explores the complicated paths of legal evolution they trigger. Legal transplantation has played a vital role in shaping our current, Western legal culture and in producing the contemporary notions of 'cosmopolitan'[10] and 'global' law.[11] A neutral legal scholar could observe the contribution of legal transplantation in all kinds of legal reform projects adopted by individual nation-states, such as Switzerland or Poland, supranational institutions, such as the European Union or the North Atlantic Treaty Agreement, and international institutions promoting legal change on a global level. Moreover, the idea of legal transplantation is the 'fuel' that, in terms of norms production, has traditionally preserved in 'motion' mixed legal systems such as those of Israel, Cyprus, Scotland, South Africa, Louisiana, Quebec and Singapore.

Legal Transplants and the Positive/Natural Law Confrontation

The concept 'legal transplant' is based on 'a metaphor that was chosen *faute de mieux*, ill-adapted to capturing the gradual diffusion of the law or the continuous nature of the process that sometimes leads to legal change through the appropriation of foreign ideas'.[12] Principally, the development of law could be explained through the 'legal transfer' of legal rules among legal systems or through the process or transformation

4 *The Oldest Code of Laws in the World The code of laws promulgated by Hammurabi, King of Babylon B.C. 2285-2242*, trans. C. H. W. Johns, A Public Domain Book (2011).

5 R. Versteeg, *Law in Ancient Egypt* (Durham, NC: Carolina Academic Press, 2011).

6 Aristotle, The Athenian Constitution, translated by P. Rhodes (London: Penguin, 2004).

7 G. Mousourakis, *Fundamentals of Roman Private Law* (Berlin-Heidelberg: Springer Verlag, 2012).

8 For the French Civil Code, see *The Code Napoleon*, or, *The French Civil Code* (Hard Press, 2018), and for the German Civil Code, see *Connecticut Railroad Commissioners and C. Wang, The German Civil Code* (Sacramento, CA: Creative Media Partners, 2015).

9 P. Voigt and A. von dem Bussche, *The EU General Data Protection Regulation (GDPR): A Practical Guide* (Cham, Switzerland: Springer Verlag, 2017).

10 A. Some, *The Cosmopolitan Constitution* (Oxford: Oxford University Press, 2014).

11 N. Walker, Intimations of Global Law (Cambridge: Cambridge University Press, 2014).

12 M. Graziadei, 'Comparative Law as the Study of Transplants and Receptions', in *The Oxford Handbook of Comparative Law*, eds M. Reimann and R. Zimmerman (Oxford: Oxford University Press), 443. Other terms have been used in place of 'legal transplantation': 'legal transfer', 'circulation of legal models', 'legal reception', and 'legal borrowing'.

of already existing legal concepts in a national legal system so as for them to be applied in analogy, under a new environment.

Dealing with legal transplantation, a reference has to be made to the two doctrinal schools of thoughts, i.e. the 'pessimists' and the 'optimists'. To the pessimists, law is not only words, a text, or a document, but it is also a functional process which takes place through a subject applying a rule. Such an application obtains specific characteristics and subjective features influenced by general societal framework, geography, politics, mentality, and the culture of a specific society. Thus, 'legal borrowing' and a 'legal transfer' of certain rules or laws would not survive the journey from one legal system to another.[13]

Furthermore, legal transplants are more likely to cause harm than to benefit the recipient legal system. A new, imported legal rule would work more as an irritant to the existing legal order than as a benefactor that helps in coping with complicated legal issues. According to this argument, there is an *a priori* mismatch between the domestic and local legal system on one hand, and the foreign legal system on the other, on the grounds of various domestic, social, historical, cultural dissimilarities within the two legal traditions.

On the other hand, the optimists argue that legal borrowings are a blessing for any legal tradition. In the age of globalization, normative diversification, rapid technological evolution, legal polycentricity, the process of transplanting legal ideas, rules, laws, and doctrines from one legal system to another, helps legal systems to cope with major normative and regulatory challenges[14] in fields such as environment, data protection, internet of things, artificial intelligence, blockchain technology, foreign investment, corporate law, and dispute resolution. Legal transplants designed under thorough preparation, with respect to the recipient country's legal tradition and with professionalism, would meet fewer impediments in compatibility, transferability, and successful application in the domestic legal order.

The specific issue of legal transplants is part of a broader issue, namely the relationship between society and legal change. A quite controversial dimension of 'legal transplantation' is the role of society as a 'producer' or as a 'recipient' of either a single new legal rule or a series of new legal entries. According to Watson, it is very difficult to discover any dialectic relationship between law and society since law does not necessarily have to reflect societal needs or a specific version of society in a

13 Generally, for an argumentation against legal transplantation, see P. Legrand, 'What Legal Transplants?', in *Adapting Legal Culture*, eds David Nelken, Johannes Feest (Oxford: Hart Publishing, 2001).

14 See Sir B. Markesinis, 'Our Debt to Europe: Past, Present and Future', in *The Coming Together of the Common Law and the Civil Law*, ed. Sir B. Markesinis (Oxford: Hart Publishing, 2000), 49.

regular and, theoretically, specified manner.[15] The causation between law and society is mutual, interactive, multi-dimensional, but not direct and immediate. Regardless of the frequency, legal transplantations have taken place over time, and the acknowledgement of their regenerating role in world's legal systems appears often against some profound positions about the sources and the nature of law and normativity. These profound convictions deal with the relationship among law-making, state authority, and society's role in giving birth to a normative order. Is law, transplanted or not, the expression of a centralized, hierarchical statal authority and power? Or is law the product of the decentralized, heterarchical forces within the realm of society. A. Emilianides, exploring a path of transcending Cyprus' Constitution, proposes, as a helpful methodological foundation, the analysis of the never-ending struggle between natural law, positive law, and contemporary theories of justice.[16] Indeed, one of the most fundamental issues of legal science is how much the consensual gap between positive and natural law can affect the reception or transplantation of a legal rule.

This debate between believers in a law derived from a sovereign state and those who declare the need of a stateless, societal or a universal law, it can be argued, is one more episode in the eternal struggle between natural law and legal positivism, between society's impetus and spontaneity on the one hand, and centralized state authority on the other, between 'found' law and 'made' law.[17] The antithesis of origins and goals between natural and positive law has taken different forms and names throughout history, but very little has changed in substance. In antiquity it was the unwritten, eternal laws of nature versus the city-state's law, in the Middle Ages it was divine law versus human law, and in the post-Enlinghtement era it has been the struggle between state and centralized codification on the one side and society's spontaneity and 'free law' movement on the other.[18] In this age of disruptive technologies and the

15 R. Cotterrell, 'Is there a Logic of Legal Transplants?', in *Adapting Legal Cultures*, eds David Nelken and Johannes Feest (Oxford: Hart Publishing, 2001), 71-72.

16 A. C. Emilianides, *Beyond the Cyprus Constitution* [in Greek] (Athens: Sakkoulas Publications, 2006), 3, 5.

17 See also D. Koukiadis, *Reconstituting Internet Normativity: The role of State, private actors, and the online community in the production of legal norms* (Baden-Baden/Oxford: Nomos Verlag/Hart Publishing, 2015), 18ff.

18 From the time of Sophocles, Aristotle, and Cicero, to the time of Samuel Pufendorf, Thomas Hobbes, and to our contemporary John Finnis, the natural law doctrine has gone through many modifications. However, we can identify some basic features that have survived through the ages: a) all human beings share a common nature; b) this common nature is identified through human knowledge and experience; c) our common nature generates a specific and unmalleable normativity; d) in case of conflict between natural law normativity and positive law norms, the former prevails. For further analysis on the natural/positive law dichotomy, see C. Focarelli, *International Law as Social Contract: The Struggle for Global Justice* (Oxford: Oxford University Press, 2012); J. Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 2011); G. Flavius (H. Kantorowicz), *Der Kampf um die Rechtswissenschaft* (Baden-Baden: Nomos Verlag, 2002).

Industry 4.0 economy, the battle has been transformed into the spontaneous order of individual constituents, the social impetus of global society, the private interest of the individual versus the centralized state authority and the interest of the public community. Precisely, this shift from the public interest of the community to the private interest of the individual is one of the key characteristics of the new era.

Legal positivism in the modern era can be traced back to the post-Enlightenment time, when the rational approach to the production of norms, and the need for clarity, uniformity, certainty, legitimacy, and strict legality gave birth to the sweeping codification movement. Legal positivists claim that, by adapting positive law to the new environment, it is capable of offering adequate solutions to the rising issues of comparative law, and that, by abolishing the traditional role of 'statal' authority as the 'maker', society, the 'infuser' of new law, will return to a period of obscurantism, anarchy, metaphysical, and lofty speculations. It would be a time of intellectual immaturity and naivety.

A legal order, according to legal positivism, is made by human will. Unlike the rules of natural law, its rules derive from the arbitrary will of human authority, and therefore, simply because of the nature of their source, they cannot have the quality of immediate self-evidence. Rules of positive law do not lay down a final determination of social relations, but they allow for the possibility that these relations could be alternatively determined and shaped by another legal authority's rules of positive law. Thus, positive law is essentially an order of coercion in the sense that it prescribes coercive acts, and coercion becomes an integral part of positive law.[19] Positive law, as an arbitrary human order, whose rules lack self-evident rightness, necessarily requires an agency for the realization of acts of coercion and displays an inherent inclination to evolve from a coercive order into a specific coercive 'organization'. This coercive order, when it becomes an organization, is identical to the State. Hence, it can be argued that the State is the perfect form of positive law.[20]

Positivism regards law as the creation of the ruling power in a society in an historical process. Hobbes put this in his own words by stating '*Auctoritas non veritas facit legem*'.[21] Law is made not by the subjective truth of society's constituents but by what the highest authority and the ruling power has commanded. It is the justice of positive law that has abolished anarchy and chaos, that created peace and order, brought to an end the '*bellum omnium contra omnes*' and the '*homo hominis lupo*' prevailing doctrines and,

19 H. Kelsen, 'The Natural law doctrine before the tribunal of science', in *What is Justice?: Justice, Law and Politics in the Mirror of Science*, ed. H. Kelsen (Berkeley/LA, CA: University of California Press, 1957), 392.

20 Ibid., 393.

21 T. Hobbes, *Leviathan* [1651] (London: Penguin, 1982), 133.

finally, established the rule of law and not the rule of man. The fundamental value that positivism serves is the existence of security, order social peace, and the continuous reference to a higher, indisputable norm. The law has to be obeyed only because it ought to be obeyed and not necessarily because it is the right law. It is the objective need for order that matters and not so much the need for the subjective truth.

On the contrary, natural law is based on the assumption of a 'natural order', in which, unlike the rules of positive law, the rules governing human behavior and human relations are not in force because they stem from an artificial centralized public authority, but because they stem from societal impetus and instincts, and from the presumption that citizens themselves are in a better position to know what is best for them, and thus, they are better equipped to produce their own 'laws' for regulating and resolving their legal disputes. Natural law claims absolute validity, and hence, in harmony with its pure idea, it presents itself as a permanent unchangeable order.[22] Codes, statutes, regulations, and norms that stem from a political superior within a specific political community and then are applied and enforced in a court of law are not acknowledged sources of law. Natural law's principles and norms derive from a universalized conception of human nature rather than from state's legislative or judicial action.

Throughout the centuries, the right to resist against the unwanted and undesired positive law, which was allegedly against the fundamental human principles and rights, was granted by natural law all its necessary legitimization. Positive law is an order of coercion and this coercive nature o of law is most of the times identical with the statal structures.

Thucycides' remark that a man serves his own interests by serving the community's interest was transformed by natural law into the belief that when a man serves his own interest he serves the interest of the community. Thus, natural law, together with the domination of political liberalism's belief that 'deifies' the role of the individual, leads to a creation of a more individualist society. This dualism of natural law and political liberalism is one of the main reasons why natural law is on its way to a new renaissance, and legal positivism is in retreat. The overall demand for self-regulation is mainly a shift from legal positivism to natural law.

In order for positive law to survive, it will have to adapt to the new reality and become more flexible and receptive to changes. When Richard Posner characterizes the people who are bound to protect the traditional, 'statal' regulatory system in the name of Jurisprudence as the 'medieval canonists', he does not abolish the traditional model of law-making in total. He merely expresses the need that positive law should become more malleable, more efficient, more modernized. 'When Judiciary is defined more

22 H. Kelsen, 'Natural Law Doctrine and Legal Positivism', 397.

broadly, as legal theory, the limitations of conventional Judiciary are even plainer'.[23]

In a purely comparative law context, the above mentioned struggle still influences the reception of legal transplants within a legal order. For a positive law theorist, it is alarming to accept that a 'new' legal transfer is coming from outside the 'realm' of statal authority, and that its implementation may have very little to do with the will and the decision-making of a state authority. On the other hand, for a natural law theorist, it is alarming to accept that too many new legal borrowings derive from state authorities outside the border of his nation-state, and that any act of legal transplantation takes place only when the state authority has decided to engage in such a process, because the 'adopted' law has proven successful elsewhere.

Legal Transplants and Their Role in the Formation of Mixed Legal Systems

Regardless of whether the identity of the dominant 'subject' of the process of legal transplantation is a centralized state authority or decentralized societal, private actors, legal transplantation occurs among different legal systems and cultures. The outcome of this communication between two legal systems has very often created mixed legal systems, that is, a national or supranational legal system that consists of legal doctrines, and legal rules attributed to different legal cultures. In a broader sense, as already mentioned above in the text, most legal systems, even the most 'internationally' influential ones, such as the UK, German, French, and the US legal systems, have been the product of a long-lasting mixture of different legal traditions and cultures. In a narrower sense, the term 'mixed legal system' speaks for the legal system in which there is a blending of the Continental Law tradition and the Common Law tradition. The most commonly known examples of mixed legal systems are those of Scotland, Cyprus, Israel, Louisiana, Quebec, Puerto Rico, South Africa, and the Phillippines. All these states have a legal system that consists of legal elements of both the Romano-Germanic legal tradition and the Anglo-Saxon legal tradition. Legal dualism is evident in these legal orders, in which another common feature is that common law is dominant in their public/constitutional/administrative law, and continental law is dominant in their private law.[24]

23 R. A. Posner and W. M. Landes, 'An Economic Analysis of Copyright Law', *Journal of Legal Studies*, Vol. 18 (1989), 327ff.

24 The only exception to this rule is Cyprus, where, contrary to the classic mixture of the two legal traditions, private law, criminal law, and procedural law are strongly influenced by the Common Law tradition, whereas its public/constitutional/administrative law is strongly influenced by the Greek and French law. For the Cyprus paradigm, see further in the text. For a general introduction to mixed legal systems, see V. V. Palmer, *Mixed Jurisdictions Worldwide. The Third Legal Family* (Cambridge, Cambridge University Press, 2014); See also V. V. Palmer, M. Y. Mattar and A. Koppel (eds), *Mixed Legal Systems, East and West* (London: Routledge, 2015).

The dualism based on the civil/common law tradition outweighs any other possible pair of normative 'influencers' in a foreign legal system. As T. B. Smith puts it, '[T]he "mixed" or "hybrid" jurisdictions[…]are those in which CIVIL LAW and COMMON LAW doctrines have been received and indeed contend for supremacy. Other hybrid systems where, for example, customary law or religious law coexists with western type law are not considered.'[25]

Vernon Palmer refers to mixed legal systems as the 'third legal family'. This application of the term 'third family' does not mean that there are no other legal 'families' or 'groupings' beyond. Rather, it demonstrates that the classical mixed legal systems have impressive unity despite the indisputable diversity of peoples, cultures, languages, climates, religions, economies, and indigenous laws existing among them.[26] It is the background presence of these highly diverse settings which makes legal unity all the more remarkable and impressive.[27]

Traditionally, the institutional 'vehicles' through which a legal change has taken place in a mixed legal system have been the legislation and the adjudication processes. Considering the legislation process, the main goals for legal change have been public/constitutional/administrative law and civil/criminal procedural law. As far as commercial law is concerned, shipping, insolvency, insurance, intellectual property, corporate law, and sales law have been the main sectors of law which, most commonly, have been amended through the statutory reforms.[28] The prime goal served with the above mentioned legislative/statutory transplantations was the fortification of colonial rule and colonial status, the facilitation of the commercial/trade relations between the legally exporting State and the importing State, the harmonization of the two legal systems, and the demonstration of who is the dominant power in the 'bi-juralistic' relationship.

On the other hand, the adjudication process has been the chosen process in order to implement common law elements in the realm of private law. Especially, the introduction of the *stare decisis* doctrine in the recipient country has been highly

25 T.B. Smith, *International Encyclopedia of Comparative Law*, vol. 6, Property and Trust, Brill Publ. (1974); See also T.B. Smith, 'The Preservation of the Civilian Tradition in "Mixed Jurisdictions"', in *Civil Law in the Modern World*, ed. A. N. Yiannopoulos (Baton Rouge: Louisiana State University Press, 1965), (emphasis in the original).

26 V. V. Palmer, 'Mixed Legal Systems', in *The Cambridge Companion to Comparative Law*, eds M. Bussani and U. Mattei (Cambridge: Cambridge University Press, 2012), 373. On mixed legal systems, see also V. V. Palmer, *Mixed Jurisdictions Worldwide: The Third Legal Family* (Cambridge: Cambridge University Press, 2012); J. Husa, 'Legal Families', in *Elgar Encyclopedia of Comparative Law*, ed. J. Smits, (Cheltenham: Edward Elgar Publishing, 2006).

27 Ibid., at 373.

28 J. du Plessis, 'Comparative Law and the Study of Mixed Legal Systems', in *The Oxford Handbook of Comparative Law*, eds M. Reimann and R. Zimmerman (Oxford: Oxford University Press, 2006), 490.

important on the grounds that the judicial precedents of the common law dominant country were planned to function as precedents in the legal order of the recipient country. 'The tenability of some of these justifications has been heavily disputed in some systems, the main antagonists in this *bellum juridicum* being "purists", who generally wanted the civil law to be untainted by a common law perceived to be disorganized and lacking in principle, and "pollutionists", who, despite the constraints of *stare decisis*, had few qualms about supplanting civil law, which they often regarded as antiquated and obscure, by common law rules.'[29]

The reasoning behind the predominance of common law in the recipient country has been the promotion of uniformity between the two legal systems, and this uniformity has been also significant in the statutory reorganisation of public and commercial law. Even after the status of 'colony' has ended in some mixed legal systems, e.g. Republic of South Africa and Cyprus, and there is no longer any need for uniformity between the two legal systems, the compliance with the ex-colonial power's law still enjoys a significant spectrum of application. Commercial relationships, trade agreements, economic cooperation, and political support have been the prime reasons for such a continuation of the former legal status.

The common law effect also functions in an 'indirect' and 'soft' way, to the extent that it is employed 'to support or illustrate a position adopted with regard to the existing law, and not to supplant it. To comparative lawyers who may believe that foreign law can generally only influence local legal development via the statutory route, the mixed jurisdiction experience shows that the judiciary[…]can be a significant source of borrowing.[…]This neither means that the borrowings necessarily improve the quality of the local system, nor that optimal use is made of the opportunities to adopt a comparative perspective.'[30]

The Case of Cyprus as a Mixed Legal System and the Paradigm It Sets

Cyprus has such a legal system that reflects its rich and diverse history. In short, Cyprus' legal history extends from early antiquity through the Hellenistic period (Antiquity - 58 B.C.), the Roman-Byzantine period (58 B.C. – 1191 A.D.), the Franco-Venetian period (1191-1571), the Ottoman period (1571-1878), the British period (1878-1960), and finally to its Independence period (1960 – to date). It is easy to imagine that each of the above periods would deserve an individual thesis so as to describe and explain the cultural and legal versatility of this island.

29 du Plessis, 'Comparative Law', 490.

30 Ibid., 493.

As Prof. Symeonides describes:

> 'Cyprus is too small a country (less than 5000 square miles) to have geographically dispersed legal diversity. However, Cyprus has a different type of legal diversity – by subject matter…in Cyprus one changes laws as often as one changes subject matter. Indeed, the law of Cyprus resembles the beautiful mosaics that adorn so many of its ancient Byzantine churches – it is a colorful plurilegal mosaic. It is so diverse in terms of sources, legal traditions, and applications as to be insusceptible of being neatly classified as a member of either the common law or the civil law legal families…it is an example of what is known as 'mixed legal system'. Nevertheless, it is a decidedly European legal system."[31]

Cyprus' contemporary law is founded on civil law and common law, each dominating different legal 'realms'. In the context of mixed legal systems, what makes Cyprus unique is, contrary to the general doctrinal orientation of mixed legal systems, the fact that its private law, criminal law, civil/criminal procedural law, and legal methodology follow the common law tradition, whereas its public/administrative law follow the civil law tradition, and not the other way round. It could be argued that Cyprus is not so much a typical paradigm of a mixed legal system but rather a 'hybrid' one.[32]

Moreover, in Cyprus, it is not only the different mixture of civil and common law tradition that makes it special. On the top of that, lies the fact that Cyprus is a versatile mosaic, in which the colors of English private/criminal law coexist with the colors of Greek and French administrative law, European law, post-colonial law, American constitutional law, Roman-Byzantine law, and Ottoman law. It would be very difficult, at least within the Western legal family, to identify another legal culture with such legal diversity. That is why, perhaps, Cyprus is called a 'paradise of comparative law'.[33]

The term 'mutation' could be a helpful word that characterizes the current Cyprus legal system. Traditional legal fields, under the influence of civil law tradition, have been 'mutated' through the use of common law procedure and a common law mentality among the judiciary, whereas the legal profession has mutated away from common law's original structure.[34] The bar is a massive, unitary body, the judiciary has established a hierarchical and bureaucratic system, and the Supreme Court is not a mere common law court of last resort, but, absent an intermediate jurisdiction,

31 S. C. Symeonides, 'The Mixed Legal System of the Republic of Cyprus', *Tulane Law Review*, Vol. 78 (2003), 442.

32 Usually, the term 'hybrid' means a system that cannot be clearly classified in any of the accepted legal families and is not purely based on the dual foundations of common law and civil law traditions.

33 Ibid., 453.

34 N. E. Hatzimihail, 'Reconstructing Mixity: Sources of Law and Legal Method in Cyprus', in *Mixed Legal Systems, East and West*, 77.

it sits on all civil and criminal appeals, and acts simultaneously as an administrative jurisdiction and a constitutional court.[35]

A further enrichment factor in Cyprus' 'mixed' legal system has been Cyprus' membership in the European Union in 2004 after 15 years of multi-level negotiations. Ever since, Cyprus has officially adopted EU's primary and secondary law. Most of the legislation adopted since the end of the '90s, under the prospect of EU membership, has been orientated towards the country's gradual European integration and respect for the EU's *acquis communautaire*. In the process of implementing EU's secondary law, as another advantage of being a mixed legal system, Cyprus' legal system had the opportunity to follow the earlier compliance steps taken by either Greece or the United Kingdom.

In Cyprus, contrary to the United Kingdom's legal tradition, there is a clear adherence to a hierarchy of sources of law, i.e. the Constitution is the backbone of the whole legal discourse, including provisions that make it very hard to amend. Besides that, Cyprus' accession to the European Union has made EU primary and secondary law become the cornerstone of the entire legal system, and the importance of written, statutory law has been gradually enhanced and stabilized.

At this point, it would be useful to point out the hierarchical order of norms in the mixed legal system of Cyprus, an order that also illustrates the gradual shift of influence from the pure civil/common law tradition to the European Union's legal tradition. Following the accession of the Republic of Cyprus to the European Union, the hierarchy of norms in Cyprus' legal order could be described as follows:[36]

1. European Union Law,
2. The Constitution of The Republic of Cyprus,
3. International Conventions/Treaties/Agreements,
4. Formal Laws,
5. Regulatory Acts,
6. Supreme Court Case Law,
7. Common Law and Principles of Equity.

Common law and the principles of equity are still a source of Cypriot law and are applied in cases in which there is no other legislative provision/institutional framework. In Cyprus' legal system, the line between influence and authority is often hard to distinguish, due to the fact that 'traditionalism is a force to be reckoned with but also a vehicle for juristic innovation. From legal borrowings, transplants, and enclaves,

35 Hatzimihail, 'Reconstructing Mixity', 77.

36 Cyprus Member State law, available at https://e-justice.europa.eu/content_member_state_law-6-cy-en.do?member=1.

Cyprus law is gradually, slowly transforming into something unique'.[37]

Cyprus' legal paradigm helps us shift from the context of a mere co-existence of civil and common law principles and doctrines within a legal system, as is the case with most of the mixed legal systems, to a context of how a true polyjural legal tradition can thrive and evolve in the age of globalization, normative fragmentation, legal polycentricity, and continuous transnationalisation. Cyprus does not simply have a mixed legal system. Cyprus has a polyjural legal tradition and culture which means something deeper and more versatile.

A polyjural legal tradition transcends the term 'mixed legal system' to the extent that is not just a legal system consisting of a combination of civil and common law rules. Much more than that, it is a legal tradition built on diversified legal traditions, whose endowment to the recipient environment is deeper and more difficult to distinguish. The concept of 'polyjuralism' expresses better 'the variety of disparate elements that can be traced back to different legal traditions and legal cultures.'[38] Cyprus' contemporary legal culture goes beyond the traditional boundaries of civil and common law. Cyprus embraces Roman-Byzantine law, Episcopal courts' law, Franco-Venetian legal rules, Ottoman law's elements, British private/criminal law as well as civil/criminal procedural law, Continental public and administrative law, and on the top of all these legal traditions comes the European primary and secondary law, having its own legal impact on Cyprus' legal order. Very few countries in the world can claim a more versatile legal culture.

Through the study of Cyprus's contemporary legal culture, the study of polyjural systems may be assessed, and through the assessment of polyjural systems our understanding of multi-regulated, normatively fragmented, doctrinally polycentric legal orders can be enhanced and deepened. Cyprus can function as a useful paradigm not only on how the development of common European private law or common European public law may flourish despite the apparent and deep differences existing among its national legal systems but also on how the local-, national-, supranational-, international-, and transnational law-making and regulation can function in harmony and effectiveness.

Issues such as environment, world financial system, climate change, industry

37 See Hatzimihail, 'Reconstructing Mixity: Sources of Law and Legal Method in Cyprus', 98.

38 B. Andò, 'As Slippery as an Eel? Comparative Law and Polyjural Systems', in *Mixed Legal Systems, East and West*, eds Palmer et al (London: Routledge, 2015), 3.

4.0 economy, disruptive technologies, bioethics, and privacy protection go beyond the boundaries of civil and common law, Roman law, and even European Union's law. What is needed to tackle these global issues is more than what pure comparative law can offer. What is needed is the concept of 'hybridity', a concept that straddles traditional legal theory, well established legal doctrines, legal sociology, legal anthropology, and comparative law. Hybridity expands traditional comparative analysis to other levels of mixes, and 'paves the way for a different assessment of the complexity of the normative phenomenon'[39]

Hybridity can bridge the normative gap created by the never-ending struggle between positive and natural law, statal and societal norms, hard law and soft law, hierarchical and heterarchical law-making, legal centalisation and legal polycentricity, and self-regulation and institutional regulation. Through hybridity, the complexity of both an individual legal system and many legal systems working together serving a common goal can be better explained. S.P. Donlan phrases his understanding of legal and normative hybridity as a way 'to cover the fluid complexity of both laws and norms at the levels of both principles and practice'.[40]

Donlan argues that legal hybridity is something much more than an element of the contemporary, formerly colonized global East and South. He claims that 'acknowledging complexity has consequences not only for comparative law and legal history, but also for legal philosophy and the meaning of law. Hybridity challenge, for example, the dissection of plural and dynamic traditions into discrete, closed families or systems. More critically, '*hybridity undermines commonly held and conjoined beliefs in legal nationalism and positivism, legal centralism and monism. It points, in fact, toward a more plural jurisprudence*'.[41]

Legal hybridity speaks against doctrinal and normative purity, which today does not amount for highly complex and globalized legal issues. Cyprus' legal paradigm serves this notion of hybridity better than any other legal culture. It teaches us that the aim should be not looking for the appropriateness of the rule in question in its country of origin or which legal system a rule comes from, but looking for the best rule whatever its source or its legal system of origin. In short, to combine the best of both worlds, Cyprus' legal tradition, founded through the ages on the symbiosis of many legal cultures that are contrary to each other. can assist on the future project,

39 Andó, 'As Slippery as an Eel?, 10.

40 S. P. Donlan, 'To Hybridity and Beyond: Reflections on Legal and Normative Complexity', in *Mixed Legal Systems, East and West*, eds V. V. Palmer et al., 19.

41 Ibid., 18 (emphasis added).

which is the gradual approximation of civil and common law, state and non-state norms, positive and natural law, at both the European Union level and the global level.

The future of mixed systems is most likely to focus on a continuing 'hybridization' rather than on identifying a case by case dominance of either civil or common law. Worldwide, the tendency is for mixed legal systems to increase and become more powerful institutional 'normative' actors. The whole European Law experiment, after all, is nothing more than a gradual creation of a huge mixed legal system combining the best of the civil and common law worlds. Whether the final goal is the production of a European private law, or European procedural law, or a specialized transnational law, the Cyprus' paradigm shows how to be open to the world, normatively, linguistically, and culturally, knowing why certain legal transplantations have taken place and how to improve our own law.

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Reforming Local Government in the Republic of Cyprus: Resistance and Differentiations

Andreas Kirlappos[1]

Abstract

This work examines the attempts to reform the Cypriot local government system as they had been triggered by the implementation of the Memorandum of Understanding (2013-2016). It analyses the effects of European integration on the local government reform attempts and also examines how alterations in capacities, i.e. staffing, competencies, financial resources etc., acted as mediating factors affecting local government's reactions to the reform attempts. Specific analytical tools are utilized (urban Europeanization and circular Europeanization) along with empirical data from structured questionnaires and semi-structured interviews (2013; 2017). The research results indicate that European integration had limited effects in reforming LG in the Republic of Cyprus. Due to the crisis, domestic and local opposition successfully resisted change. Resistance was uploaded to the EU level by the executives, renegotiating the proposed change. Finally, it was demonstrated that LG's reactions and differentiated responses towards the reform attempts reproduced the differences among them in terms of local resources.

Keywords: Republic of Cyprus, local government reform, urban Europeanization, circular Europeanization, crisis, implementation of the Memorandum of Understanding

Introduction

The fact that a pre-accession attempt to reform local government (LG) in the Republic of Cyprus was never concluded meant that Cypriot municipalities and communities had to respond to modern challenges based on a legal and institutional framework dating back to the nineteenth century. Specific historical continuities not only restrain Cypriot LG's capacity to function well, but they also limit the possibility of utilizing the opportunities offered by the EU.[2] While this inconsistency has been clear to Cypriot central executives, a successful reform attempt is still elusive. This work uses LG as the point of analysis to offer a new sub-national study of a small EU member-state, i.e. the Republic of Cyprus. The basic novelty of this effort lies in its work to chart and analyse the post-accession attempts to reform LG with a specific focus on

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2 A. Kirlappos, 'Local Government in the Republic of Cyprus: Path Dependent Europeanization', *The Cyprus Review*, Vol.29, No. (2017).

the ones triggered by the provisions of the Memorandum of Understanding (MOU) (2013-2016).

The research hypothesis views local reactions vis-à-vis the reform attempts as dependent on the differences among the Cypriot local actors in terms of local resources, i.e. institutional and financial resources, competencies structures and personnel. Specific research questions include: 1) How has European integration influenced the attempts to reform LG in the Republic of Cyprus? 2) How do the differences among the Cypriot local actors in institutional and financial resources and structures affect the manner in which LG actors respond to the reform attempts?

This work derived its data from a number of sources. Initially field research was conducted (2013, 2017) charting the attempts to reform LG. For this reason, a total of 170 structured questionnaires were addressed to elected LG politicians. In addition, 40 semi-structured interviews of local public servants and local elected politicians provided the chance to gather additional data. Finally, the Auditor General of the Republic's reports were also used.

A single framework was developed to present and analyse the reform processes. It highlighted the purpose and duration of each attempt, the main actors involved and their preferences, the reform strategies and proposed measures, along with the local reactions and counterproposals. This framework permitted a close examination of the similarities and differences of the reform processes, allowing the formation of clearer conclusions on the patterns of reforms.

In order to assess the effects of European integration, we utilized two specific analytical aspects of Europeanization: urban Europeanization and circular Europeanization. In this context, based on Marshall's urban typology,[3] we accessed Europeanization's top-down impact, focusing on the various reform plans and proposals presented by experts and executives as well as on the recorded changes on local territorial and administrative structures. In order to assess the impact of bottom-up Europeanization, we explored the attempts of Cypriot LG to lobby central government structures and European institutions. Finally, we examined involvement in local and pan-European networks to evaluate the effects of the horizontal Europeanization process in reforms.

Since these attempts occurred during a highly polarized period, affected by the economic crisis, austerity policies and the implementation of the MOU, we used circular Europeanization.[4] This addition to Europeanization literature focuses on the intense reactions and resistance to the amplification of Europeanization's hard mechanisms.[5]

3 A. J. Marshall, 'Europeanization at the Urban Level: Local Actors, Institutions and the Dynamics of Multi-Level Interaction', *Journal of European Public Policy*, Vol.12, No.4 (2005).

4 S. Saurugger, 'Europeanisation in Times of Crisis', *Political Studies Review*, Vol. 12, No 2 (2014), DOI. org/10.1111/1478-9302.12052.

5 S. Ladi and D. Tsarouhas, 'The Politics of Austerity and Public Policy Reform in the EU', *Political*

Factors such as time, politicisation and salience provide the framework explaining the differentiated Europeanization results based on continuous renegotiation between the EU, the Member States and LG. In this circular interaction, we added LG in order to take into account local resistance to EU-induced policy change.

In practice, the EU will function both as a dependent and independent variable, since the impact seems to be diverse.[6] For this reason, a typology of research indicators was employed, examining how differences in institutional and administrative capacities acted as domestic mediating factors, differentiating LG's responses to the reform attempts.

No previous research has been conducted examining LG reform in the Republic of Cyprus and local responses to it, creating thus a significant gap. This work attempts to fill part of this gap. The theoretical contribution of this work aims at offering a more comprehensive understanding of the limited effects of reform attempts on the Cypriot LG by emphasizing the mediating role of domestic factors. The research results indicate that, although the reform process was triggered by the provisions of the MOU, European integration had limited effects in reforming LG in the Republic of Cyprus. Moreover, due to the crisis, domestic opposition successfully resisted change, renegotiating the proposed changes at the EU level. Finally, it was demonstrated that LG's reactions and differentiated responses towards the reform attempts reproduced the differences among them in terms of local resources.

Urban Europeanization and Circular Europeanization

Urban Europeanization as an analytical and theoretical model was developed when Marshall[7] called for a more comprehensive academic study of Europeanization at the local level. Consequently, the three research dimensions/processes of Europeanization were applied to LG actors, who are able to implement Europeanization (top-down) through EU legislation and by fulfilling criteria to secure EU funding, which triggers changes in local policies, practices, and preferences.[8] LG actors are also able to upload Europeanization (bottom-up) by becoming active policy shapers, lobbying European institutions and transferring local demands to the European level.[9] Finally, they are able to contribute to the horizontal process of Europeanization by joining transnational networks, such as the Council of European Municipalities and Regions (CEMR), to transfer practices and norms among them.[10]

Studies Review, Vol. 12, No. 2. (2014), 174, DOI.org/10.1111/1478-9302.12048.

6 T. A. Börzel and T. Risse, 'Conceptualizing the Domestic Impact of Europe', in *The Politics of Europeanization*, eds K. Featherstone and C. Radaelli (Oxford: Oxford University Press, 2003).

7 Marshall, 'Europeanization at the Urban Level', 682.

8 Ibid., 672.

9 Ibid.

10 Marshall, 'Europeanization at the Urban Level', 673.

More recently, there have been new additions to Europeanization literature which analyse new empirical findings that Europeanization has, under specific conditions, acquired a more empowering nature.[11]

As a means of containing the 2013 economic crisis, the EU took steps in two main directions. On the one hand, a number of reforms have been implemented at the European level so as to enhance the EU's institutional capacity to cope with the crisis. On the other hand, it concluded a number of bailouts with some of its member states. These events, as Ladi and Tsarouhas point out ,[12] have provided the EU with powers over public policy reforms, and thus over public administration, including the means of surveillance, sanctioning and imposition, especially for bailed-out member states. These new powers not only highlight a constant increase in Europeanization's hard mechanisms but they also indicate that classic Europeanization literature cannot explain the observed results, especially since resistance is maximized.[13]

In this context, Saurugger[14] applied the concept of circular Europeanization to the implementation of EU-derived policies, indicating that, in light of the crisis, the three-step model (goodness of fit, mediation, change) cannot explain why change occurs or not. Normal Europeanization's conditions and mechanisms are not valid in times of crisis, since issues are perceived with increased political meaning, producing increased domestic resistance. As she highlights, in times of crisis, the impact of EU decisions on the domestic level must be understood as a feedback loop.[15] This process gives domestic opposition the opportunity to avert policy/institutional change, to resist the changes at the EU level and to successfully renegotiate the proposed change. Saurugger[16] highlights the importance of time, salience and discourse in explaining political aspects of Europeanization, indicating that domestic opposition leads to renegotiation.

These two analytical aspects of Europeanization will be applied to the empirical data.

Historical Continuities and Cypriot Local Government

The Republic of Cyprus joined the EU in 2004 and the Eurozone in 2008. Located at a significant geopolitical point, it suffers, to date, foreign occupation and division. Administratively, it is divided into six districts, 39 municipalities and 491 communities.[17]

11 Ladi and Tsarouhas, 'The Politics of Austerity and Public Policy Reform in the EU', 174.

12 Ibid., 173-75.

13 S. Ladi and P. R. Graziano, 'Fast-Forward' Europeanization: Welfare State Reform in Light of the Eurozone Crisis, in *Europeanization and European Integration*, eds R. Coman, T. Kostera and L. Tomini (London: Palgrave Macmillan, 2014).

14 Saurugger, 'Europeanisation in Times of Crisis'.

15 Ibid., 182.

16 Ibid.

17 Due to the existence of a number of very small communities in terms of population, the number

During the Ottoman and British periods, prior to the Republic of Cyprus' independence, a number of historical continuities were generated which placed burdens on to the Republic of Cyprus' social, political and financial advancement.[18] These continuities have also had a profound effect on Cypriot LG, diminishing its administrative, financial and political autonomy and affecting the outcome of European integration at the local level.[19]

The Ottoman and British Eras

Based on a process of explicitly assigning a very limited list of competencies and sources of revenue, local actors were allowed specific characteristics during this historical period. At the same time, the central state exerted firm administrative control on them in the form of the appointed District Commissioners.[20]

During British rule (1878–1960), some reconstruction was effected in local actors' situations, i.e. mayors and councils were held accountable for the management of the municipal budgets.[21] Yet, since British laws of the period that regulated LG kept many of the provisions of the old Ottoman laws,[22] in practise there was no improvement. Local competencies and local financial resources remained extremely specific and very limited. Finally, appointed district commissioners exercised strict administrative control over LG.[23]

The Republic of Cyprus

The first postcolonial years were characterized by a series of tragic events that established very unusual circumstances, such as inter-communal violence in 1963,[24] the coup d'état against President Makarios and the resulting Turkish military invasion in 1974. Local elections were not held and the Council of Ministers decided (1963) to appoint instead persons to be in charge of managing LG.[25] This practise has stopped since the 1980s with the implementation of new laws and the European Charter of Local Self-Government (1988) providing aspects of a more modern legal framework.

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of the Communities tends to change from time to time.

18 A. Sepos, *The Europeanization of Cyprus: Polity, Policies and Politics* (Basingstoke: Palgrave Macmillan, 2008).

19 Kirlappos, 'Local Government in the Republic of Cyprus: Path Dependent Europeanization'.

20 C. Tornaritis, *Η Τοπική Αυτοδιοίκησης Εν Κύπρω* [Local Self-Government in Cyprus], (Nicosia, 1972), 6–13.

21 Ibid., 16–17.

22 Ibid.

23 D. Markides, *Κύπρος: 1957-1963* [Cyprus: 1957-1963], (Athens: Mesogeios, 2009), 186.

24 The issue of separate municipalities was central to the outbreak of violence in 1963. See Markides *Κύπρος*.

25 Markides, *Κύπρος*, 348-349.

Although accession to the EU instigated reforms and institutional change for the political, economic and administrative arrangements of the Republic of Cyprus, it did not significantly touch LG.[26] As a result, Cypriot LG actors do not enjoy the significant role that their EU counterparts usually have. Local competencies in the areas of public services are fragmented and are shared with ministries and semi-governmental organizations, leaving limited room for free operation.[27]

Massive debt problems, corruption and limited political accountability are common, and the auditor general[28] (2000-2016) frequently reports cases of embezzlement and fraud. The strict administrative control of the central state continues to this day, embodied by the appointed district officers.[29] LG actors continue to have limited means of income and are largely dependent on the central state's grant.[30] As it has been explained, the domestic balance of power does not favour LG actors, and they have become accustomed to operating in a very specific and thus restrictive manner.

The following part will contextualize the basic features of the Cypriot LG actors in an attempt to highlight the mediating factors of Europeanization at the local level.

Contextualization of the Local Mediating Factors of Europeanization

Population and Financial Characteristics

The average population of a municipality in the Republic of Cyprus is 19,950 and the respective one for a community is 645.[31] These figures indicate that the Cypriot LG system is highly fragmented, thus creating resource restrictions. The existence of so many LG actors on a small island like Cyprus seems to have an effect on political power distribution. According to Attalides,[32] this has permitted local political interests to become established and well placed to resist change and reform.

Cypriot LG expenditures as a percentage of the GDP is the second lowest in

26 Kirlappos, 'Local Government in the Republic of Cyprus: Path Dependent Europeanization'.

27 A. Kirlappos et al., 'Austerity Measures and Local Public Services in Cyprus: Coping with Challenges Old and New and Reinforcing Historical Continuities', in *Local Public Services in Times of Austerity across Mediterranean Europe*, eds A. Lippi and T. Tsekos (London: Palgrave Macmillan, 2019).

28 Auditor General of the Republic, *Annual reports 2000-2016* (Audit Office of the Republic of Cyprus, Nicosia, 2000-2016).

29 D. Markides, 'Local Government', in *The Government and Politics of Cyprus*, eds J. Ker-Lindsay and H. Faustmann (Bern: Peter Lang, 2008), 186–188.

30 Auditor General of the Republic, *Annual reports 2000-2016*.

31 National School of Government International (NSGI), *Local Government Reform in Cyprus: Final Options Report*. (London: National School of Government International, 2014), 25, available at http://www.moi.gov.cy/moi/moi.nsf/0/D1BB8168615F0DF3C2257D02002F7C52/$file/Local%20Government%20Reform%20in%20Cyprus_Final%20Options%20Report_08%2004%2014.pdf.

32 M. Attalides, *Social change and urbanization in Cyprus: a study of Nicosia* (Nicosia: Social Research Centre, 1981).

Europe, according to CEMR,[33] reaching a mere 2.1 %. Table 1 summarizes the limited financial condition of the members of the sample, along with the great differences noticed between them in terms of budget average, own resources average, and state grants average.

There is a clear connection between the population sizes of the local actors and their capacities in terms of financial resources. The urban municipalities had the biggest financial capacities, validating the enlarged economic activities of the urban centres of the island, where the majority of the population is settled.

Table 1: Local Economic Capacities of the Municipalities and Communities

Municipalities/ Communities 2008-2013	Budget Average €	Own Resources Average €	State Grants Average €
Urban Municipalities	32,569,533.5	19,650,408.5	10,914,604.5
Suburban Municipalities	14,145,940.5	8,103,360.5	6,197,261.0
Rural Municipalities	8,251,077.5	3,402,250.0	1,792,894.0
Displaced Municipalities	981,071.5	46,261.5	923,591.5
Communities	1,510.000.0	10,000.0	1,688,850.0
Displaced Communities	1,250.0	250.0	1,000.0

Source: Kirlappos 2016, 2017

The recent implementation of the austerity programme, as it was provisioned by the MOU, and the consequent imposition of budget cuts meant that LG's economic capacities and resources were further reduced. This is indicated by Table 2, verifying that the state grant allocated to the municipalities was reduced by up to 40 % from 2012 to 2016.

33 Council of European Municipalities and Regions (CEMR), 'Subnational Public Finance in the European Union', (Brussels: Dexia - CEMR, 2012), 24, available at: http://www.ccre.org/docs/Note_CCRE_Dexia_EN.pdf.

Table 2: Annual State Grant to Municipalities 2011-2016

Year	Annual State Grant Municipalities €
2011	68,795,153
2012	60,976,514
2013	58,082,868
2014	51,093,530
2015	51,130,120
2016	51,130,920

Source: Kirlappos et al., 2019

Personnel and Competencies

As it was noted, there are substantial differences in terms of the 'attributed tasks'[34] that LG actors exercise in Cyprus. This takes place in two ways. Municipalities have greater and more substantial competencies than the communities. On the other hand, urban municipalities, since they are town planning authorities, have more complex responsibilities than the rest of the municipalities.

These substantial dissimilarities in terms of powers exercised are articulated through the intense differences in local structures and personnel. The following charts demonstrate these severe differences between the members of our sample. While the municipalities have greater resources in terms of personnel than the communities, the vast majority employ fewer than 100 people. On the other hand, the majority of communities employ fewer than 5 people.

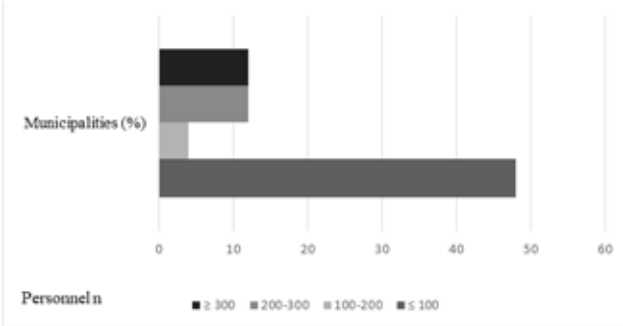

Figure 1: Municipalities' Personnel 2008-2013
Source: Kirlappos 2016, 2017

34 F. Fleurke and R. Willemse, 'Effects of the European Union on Sub-National Decision-Making: Enhancement or Constriction', *Journal of European Integration*, Vol.29, No. 1 (2007).

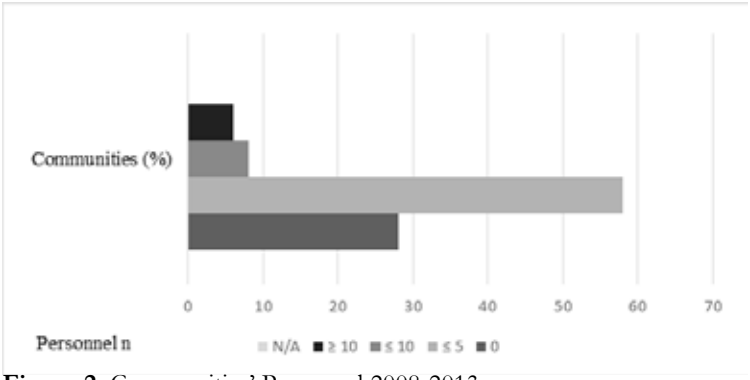

Figure 2: Communities' Personnel 2008-2013
Source: Kirlappos 2016, 2017

These limited resources were further restricted in practise by the implementation of the MOU and the consequent austerity measures. Due to the austerity programme, budget constraints compelled LG actors in Cyprus to decrease their personnel costs by firing people. This is indicated by Table 3 that verifies the reductions in municipal personnel, which in turn create further problems to the already restricted local capacities.

Table 3: *Decreases in Municipal Personnel*

Municipality	Total personnel 2011	Total personnel 2015
Agios Athanasios	79	70
Agios Dometios	86	61
Kato Polemidia	97	60
Lakatamia	144	125
Larnaca	350	318
Limassol	494	393
Nicosia	559	458
Paralimni	180	156
Paphos	255	218
Strovolos	353	283

Source: Kirlappos et al., 2019

The following parts will present the post-EU-accession attempts to reform the Cypriot LG system, by focusing on the significance of internal and external factors that drive and mediate the results.

Reforming Cyprus' Local Government: Easier Said than Done

This work focuses only on the reform attempts that occurred as a result of the implementation of the provisions of the MOU (2013-2016). While the pre-MOU attempt (2010-2012)[35] could also be related to the influence of European integration, it does not, however, demonstrate such intense elements of coercion and conditionality as the last two attempts did.

MOU Triggered Reform Attempts 2013-2016

The MOU included a specific provision regarding LG reform in the Republic of Cyprus. This provision provided a window of opportunity to enact the reform process during the implementation of the MOU. These reform attempts can be categorized into three phases. In the initial one, the foreign experts presented their reform report, initiating public discourse, reactions and resistance about this issue. In the second one, the executives changed their mind and presented a modified proposal. Finally, in the third one, the executives presented an entirely new bill prior to the completion of the MOU.

The main drivers for these reform attempts included the economic crisis, the MOU, the consequent imposition of austerity measures and the overall need to modernize LG's institutional and legal framework. The key actors involved in this reform process were distributed in three levels: European, national and local. The European level included European institutions that were involved in the process, mainly the European Commission. The national level included national actors, such as the political parties, the parliament and the executives, particularly the Ministry of the Interior. Finally, the local level included local politicians, local public servants, municipalities, communities and their respective unions.

First Phase: Initial Experts' Proposal

In fulfillment of the MOU obligations, the newly elected government, under President Anastasiades (2013 until present day), appointed British experts to prepare reform

35 The Union of Cyprus Municipalities and the Union of Communities commissioned the Greek National Centre of Public Administration and Local Self-Government to conduct a comprehensive study (EKDDA, 2010), under the scientific coordination of Associate Professor Nicolaos-Komninos Hlepas. The basic aims of this attempt focused on decentralization, improvement of the regulatory framework and empowerment of LG. This effort was characterized by a gradual and incremental scope (2010-2021) since changes would be effected over a period of more than 10 years. Finally, economic incentives were to be given so as to promote the establishment of larger amalgamations. This reform attempt was never implemented due to conflict caused by the worsening financial situation of the island. Tensions were raised in view of the February 2013 presidential elections. Support for the LG reform bills, pending in Parliament since 2011, evaporated, especially since fears were raised that local reactions could influence the outcome of the election.

reports, based on which an LG reform process would be triggered.[36] This development gave a clear top-down nature to this reform attempt. The experts acknowledged that the existing system of LG was no longer viable and prepared proposals for comprehensive and drastic institutional and territorial reform. The purpose of this reform plan was to reduce the fragmentation of the system by promoting far-reaching institutional reform and downsizing the number of LG actors.

It proposed the establishment of five powerful, district-level authorities, which would be formed merging all municipalities and communities per district.[37] This reform report also proposed that the new units were to incorporate all district, municipal and community level competencies, along with 15 new additional competencies decentralized by the government. Central authorities agreed to adopt related laws as high priority prior to the completion of the MOU.

Preferences, Actions and Reactions

Despite the high external pressure stemming from the MOU, this reform proposal was met with strong resistance. The European Commission was pushing for the implementation of a wider public administration reform package that included health, education and agriculture. Yet, it considered the reform plan of LG as probably the most challenging of all four.[38] Implementation was scheduled to start in the fourth quarter of 2014. The Ministry of the Interior was in full agreement with the experts' recommendations, especially with the suggestion to drastically minimize the number of local actors, and resorted to threatening to decrease the grant allocated to LGs, in order to secure support for the reforms.

There was strong resistance to the suggested reforms, originating from both the national and the local levels. In this context, mayors (70%) and presidents of community councils (76%) distrusted the reform attempts, viewing them as highly technocratic (structured questionnaires 2013, 2017). Mayors (84%) and presidents of community councils (82%) highlighted that the municipalities and communities would run the risk of being neglected if they were to be merged into greater entities. Both local politicians and local public servants were afraid that they would lose their political positions and their jobs respectively, and they started cooperating with the opposition parties to prevent the proposed reforms being implemented.[39]

On the other hand, the mayors of the Nicosia district took initiatives in preparing

36 International Monetary Fund, Country Report 14/180-Cyprus (Washington, D.C.: IMF, 2014), available at https://www.imf.org/external/pubs/ft/scr/2014/cr14180.pdf.

37 National School of Government International (NSGI), Local Government Reform in Cyprus.

38 European Commission, 'The Economic Adjustment Programme: Cyprus 5th Review', *European Economy: Institutional Papers 009* (2014, December)

39 Ibid.

a position paper containing further suggestions on this issue. They were soon joined by mayors of Limassol, Larnaca and Pafos. With this initiative, they managed to involve the Union of Municipalities, and thus the rest of the municipalities, in order to hire experts and start preparing counterproposals.[40] The same initiative was attempted by the communities, with less success.

As the Minister of the Interior admitted, this reform process was influenced by the electoral timeframe and the upcoming European Parliament elections.[41] In practise, support for the LG reform bills decreased, in fear that local reactions and resistance could influence the outcome of the European Parliament elections, the first elections ever to be held in Cyprus, as the country was implementing its Economic Adjustment Programme.

Second Phase: Change in Government's Mind

The second phase was characterized by a change in the executives' minds regarding the reforms. As a result of the backstage pressure, a new reform report was presented by the British consultants that was subsequently accepted by the Ministry of the Interior. This development provided again an obvious top-down nature to the reform attempt.

This report was considerably different in terms of the scope and magnitude of the LG reforms.[42] The government drafted a bill as high priority before the completion of the MOU (March 2016) that reproduced the institutional suggestions of the previous plan, but with one significant alteration: there was not going to be a mandatory reduction of the LG actors. It reproposed the establishment of five powerful, district-level authorities, incorporating all competencies and assets belonging to municipalities and communities. The latter would be preserved but only with a cosmetic role, with no substantial powers or assets (Bill 09/2014).[43] Competencies belonging to other organizations, such as sewerage and water boards, would be transferred to the five district councils, along with decentralized state competencies like town planning.

40 Kirlappos et al., 'Austerity Measures and Local Public Services in Cyprus'.

41 S. Hasikos, 'New second tier institutions for local government'. *Sigmalive* (2014, June 20), available at http://www.sigmalive.com/news/local/136935/xasikos-defterovathmia-organa-gia-tin-topiki-aftodioikisi.

42 Kirlappos et al., 'Austerity Measures and Local Public Services in Cyprus'.

43 Bill. 09/2014, 'Law Regulating the Functioning and Administration of First and Second Tier Local Government Organizations, their Competencies and Other Related Matters'.

Preferences, Actions and Reactions

The European Commission[44] accepted the changes in the reform proposal and reached a new deal with the executives. It urged the Cyprus Government to resolve issues such as the unclear explanation of the rationale for choosing the new structure and the uncertain implementation details. Implementation was scheduled to start in the first quarter of 2015.

Again there was strong resistance to the suggested reforms. While local politicians viewed this proposal more positively in relation to the previous one, a majority of them too rejected it – 75% of the mayors and 81% of the presidents of community councils (structured questionnaires 2013, 2017). The main reason for discomfort was the fact that the reform proposal aimed at removing local competencies, leaving both municipalities and communities without an 'actual' role (semi-structured interviews 2013, 2017). It was stated by both the mayors and the presidents of the community councils that the proposed reform plan would increase the distance between citizens and LG actors, decreasing the efficiency of the administration.[45] Both demanded an increase in the decentralization of competencies at the local level to truly enhance LG (83% and 72% respectively; structured questionnaires 2013, 2017). Just like in the previous attempt, local politicians were able to cooperate with opposition parties, exerting backstage pressure on the government and managing to prevent the effective implementation of the reform process.[46]

Support for the LG reform proposal decreased, mainly because of electoral considerations since two important elections were held within a short period of time in Cyprus: the parliament and municipal elections (May and December 2016). In this context, fears that local resistance could affect the outcome of the elections influenced the executives' decisions, despite the Minister of the Interior's proposal to postpone these elections for the sake of the reforms.[47]

Third Phase: New Proposal

The third and final attempt to reform the LG system of the Republic of Cyprus was influenced by the nearly completed MOU. In contrast to the previous two attempts, this one had a bottom-up nature, since the central structures were willing to accept more input from LG.

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44 European Commission, 'The Economic Adjustment Programme: Cyprus 7th Review', *European Economy: Institutional Papers 009* (2015, October).

45 Ibid.

46 Kirlappos et al., 'Austerity Measures and Local Public Services in Cyprus'.

47 Ministry of the Interior, Statements by the Minister on the probability of postponing the local government elections (2016, October), available at http://www.moi.gov.cy/moi/moi.nsf/All/425DC991F51F01CAC2258044001948D2?OpenDocument.

The main urban and suburban municipalities responded by commissioning Notoria International to prepare another reform study, which the executives eventually accepted as the basis for reform legislation. Just like the first attempt, its purpose was to diminish the fragmentation of the system, i.e., to decrease the number of municipalities to either 22 or 12, to conduct institutional reform and to increase cooperation among LG actors.[48]

Yet a different strategy was adopted, since an incremental process was proposed, having the final goal to produce new structures of local clusters consisting of municipalities and communities along with district clusters. District administrations' role and competencies were to be substantially reduced in favour of the new units, which would also acquire additional decentralised central state competencies.[49] The Ministry of the Interior prepared the new reform proposals and brought them to Parliament in March 2016.

Preferences, Actions and Reactions

This time the European Commission noted the partial compliance of the LG reform provision.[50] After negotiations with the executives, it accepted new extensions to the implementation of the reform plan prior to the completion of the MOU in January 2016.

The Ministry of the Interior continued to be in favour of implementing the reform, although based on its experience it was very cautious. Regardless of both external and internal pressure, this reform proposal was also met with strong resistance, initiating new disagreements and important backstage pressure.

Local politicians rejected once again the reform plans, fearing that they would run the risk of falling by the wayside if they were to be amalgamated (semi-structured interviews 2013, 2017). The main concern had to do with the proposed reduction in the numbers of municipalities and communities, which triggered further anxiety and further obstacles to the successful conclusion of yet another attempt to reform LG in the Republic of Cyprus (semi-structured interviews 2013, 2017).

The executives presented the new bill prior to the completion of the MOU. This was debated in the Parliament for most of 2017 and lost momentum due to the February 2018 presidential elections. In practise, support for the LG reform proposal further decreased out of fear that local reactions could influence the outcome of the elections.

48 Notoria International and Union of Municipalities, *Lean Six Sigma Value Proposition on the Municipalities service processes* (Torino and Nicosia: Notoria International and Union of Municipalities, 2015), available at http://www.notoriainternational.com/Our-Job-for-the-UOM.

49 Ibid.

50 European Commission, 'The Economic Adjustment Programme: Cyprus 7th Review' (2015, October).

The following part will analyse the findings based on urban and circular Europeanization.

Reforming Local Government: Effects via a Urban Europeanization Framework

Our empirical findings seem to demonstrate that European integration had a very moderate influence on the attempts to reform LG in the Republic of Cyprus, presenting very limited evidence of Europeanization effects. It was indicated that out of the three Europeanization processes, the top-down one had relatively greater initial effects. At the same time, weaker evidence of Europeanization effects were noticed in relation to the two other processes: bottom-up and horizontal.

Top-Down

We start with Europeanization's top-down effects on LG's territorial and administrative structures as well as on its institutional framework. As it was demonstrated, EU pressure to reform LG was originally enacted when the Republic of Cyprus signed the MOU in April 2013. This triggered a process of subsequent reviews of Cyprus's Economic Adjustment Programme, materializing specific actions, strategies and milestones in order to operationalize the LG reform process. Consequently, reform pressure was further increased, affecting the external/internal divide,[51] with pressure applied initially by external actors on the central actors (the executive and parliament). During this initial phase of the top-down Europeanization process, the strongest effects were delivered. As a result, the executives had to 'absorb' explicitly assigned provisions, i.e. commissioning a reform study from foreign experts, having consultations with national and LG actors, and presenting bills to Parliament in order to be passed into legislation. Yet, as soon as this reform pressure was applied by the centre to the periphery (LG), an inconsistency was obvious between the provisions of the MOU and the fact that there was no actual enactment of an LG reform process. At this latter and final stage Europeanization effects were met with strong local reactions and resistance, eventually producing inertia.

It was clear that the manner in which LG actors responded to the reform attempts was influenced by their resources, capacities and competencies. Evidence indicates that differences in the 'attributed tasks',[52] personnel and economic capacities acted as mediating factors causing differentiations in the local positions vis-à-vis local reform. In this context, the largest urban municipalities demonstrated that size and financial ability were indicators of a differentiated behaviour. These municipalities have a more

51 H. Wollman, 'Local Government Reforms: Between Multifunction and Single Purpose Organisations', *Local Government Studies*, Vol. 42, No.3 (2016).

52 Fleurke and Willemse, 'Effects of the European Union on Sub-National Decision-Making'.

prominent role in the Cypriot political and administrative system, as they are town planning authorities. They managed to mobilize the Union of Municipalities and thus the rest of the municipalities to hire experts and start preparing counterproposals in the form of a fully developed proposal. However, this behaviour seems to demonstrate that each rule has its exceptions, since the other LG actors did not demonstrate analogous behaviour.

The communities revealed a poorer response. Just like the municipalities, the communities managed to involve their respective union, yet due to greater resource constraints this involvement was less efficient. In practise, only brief comments were developed vis-à-vis the proposed bills, but there were no fully fledged counterproposals.

Bottom-Up and Horizontal

As the empirical data indicated, there was limited evidence of bottom-up Europeanization effects based on the restricted mobilization of the Cypriot LG actors at the European level. On the other hand, the great differences in resources, competencies and financial capacities caused differentiations in LG's responses. There was also limited evidence concerning mostly the biggest urban and suburban municipalities that they attempted to make their case at the EU level, verifying Kull and Tartar[53] who associated the size of local actors with LG's mobility at the European level. The means frequently utilized included the Union of Cyprus Municipalities (semi-structured interviews 2013, 2017). The rest of the LG actors exhibited a clear inclination to lobby and upload LG preferences to central state structures rather than to European institutions. As it was demonstrated, local politicians were less focused on the European level, since they were doubtful that it could help them prevent the proposed reforms.[54]

Empirical evidence demonstrated that the horizontal process of Europeanization had limited effects. In particular, only the biggest urban and suburban municipalities perceived their participation in pan-European networks, such as CEMR, as a means that would increase their potential either to resist the proposed reforms (24%) or to formulate counter proposals (13%) (structured questionnaires 2013, 2017). The rest of the municipalities and communities showed a clear preference towards national level networks, such as their respective unions, rather than the European ones.

Circular Europeanization and Local Government Reform in Times of Crisis

We turn our attention to explaining the reasons that prevented change from taking place. Initially, it should be noted that the response of an institution to exogenous

53 M. Kull and M. Tartar, 'Multi-level Governance in a Small State: A Study in Involvement, Participation, Partnership, and Subsidiarity', *Regional and Federal Studies*, Vol. 25, No. 3 (2015).

54 Ibid.

pressures is a complex and constantly evolving process.[55] In this context, our focus should be on a series of endogenous and exogenous factors that could offer an explanation based on the mechanisms of circular Europeanization.

Time was a crucial factor when analysing the results of the LG reform attempts. According to Paterson,[56] during a good 'weather situation', top-down Europeanization is easier to apply, since there is no great time pressure. Yet, in times of crisis, timeframes acquire increased significance, becoming a crucial intervening variable. The implementation of the LG reform process was antagonized heavily, resulting in a number of delays. The extreme circumstances which had been brought on by the economic crisis, the austerity policies and the implementation of the MOU caused particularly polarized conditions. These were further polarized due to a prolonged electoral period that affected the domestic timeframe. Four consecutive election processes were held: the May 2014 European Parliament elections, the May 2016 parliamentary elections, the December 2016 municipal elections and last, but certainly not least, the presidential elections of January 2018. These continuous and prolonged electoral timeframes increased the public's perceived importance of these LG reform attempts, increasing the chances for actors to oppose governmental decisions. Reforming LG was in practice a technical issue, whose salience became more prone to resistance.[57]

At this point, the massive impact that party patronage and clientelistic networks exert over a very small country, such as Cyprus,[58] along with very specific aspects of Cypriot LG, needs to be taken into account. Since political parties in Cyprus mostly promote candidates who demonstrate considerably extensive party background, these candidates rise through the ranks of political parties maintaining very good connections with the institutional centre, i.e. the executive and the legislature.[59] Therefore, local politicians were able, to the point that their political positions were threatened, to cooperate with the parliamentary opposition, increasing their involvement with national politics and in an indirect way with EU-level politics. This higher degree of politicisation caused delays and inertia, blurring the divide between

55 H. Tsoukas and R. Chia, 'On Organizational Becoming: Rethinking Organizational Change', *Organization Science*, Vol. 13, No. 5 (2002), 578.

56 W. E. Paterson, 'Hastening Slowly: European Studies – Between Reinvention and Continuing Fragmentation', in *Research Agendas in EU Studies: Stalking the Elephant*, eds M. Egan, N. Nugent, W. E. Paterson (Basingstoke: Palgrave Macmillan, 2010).

57 Saurugger, 'Europeanisation in Times of Crisis'.

58 Faustmann, 'Aspects of the Political Culture in Cyprus', 17-28.

59 A. Kirlappos, *Τοπική Αυτοδιοίκηση στην Κυπριακή Δημοκρατία: Ο Περιορισμένος Εξευρωπαϊσμός και τα Βαρίδια του Παρελθόντος* [Local Government in the Republic of Cyprus: The Limited Europeanization and the Burdens of the Past] (Larnaca: Vivliekdotiki, 2016).

centre and periphery[60] and successfully resisting change. On the other hand, due to these continuous electoral processes, the centre did not push forward so as to not increase discomfort and to not lose its connections to the local politicians.

This strong interconnection between LG and political parties is not enough to explain the fact that this coercive Europeanization did not produce the desired results, i.e. LG reforms. After all, Cypriot executives did demonstrate greater willpower in employing other specific reforms that facilitated the country to successfully implement its economic and adjustment programme.[61]

Our findings verify the existence of a complex feedback loop explanation. Domestic resistance and debate influenced the actions related to the implementation of the LG reform, leading to a readjustment of the specific MOU provisions. In this context, domestic opposition to LG reform was transferred to the EU level by the executives. The latter and particularly the former Ministers of Internal Affairs were successful in convincing the European Commission about the difficulties in implementing LG reforms at the domestic level. They were also successful in renegotiating their application.[62] As a result, the European Commission gave the Cyprus Government a number of extensions to enact the reform process, indicating a changing logic in relation to the implementation of public administration reforms that was noticed in other empirical cases. In this context, Ongaro[63] notes that the crisis has been having an adversarial effect on administrative reform, since greater attention has been focused on fiscal consolidation, which eventually has become the guiding principle. This indicates that attention was focused on implementing the provisions of the MOU, especially the ones aiming at fiscal consolidation. These were seen as more vital than the need to implement administrative reforms to solve long-lasting institutional problems, jeopardising the very prospect of modernization through reform.[64]

Conclusions

This work was the very first attempt to study the efforts to reform the LG system in the Republic of Cyprus, stressing interesting features of this process and contributing to the development of the international literature. It attempted to offer new empirical insights concerning Cypriot LG by studying a new research topic.

Research findings delivered evidence of very little, if any, effects of these

60 Wollmann, 'Local Government Reforms'.

61 Kirlappos et al., 'Austerity Measures and Local Public Services in Cyprus'.

62 Saurugger, 'Europeanisation in Times of Crisis'.

63 Ongaro, 'The Relationship between the New European Governance Emerging from the Fiscal Crisis and Administrative Reforms: Qualitatively Different, Quantitatively Different or nothing New? A Plea for a Research Agenda', *Administrative Culture*, Vol. 15, No. 1 (2014).

64 Ibid.

consecutive attempts to reform LG in the Republic of Cyprus. Consequently, Cypriot municipalities and communities are still struggling to respond to modern challenges because of their clearly outdated legal and institutional framework from the nineteenth century. At the same time, a critical mass that supports change in LG seems to be absent.

Concerning our first research question, it was indicated that, although the reform process was triggered by the provisions of the MOU, European integration had limited effects in reforming LG in the Republic of Cyprus. Out of the three urban Europeanization processes, greater effects were initially noticed via the top-down one. Yet eventually and since the reform of the LG system was never enacted, inertia were produced.

In practice, reforming LG was a technical issue that became susceptible to resistance. Our findings indicate that since these reform attempts occurred during a highly polarized period, affected by the economic crisis, the austerity policies and the implementation of the MOU, they were met with strong domestic opposition. Specific features of Cypriot LG, i.e. the promotion of local politicians with important party origins and connections, and the massive impact that party patronage and clientelistic networks exert over Cyprus increased further the degree of politicisation and salience of this issue. Due to the unusual conditions triggered by the crisis, domestic opposition and local politicians were able to efficiently use their connections with the centre to successfully resist change. This higher degree of politicisation caused delays and inertia, blurring the divide between centre and periphery. Then again, due to a number of continuous electoral processes, the centre, despite the former Minister of the Interior's intentions, did not push forward with the reforms so as to not further increase discomfort and not to lose its connections to the local politicians.

Our findings indicate that change was effectively resisted and that resistance was initially uploaded from the local to the national level. Then the executives shifted domestic opposition to LG reform to the EU level, activating a process of renegotiation with the European Commission and confirming the existence of a complex feedback loop explanation. The executives were able to convince the European Commission about the difficulties in implementing the LG reforms. Consequently, the European Commission gave a number of extensions to the enactment of the reform process, indicating a changing logic to the employment of public administration reforms that was noticed in other empirical cases. In practise, fiscal consolidation has been acting as a guiding principle at the expense of much needed public administration reforms.

Regarding our second research question, the empirical findings indicated that Cypriot local actors' differences in institutional and financial resources, specialized personnel and structures were quite significant in affecting the way in which LG actors responded to these reform attempts. We observed that LG's reactions and differentiated

responses towards the reform attempts reproduced the differences among them in terms of local resources. Urban and to a lesser extent suburban municipalities were able to demonstrate a differentiated behaviour vis-à-vis the rest of the local actors, voicing additional proposals, hiring experts and preparing counterproposals to the reform attempts. The smaller municipalities and communities lacked these resources and exhibited less interest.

This work's theoretical input delivered a depiction of the tremendously limited Europeanization effects deriving from the attempts to reform Cypriot LG. It confirmed that the response of an institution to exogenous pressures is a very complex process. At the same time, it confirmed circular Europeanization's applicability in highlighting the main factors that explained the reasons why change never took place in the form of LG reform during the crisis.

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The Cyprus Tourism Sector and the Sustainability Agenda 2030

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Abstract

The purpose of this paper is to investigate how organisations of the Cyprus tourism sector perceive, understand and apply the concept of Corporate Social Responsibility (CSR) and how they determine their priority areas. In addition, the paper will try to highlight how the tourism sector understands and perceives its role in relation to the 17 global Sustainable Development Goals. A quantitative research was carried out by collecting data from businesses operating in the tourism sector in Cyprus. The research indicated that there is a need to increase awareness of the tourism sector regarding the importance for crafting a CSR strategy which has to be aligned with the corporate purpose. This was the first attempt to study the perceptions of the Cyprus tourism sector in relation to the global sustainable development goals. The results are expected to assist organisations of the tourism sector to better understand the current challenges and set their priorities on how to align CSR related activities to the global sustainable development goals.

Keywords: corporate social responsibility (CSR), Cyprus, sustainable development goals (SDGs), sustainability, tourism, Agenda 2030

Introduction

The idea of corporate social responsibility (CSR) began in the early part of the 20th century, and since then, it has been defined numerous times, and according to Dahlsrud,[2] there are over 37 definitions. According to Lee, 'the core idea behind CSR is that businesses are now increasingly expected to fulfil social expectation that go above and beyond what is required under the law of the customary expectation of profit-marking'.[3] The report *Our Common Future*, also known as the 'Brundtland Report', issued by the United Nations World Commission on Environment and Development (WCED), constitutes the first worldwide sustainability initiative that took place back in 1987.

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2 A. Dahlsrud, 'How Corporate Social Responsibility is defined: an Analysis of 37 Definitions', *Corporate Social Responsibility and Environmental Management*, Vol. 15 (2008), 1–13.

3 T. H. Lee, 'The status of corporate social responsibility research in public relations: A content analysis of published articles in eleven scholarly journals from 1980 to 2015', *Public Relations Review*, Vol. 43 (2017), 211 – 218.

The European Commission[4] has defined CSR as the responsibility of enterprises for their impact on society. The international standard ISO 26000 defines CSR as 'the responsibility of an organization for the impacts of its decisions and activities on society and the environment, through transparent and ethical behaviour',[5] integrated throughout the organization and practised in all its relationships. According to ISO 26000, socially responsible organizations are expected to contribute to sustainable development, including the health and the welfare of society, to take into account the expectations of their stakeholders, and to be in compliance with applicable law and consistent with international norms of behaviour. CSR is defined as the voluntary activities undertaken by a company to operate in an economic, social and environmentally sustainable manner. The Netherlands Enterprise Agency[6] defines CSR as a company's sense of responsibility towards the community and environment, both ecological and social, in which it operates. The UN Industrial Development Organisation claims that CSR is generally understood as being the way through which a company achieves a balance of economic, environmental and social imperatives ('Triple-Bottom-Line-Approach'), while at the same time addressing the expectations of shareholders and stakeholders.[7] It is the economic, social and environmental performance, combined with the voluntary nature and the consideration of stakeholder relations which describe the comprehensive scope of CSR.[8]

Despite the different definitions of CSR, there are three points for which there is consensus. The first concerns the voluntary nature of social responsibility and the fact that the responsibility does not replace legal compliance. The second refers to the close relationship with the concept of sustainability, and the third refers to the fact that CSR is a strategic choice of the business and not just a secondary causal choice.

It is clear that the concept of CSR is still evolving[9] and is now linked with

4 European Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility', European Commission (2017). Available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0681&from=EN, accessed 12 December 2017.

5 International Organistion for Standardization, *ISO 26000, Guidance Standard on Social Responsibility*, (Geneva: International Organisation for Standardization, 2010).

6 Netherlands Enterprise Agency, 'Corporate Social Responsibility' (The Hague: Netherlands Enterprise Agency, 2018), available at https://english.rvo.nl/topics/international/corporate-social-responsibility, accessed 12 December 2018.

7 UNIDO, 'What is CSR?', *UNIDO.org* (2017), available at from https://www.unido.org/our-focus/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/corporate-social-responsibility-market-integration/what-csr, accessed 17 December 2017.

8 D. Lund-Durlacher, 'Corporate Social Responsibility and Tourism', *Education for Sustainability in Tourism - A Handbook of Processes, Resources, and Strategies*, eds G. Moscardo and P. Benckendorff (Berlin: Springer, 2015), 59-73.

9 M. Asrar-ul-Haq, K. P. Kuchinke, and A. Iqbal, 'The relationship between corporate social

sustainability. CSR has traditionally been seen by businesses as the design and implementation of activities that are aimed at reducing businesses' negative impact and which are focussed on the triple P (planet – people – profits), or more recently on the four main areas/pillars, namely society, environment, human resources, and market, or customers. In practice, the last two pillars constitute the economic dimension of sustainability, with the other two dimensions being the social dimension and the environmental dimension (biosphere). It is well known that our planet faces multiple and complex challenges in the 21st century that demand a whole new level of human initiative. If we continue on the current path – with intensifying climate change, depletion of vital natural resources and rising inequalities among people – we not only threaten future prosperity but risk a reversal of the progress in human development that we have seen so far.[10] The world's population is expected to grow to nine billion by 2050, and demand on global food systems,[11] transportation and entertainment services increases every year.

On 25 September 2015, the 193 Member States of the United Nations adopted the 2030 Agenda for Sustainable Development. A set of 17 aspirational Sustainable Development Goals (SDGs), with 169 targets and many more sub-targets, are expected to guide the actions of governments, international agencies, civil society, organizations and other institutions over the coming years. These ambitious 17 goals of the 2030 Agenda are a global vision for people, for the planet and for long-term prosperity. They integrate the three dimensions of sustainable development – economic, social and environmental – while at the same time no one goal is separate from the others, and each calls for comprehensive and participatory approaches.[12] The 2030 Agenda for Sustainable Development is as relevant to developed nations as it is to developing states, and it charts a plan for the future – shifting the world onto a sustainable and resilient course and leading to transformation. Also, the new 2030 Agenda commits the international community to act together to achieve the Goals and transform our world for today's and future generations.[11]

Organizations in all economic sectors are expected to contribute towards the

responsibility, job satisfaction, and organizational commitment: Case of Pakistani higher education', *Journal of Cleaner Production*, Vol. 142 (20117), 2352-2363.

10 UN Global Compact, *United Nations Global Compact* Progress Report: *Business Solutions to Sustainable Development* (New York, NY: UN Global Compact, 2017), available at https://www.unglobalcompact.org/library/5431, accessed 19 December 2017.

11 UN Global Compact, 'Food and Agriculture', (New York, NY: UN Global Compact 2016), available from https://www.unglobalcompact.org/what-is-gc/our-work/environment/food-agriculture, accessed 29 August 2016.

12 A. Antonaras and A. Kostopoulos, 'Stakeholder Agriculture: innovation from farm to store', *Driving Agribusiness with Technology Innovations*, eds T. Tarnanidis, M. Vlachopoulou and J. Papathanasiou (Hershey, PA: IGI Global, 2017), 125-147.

achievement of these universal goals. In particular, tourism represents an interesting challenge for sustainability because it directly impacts on and is impacted by both the socio-economic and environmental dimensions of sustainability.[13] If used responsibly, tourism can be a force for positive growth and economic success.[14] Responsible tourism is emerging as a significant market driver following consumer market trends' transition towards ethical consumption.[15] According to UNWTO, tourism is one of the driving forces of global economic growth, and currently accounts for 1 in 11 jobs worldwide.[16] In Cyprus, according to the Travel & Tourism Economic Impact report, issued by the World Travel & Tourism Council,[17] the tourism industry is considered to have contributed 21.4% of the country's GDP in 2016. Therefore, tourism sustainability is vital, as explained in the section below.

Sustainability in the Tourism Sector

According to UNESCO, sustainable tourism is 'tourism that respects both local people and the traveller, cultural heritage and the environment'.[18] Visit Scotland, Scotland's national tourism organization, defines sustainable tourism as 'tourism committed to generating a low impact on the surrounding environment and community by acting responsibly while generating income and employment for the local economy and aiding social cohesion'.[19] The UN World Tourism Organisation defined sustainable tourism as the 'tourism that takes full account of its current and future economic, social and environmental impacts, addressing the needs of visitors, the industry, the environment and host communities'.[20]

In order to contribute to the creation of a collective consciousness of tourism

13 A. Postma, E. Cavagnaro and E. Spruyt, 'Sustainable tourism 2040', *Journal of Tourism Future*, Vol. 3, No. 1 (2017), 13-22.

14 R. Dodds, 'CSR among Canadian mass tour operators: good awareness but little action', *International Journal of Contemporary Hospitality Management*, Vol. 22, No. 2 (2010), 221-244.

15 H. Goodwin and J. Francis, 'Ethical and Responsible Tourism: consumer trends in the UK', *Journal of Vacation Marketing*, Vol. 9, No. 3 (2003), 271-284.

16 United Nations World Tourism Organisation (UNWTO) *Tourism and the SDGs*, (2017), available at http://icr.unwto.org/content/tourism-and-sdgs, accessed 21 August 2017.

17 World Travel & Tourism Council, *Economic Impact 2017 – Cyprus*, London: World Travel & Tourism Council (2017), available at https://www.wttc.org/-/media/files/reports/economic-impact-research/countries-2017/cyprus2017.pdf, accessed 6 June 2017.

18 UNESCO, *Sustainable tourism*, UNESCO (2015), available at http://www.unesco.org/education/tlsf/mods/theme_c/mod16.html, accessed 17 December 2017.

19 Visit Scotland, 'What is sustainable tourism?', *VisitScotland.org* (2015), available at http://www.visitscotland.org/business_support/sustainable_tourism/what_is_sustainable_tourism.aspx, accessed 17 December 2017.

20 UNWTO, *Sustainable development of tourism*, UNWTO (2015b), available at http://sdt.unwto.org/content/ about-us-5, accessed 17 December, 2017.

based on the principles of sustainability, the Responsible Tourism Institute (RTI) has adapted the principles emanating from the 17 United Nations Sustainable Development Goals (SDG) to the reality of tourist agents at a global level.[21] Table 1, below, provides an explanation of the SDGs under the tourism prism.

Table 1: SDGs explained under the Tourism Prism

SDG 1: End poverty in all its forms everywhere	Tourism is one of the main drivers of world trade and prosperity, and has continued to be even during these years of global economic crisis. The tourism sector is uniquely positioned to foster growth and economic development at all levels and to provide income through job creation.
SDG 2: End hunger, achieve food security and improved nutrition, and promote sustainable agriculture	The supply of local agricultural products not only improves the well-being of the community of the destination but also increases its attractiveness in the tourist market, offering the tourists a greater authenticity in their experiences.
SDG 3: Ensure healthy lives and promote well-being for all at all ages	Tourism can have a notable effect on health and well-being, not only through its contribution to economic growth and sustainable development but also through its role as a transmitter of ideas and customs. By empowering local health practices, not only a channel of understanding between cultures is built but also good health and well-being practices can be shared.
SDG 4: Ensure inclusive and quality education for all and promote lifelong learning	A good level of training is crucial for the tourism sector. The sector can provide incentives to invest in education and professional training, promoting professional mobility through cross-border agreements on professional training […] transmitting values of tolerance, peace and non-violence.
SDG 5: Achieve gender equality and empower all women and girls	As one of the sectors with the highest proportion of women employed and entrepreneurs, tourism can and should be a tool for the empowerment of women, helping to ensure that their participation in all aspects of society is full.
SDG 6: Ensure access to water and sanitation for all	Tourism has the moral and commercial imperative to improve its water management. The cost is a clear factor. […] On the other hand, the moral aspect is equally compelling: water is a scarce resource in many resorts around the world, which is why hotels have the responsibility of not using more than necessary, especially in remote areas where only through efficient management is it ensured that local residents are not deprived of essential supplies.

21 Responsible Tourism Institute (RTI), *The 17 Sustainable Development Goals: fulfilling the resolutions of the World Summit on Sustainable Tourism* (Santa Cruz de Tenerife: Responsible Tourism Institute, 2017), available at http://www.sustainabletourism2017.com/sustainable-development-goals-tourism/, accessed 21 August 2017.

SDG 7: Ensure access to affordable, reliable, sustainable and modern energy for all	The tourism industry is one of the main interest groups in favour of good practices in energy saving, due to the great economic, social, cultural and environmental impact of its activity. The fact that tourism agents act in a responsible and sustainable way creates additional benefits that not only affect the well-being of the population but also allow destinations to increase their competitiveness and presence at an international level.
SDG 8: Promote inclusive and sustainable economic growth, employment and decent work for all	Sustainable economic growth and the reduction of poverty through tourism depend on it being able to generate employment opportunities, creating synergies with agriculture and local service provider sectors, and stimulating the development of basic infrastructure, such as roads and port and airport facilities. To this end, it is essential that tourism revenues be used to finance infrastructure development, to support local businesses, particularly SMEs, and to develop the skills and institutions needed to strengthen the local economy.
SDG 9: Build resilient infrastructure, promote sustainable industrialization and foster innovation	Tourism development is based on good public and private infrastructure and an innovative environment. The sector must be committed to a constructive model based on the principles of sustainable development, in which different groups and market players contribute strongly to the settlement and application of a culture of protection of the environment and cultural identity applied to the building sector, based on the commitment to sustainability.
SDG 10: Reduce inequality within and among countries	Today, tourism provides stability at a time of special global economic volatility. Tourism can therefore become an instrument for the development of the community and the reduction of inequalities if it engages the local populations in its development. Tourism has the potential to contribute to urban renewal and rural development and reduce regional imbalances, giving communities the opportunity to thrive in their place of origin.
SDG 11: Make cities inclusive, safe, resilient and sustainable	A city is not good for tourists if it is not good for its inhabitants. Safety is one of the main guidelines … in the choice of a destination during free time for tourism and recreation and must be interpreted as an objective and subjective state that allows us to perceive that we move in a space free from actual or potential risks. Sustainable tourism has a duty to analyze the problems of safety in the context of tourism and to address these problems in all its concrete manifestations, coming from the same sector, its social environment, the natural environment and the […] tourist or visitor.
SDG 12: Ensure sustainable consumption and production patterns	A tourism sector that adopts sustainable consumption and production practices can play an important role in accelerating the global shift towards sustainability. To this end, initiatives for the efficient use of resources must be developed, leading to better results, not only economic but also social and environmental.

SDG 13: Take urgent action to combat climate change and its impacts	Tourism can play a leading role in the fight against climate change by fully mobilizing the resources and innovation capacity of this world economic sector of vital importance, guiding them towards this goal. Climate change will affect tourist destinations, their competitiveness and their sustainability in many aspects. It can directly alter environmental resources that are outstanding tourist attractions, or indirectly through loss of biodiversity, scarcity of resources such as water, or by levies derived from mitigation policies.
SDG 14: Conserve and sustainably use the oceans, seas and marine resources	Coastal and maritime tourism, large segments of tourism, particularly for small island developing states, depend on healthy marine ecosystems. Tourism development should be a part of integrated coastal zone management in order to help conserve and preserve fragile marine ecosystems and serve as a vehicle for promoting a blue economy. Much of the tourism is in or near the oceans. Fishing, sailing, diving, snorkeling and cruising are examples of tourist operations that depend on the health of the oceans, coastal habitats and marine environments. The Blue Community programme has been actively involved in tourism programmes to protect oceans and marine environments and coastal habitats.
SDG 15: Sustainably manage forests, combat desertification, halt and reverse land degradation, halt biodiversity loss	Tourism may be the sector that is most interested in preserving the air, water, forests and biodiversity of the area, since they generate the assets (landscapes, wetlands, forests and other natural spaces) that are often the main cause why tourists visiting a destination. Tourism should play an important role, not only in the conservation and preservation of biodiversity but also in respect for terrestrial ecosystems, making efforts towards reducing waste and consumption, conserving flora and Wildlife, and awareness-raising activities.
SDG 16: Promote just, peaceful and inclusive societies	Sustainable tourism is called upon to contribute effectively to poverty alleviation and the eradication of destination inequalities, through a better redistribution of income and the elimination of exclusionary criteria and activities. It is in this context of fairness and just redistribution that tourism, being the largest and fastest growing industry, can and should equally become the first industry for world peace. To this end, initiatives that contribute to international understanding and cooperation, preservation of heritage and identity, and the search for a peaceful and sustainable world must be promoted and facilitated, making each traveler a potential 'Ambassador for Peace'.
SDG 17: Revitalize the global partnership for sustainable development	The active contribution of tourism to sustainable development necessarily presupposes the participation and collaboration of all public and private actors involved in tourism activities. Such concerted action must be based on effective mechanisms of cooperation and partnership in all areas, both at the destination and at the international level. The sustainable governance of destinations, beyond the powers of governments and administrations, is one of the great challenges today.

Tourist operators and destinations are starting to realize the negative impacts that tourism can have on their product and are becoming aware that the very resources that attract tourists need to be protected for long-term business sustainability.[13] The World Tourism Organization (UNWTO) – the United Nations agency responsible for the promotion of responsible, sustainable and universally accessible tourism – is working with governments, public and private partners, development banks, international and regional finance institutions, and other UN agencies and international organizations to help achieve the SDGs, placing an emphasis on Goals 8, 12 and 14, in which tourism is featured.[15]

More specifically, by giving access to decent work opportunities in the tourism sector, society – particularly youth and women – can benefit from enhanced skills and professional development.[15] The sector's contribution to job creation is recognized in target 8.9: 'by 2030, devise and implement policies to promote sustainable tourism that creates jobs and promotes local culture and products'.[22] In addition, a tourism sector that adopts sustainable consumption and production (SCP) practices can play a significant role in accelerating the global shift towards sustainability. To do so, as set in Target 12.b of Goal 12, it is imperative to 'develop and implement tools to monitor sustainable development impacts for sustainable tourism which creates jobs, promotes local culture and products'.[23] The Sustainable Tourism Programme (STP) of the 10-Year Framework of Programmes on Sustainable Consumption and Production Patterns (10YFP) aims at developing such SCP practices, including resource efficient initiatives that result in enhanced economic, social and environmental outcomes.[15] Furthermore, coastal and maritime tourism, tourism's biggest segments, particularly for Small Island Developing States (SIDS), rely on healthy marine ecosystems. Tourism development must be a part of integrated Coastal Zone Management in order to help conserve and preserve fragile ecosystems and serve as a vehicle to promote the blue economy, in line with Target 14.7: 'by 2030 increase the economic benefits of SIDS and LCDs from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture and tourism'.[24]

Sustainable tourism has received extensive academic attention over the years and an equal amount of debate.[25] It is evident that companies in the tourism sector play

22 UN, 'Sustainable Development Goal 8', Sustainable Development Goals Knowledge Platform (2017), available at https://sustainabledevelopment.un.org/sdg8, accessed 21 August 2017.

23 UN, 'Sustainable Development Goal 12' Sustainable Development Goals Knowledge Platform (2017), available at https://sustainabledevelopment.un.org/sdg12, accessed 21 August 2017.

24 UN, 'Sustainable Development Goal 14', Sustainable Development Goals Knowledge Platform (2017), available at https://sustainabledevelopment.un.org/sdg12, accessed 21 August 2017.

25 A. Farmaki, P. Constantis, I. Yiasemi and P. Karis, 'Responsible Tourism in Cyprus: the rhetoric and the reality'. *Worldwide Hospitality and Tourism Themes,* Vol. 6, No. 1 (2014), 10-26.

an important role in transforming the sector's approach and introducing sustainability criteria into their operations.[26] These companies can align their strategies with the SDGs by promoting responsible tourism that represents the natural, cultural and social environment and that fosters the sustainable development of tourism destinations. Sustainable tourism, on one hand, as described by Swarbrook, is defined as 'the forms of tourism which meet the current needs of tourists, the tourism industry and host communities without compromising the ability of future generations to meet their own needs'.[27] Whilst sustainable tourism seeks to achieve a particular combination of number and types of visitors in order to minimize the effect of their activities on the destination, responsible tourism extends beyond the management of natural resources and highlights the moral responsibility of tourism businesses towards host environments and societies.

Cyprus Tourism Sector

Cyprus is located in the eastern Mediterranean basin with a population of just under 850,000 inhabitants.[28] During the last three decades, Cyprus has been established as a very popular tourist destination, attracting more than 2.5 million tourists per year. According to the World Travel & Tourism Council, tourism in 2016 directly supported 26,500 jobs, representing 7.2% of total employment, with the total contribution to employment (direct and indirect) to be estimated at 80,500 jobs (22% of total employment). Tourism was estimated to have a direct contribution of 7.2% and a total contribution of 21.4% to the country's GDP in 2016. According to CYSTAT,[29] in 2017, 4.2 million tourists arrived in Cyprus, while 2018 is a record year in tourist arrivals, with over 4.47 million arriving until the end of September. Tourism enterprises and professionals of the tourism sector are regulated and monitored by the Cyprus Tourism Organisation (CTO) based on the relevant legislation. CTO is a semi-governmental organization, under the responsibility of the Ministry of Commerce, Industry and Tourism,[30] and over recent years it has tried to promote sustainable tourism by acting as an advisory body to the private sector, offering incentives and organizing relevant seminars. However, the implementation of sustainable tourism

26 UN World Tourism Organisation (UNWTO), *The tourism sector and the sustainable development goals* (Madrid: UNWTO and UN Global Compact Network Spain, 2017), 29.

27 J. Swarbrook, *Sustainable Tourism Management* (Wallingford: CAB International, 1998), 13.

28 Statistical Service of Cyprus (CYSTAT), 'Press Release – Demographic Report 2017' (Nicosia: Statistical Services of Cyprus, 2018, November 30), 1.

29 Statistical Service of Cyprus (CYSTAT), *Statistical Service of Cyprus Monthly Economic Indicators (Bulletin) Jan – Oct 2018* (Nicosia: Statistical Services of Cyprus, 2018, December 7).

30 Cyprus Tourism Organisation, 'About us' (Nicosia: Cyprus Tourism Organisation, 2017), available at http://www.visitcyprus.com/index.php/en/about-us, accessed 29 August 2017.

in general and the adoption of responsible tourism practices have been minimal in an industry where short-term economic interests dominate decision-making. In 2016, Cyprus Sustainable Tourism Initiative (CSTI) was established as an independent organization, aiming to combine tourism demand (tour operators, agents) with the supply of tourism resources (small producers and their communities) so as to develop a sustainable approach to tourism in Cyprus.[31]

According to Farmaki et al., there are two kinds of barriers to responsible tourism in Cyprus: adoption and implementation. The barriers to adoption of responsible tourism in Cyprus include poor understanding of the concept, lack of awareness, lack of government support and there perception that costs will be high, while the barriers to implementing responsible tourism in Cyprus include lack of cooperation, lack of coordination, diverse interests among stakeholders, and lack of monitoring.

Whilst efforts to establish responsible tourism in Cyprus are theoretically evident, the implementation of such practices has been minimal. The official tourism authorities in Cyprus remain an advisory body, lacking the executive powers that would enable them to promote responsible tourism more effectively. The CSTI has been successful in raising awareness of responsible tourism on the island, albeit at an embryonic stage and rather fragmented, as only selected hotels are participating in relevant schemes.

Method

The aim of this paper was to investigate how Cyprus-based businesses of the tourism sector perceive, understand and apply the concept of CSR, and how they determine their CSR priorities. In addition, this was the first attempt to highlight how the tourism sector understands its role in relation to the 17 SDGs. The results are expected to assist organisations of the tourism sector to be better aware of the current challenges and to set their priorities in aligning CSR-related activities to the global Sustainable Development Goals.

A quantitative research was carried out by collecting data from businesses operating in the tourism sector in Cyprus. An online questionnaire was developed to address the above questions, and following a pilot test, the survey was sent to over 300 businesses of the tourism sector, and more specifically to hotels, travel agencies, tour operators, the airport and airport ground handlers. The CSTI, CSR Cyprus and the Cyprus Hotel Association assisted in the dissemination of the online survey by forwarding it to their members. In total, 108 business representatives responded by successfully completing the survey. Table 2 presents the sample of businesses that responded to the survey by number of employees, geographical district and years in operation. The majority of

31 Cyprus Sustainable Tourism Initiative (CSTI), 'About us', CSTI-Cyprus Sustainable Tourism Initiative (2017), available at http://csti-cyprus.org/?page_id=8, accessed 29 August 2017.

respondents were from businesses with fewer than 100 employees (72.2%) and over 15 years in operation (79.6%). Descriptive statistics were used for the analysis of the data collected.

Table 2: Sample of Businesses that Responded to the Survey

No. of employees	%	District	%	Years in Operation	%
1-50	53.7	Famagusta	23.0	1-5	10.2
51-100	18.5	Larnaka	23.3	6-10	6.1
101-250	13.0	Limassol	16.4	11-15	4.1
251-500	13.0	Nicosia	23.0	15-20	20.4
500+	1.9	Paphos	16.4	20+	59.2
	100.0		100.0		100.0

Research Findings

The overall perceptions that Cyprus tourism businesses have about CSR are discussed and graphically analyzed in the following sub-sections. The research findings are presented in percentage terms with the aim of providing empirical evidence as a basis for discussion and reflection.

The majority of respondents (79.6%) reported that their organizations design and implement CSR-related activities. As illustrated in Figure 1, the most popular areas in which CSR activities are focused include the environment (55.6%), society (51.9%) and the market/customers (46.3%). When asked to identify the single most important CSR pillar for their organization, 34.9% of the respondents selected the human resources (HR) pillar, 32.6% the environmental pillar, 18.6% the market/customers pillar and 14% the society pillar. The main reasons for organizations to state this clear preference for the environmental and HR pillars may be that they find it easier to design CSR activities around these two. It should also be noted that, from its early stages, the CSR movement was linked with internal (people) and external (environment) organizational aspects, and therefore organizations have been dealing with people-related and environmental activities for quite some time now.

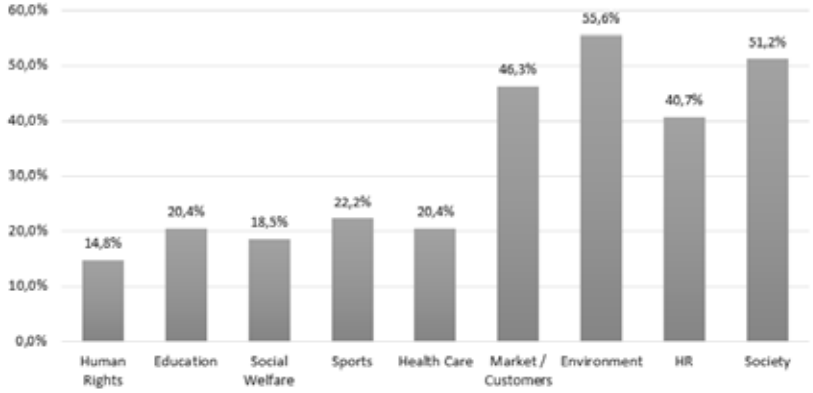

Figure 1: Areas of CSR related activities implemented by businesses

Analyzing the responses by the size of the responding organizations revealed that the majority of the implemented CSR-related activities had to do with the environment and their own human resources. It was evident that, for organizations with more than 250 employees, the two most important CSR pillars were human resources (75%) and society (25%). For organizations with up to 250 employees, the environmental pillar seems to be the most important (40%), followed by the HR pillar (25.7%), the market/customers pillar (22.9%) and the society pillar (11.4%). It seems that the Cyprus tourism sector perceives CSR in its traditional approach and targets CSR-related activities towards the four main pillars of society, environment, human resources and market/customers.

The research also revealed that 62.8% of the respondents who implement CSR activities had a CSR strategy in place, while almost a third (32.6%) also had allocated a specific budget for CSR activities. The majority (54.3%) of organizations with up to 250 employees had developed a CSR strategy, but only 22.9% had also allocated a specific CSR budget. On the contrary, all organizations with more than 250 employees had a CSR strategy and 75% of them had an allocated CSR budget. Clearly, the evidence shows that there is a need to increase company awareness regarding the importance for crafting a CSR strategy that would be aligned with the main corporate purpose.

The concept of sustainability and the recently announced 2030 Agenda seem to be issues that organizations of the tourism sector in Cyprus are not very familiar with. Only 35.2% of the participants have heard about the 2030 Agenda and the 17 Sustainable Development Goals during the last few months. The percentage drops even more (24.1%) when participants were asked to state whether they know what SDGs are all about. The challenge for the relevant sectoral authorities and business networks in Cyprus is to inform tourism sector companies about the 2030 Agenda and clearly explain how the 17 SDGs can be applied regardless of a business's size,

geographical location and 'business maturity' (years in operation).

According to the organizations that participated in the survey, the three most important SDGs for the Cyprus tourism sector are Goals 7, 13 and 3, which relate to access to affordable, clean energy (SDG 7), action against climate change (SDG 13), and good health and well-being (SDG 3). The importance of energy (SDG 7) can be explained by the traumatic experience of the tourism sector back in 2011, when an explosion near the power station at Mari left the island without electricity production capability for many months. Climate change (SDG 13) is considered important most probably because environmental protection was put on the CSR agenda a long time ago as part of the Triple P approach. The next more important SDGs are Goals 1, 2 and 8, which relate respectively to the reduction of poverty (SDG 1) and hunger (SDG 2) and to inclusive and sustainable economic development (SDG 8). Figure 2 illustrates how respondents prioritized the 17 SDGs. The higher the SGD bar the more important the SDG is for the respondents.

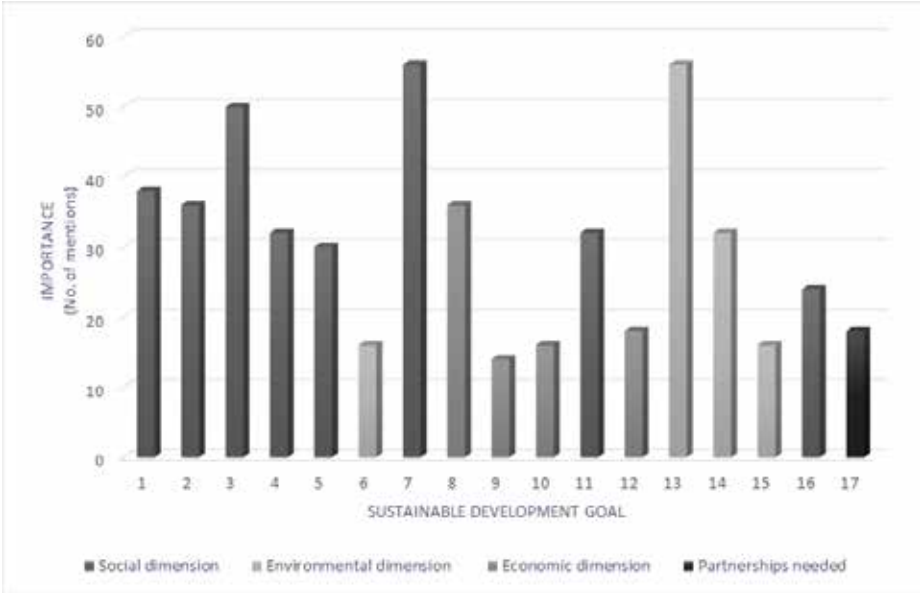

Figure 2: How respondents rated the importance of SDGs for their organizations

Furthermore, the sustainable development goals can be allocated into the three dimensions of sustainability (social, economic, environmental). Goals 1, 2, 3, 4, 5, 7, 11 and 16 constitute the social dimension, while Goals 6, 13, 14 and 15 constitute the environmental dimension and Goals 8, 9, 10 and 12 the economic dimension. The different shades used in Figure 2 correspond to the three CSR dimensions.

Goal 17, which relates to the partnerships needed for achieving the SDGs, is a goal that enhances the links required between governments, the private sector and civil society.

In a recent survey conducted in Spain by the UN Global Compact Network Spain and the World Tourism Organization, potential challenges in the tourism sector, in relation to the new 2030 Development Agenda, were identified. The challenges were classified into six priority areas: employment, environment, responsible production and consumption, partnerships, transparency, sustainable cities and supply chain. The survey revealed that companies in Spain have highlighted five sustainable development goals they consider priorities for the tourism sector in Spain: Goals 5, 8, 11, 13 and 17.[32] Comparing the findings of the Cyprus study with the SDG priorities in the Spanish tourism sector, one can clearly identify Goals 8 and 13 are common priorities. In addition, the latest Progress Report, published in 2017 by UN Global Compact, indicated that SDG 8 is the global goal on which businesses believe they can have the greatest impact.

The major challenges for companies of the tourism sector in Cyprus, regarding the 2030 Agenda, are the lack of guidelines on how to get engaged with the SDGs (33.3%) and society's insufficient understanding and knowledge about the SDGs, in general (31.5%). Other challenges are the lack of financial, human, technological and other resources (14.8%), the lack of government commitment, support and policies (14.8%), and the lack of top management commitment (5.6%). It is evident that businesses of the sector need to be informed and better educated about the SDGs and on how to align corporate activities with those SDGs that are more relevant to the business. The need for education for sustainability goes beyond businesses of the tourism sector. Apart from the need to enlighten and educate tourism companies, there is a need to educate tourism destination communities and tourists themselves about the sustainability agenda and the SDGs.

Conclusions

The survey conducted in the Cyprus tourism sector revealed that CSR is still perceived in its traditional approach, with the majority of CSR-related activities being targeted in the four main CSR pillars, namely, society, environment, human resources and market/customers. An interesting finding was that the smaller the business is, the more diverse is their interest in the four pillars. Large businesses seemed to focus their CSR activities on their human resources and society.

Clearly, there is a need to increase awareness in the tourism sector regarding the

32 UNWTO, *The tourism sector and the sustainable development goals* (Madrid: UN World Tourism Organisation and UN Global Compact Network, 2017), 22-26.

importance of crafting a CSR strategy, which has to be aligned with corporate purpose. The research indicated that small and medium business usually do not allocate a budget for CSR-related activities and that the larger the business the more likely it is to have a CSR strategy and relative budget.

It is critical that the entire tourism industry become more sustainable as it has environmental, social and economic impacts.[33] The understanding of the 2030 Agenda and the 17 SDGs is still at low levels among businesses in the tourism sector. The current challenge for the relevant sectorial authorities and business networks in Cyprus is to inform tourisim companies about the 2030 Agenda and to clearly explain how the 17 SDGs can be applied regardless of size, geographical location and 'business maturity' (years in operation). Therefore, there is a need to more critically analyze how tourism affects all dimensions of individual and community well-being or quality of life and to encourage alternative and more responsible approaches to tourism planning and management across the range of key stakeholders.[34]

The most important SDGs for the Cyprus tourism sector relate to access to affordable and clean energy (SDG 7), action against climate change (SDG 13), good health and well-being (SDG 3), reduction of poverty (SDG 1), reduction of hunger (SDG 2), and inclusive and sustainable economic development (SDG 8).

It is certain that there will be significant opportunities for business to scale engagement around the SDGs. The recent UN Global Compact Progress Report (2017) estimates that the business opportunity in delivering the SDGs can generate up to $12 trillion worth of business value. It is therefore of paramount importance for the Cyprus tourism sector to focus on sustainability and to align their strategy towards addressing the SDGs that the sector considers to be relevant.

Recommendations

One of the main challenges of the Cyprus tourism sector is relative to the environment and the need to take actions against climate change (SDG 13). Tourism activities can have impacts on ecosystems, so it is necessary to promote the efficient management of resources and to support measures against climate change. In order to achieve sustainable tourism, it is necessary to promote access to affordable, clean and modern energy in destinations (SDG 7). Companies in the tourism sector can commit to developing energy-efficiency measures as well as to increasing the use of renewable energy in their operations, while decreasing their reliance on fossil fuels,

33 D. De Lange and R. Dodds, 'Increasing sustainable tourism through social entrepreneurship', *International Journal of Contemporary Hospitality Management* ,Vol.29, No.7 (2017), 1977-2002.

34 P. Benckendorff and G. Moscardo, 'Education for Sustainability Futures', in *Education for Sustainability in Tourism* (Berlin: Springer, 2015), 271-283.

in order to achieve a sustainable and beneficial economy for all. Tourism represents more than 20% of Cyprus' GDP and has a direct effect on poverty levels (SDG 1). The sector should promote the creation of decent jobs that improve the well-being of the local population and help them to obtain a fair income, security and social protection, and better prospects for their personal development and social integration. In addition, businesses in the sector can promote sustainable tourism, stimulate agricultural production through local consumption, offer alternative business models, such as agro-tourism, and be respectful of the environment and local customs (SDG 2). The tourism sector can operate in a sustainable, healthy and safe manner for local communities, tourists and employees, contributing to the well-being of all of them (SDG 3). Implementing appropriate health and safety plans and carrying out suitable measures to prevent accidents or health problems among tourists and employees are measures that companies can contribute. The companies of the sector provide jobs that should be decent throughout their value chain. They should also encourage the hiring and entrepreneurship of local people, especially among vulnerable groups.

Further research to extend this initial analysis in the future should move in two directions. First, organizations in other industries in Cyprus should be included in the analysis to determine whether they also have similar CSR behaviour and SDGs priorities to the tourism sector and to identify possible differences. Second, other Mediterranean basin countries should be included to compare how they perceive and apply CSR and how they understand their role in relation to the 17 SDGs.

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Trusts, Central Registry and Real Beneficiary in Cyprus: Historical, Conceptual and Legislative Approach

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Abstract

The present study shows the numerous and varied legislative provisions and initiatives in Cyprus to reduce illegal movement of funds and money laundering through trusts. It is, therefore, crucial to analyse certain aspects of this legal arrangement, which mainly relate to the issue of transparency, in order to understand the entire chain structure behind the crime of money laundering through trusts and ultimate beneficial owner (UBO). Money laundering is inextricably linked with anonymity. The status of the trust is both related to and distinct from the issue of information exchange between countries regarding the battle against money laundering, as Cyprus, in recent years, tends to be pressed particularly to disclose bank secrecy data. Under the provisions voted since 2012 and afterwards, the Cyprus Parliament passed a supplementary to the Fiduciaries Law, which was the Central Registry of Trust. Cyprus must ensure that beneficial ownership information is stored in a central register located outside the company. Also, the greater transparency over the identity of the UBO, through the establishment of public registers, would act as a deterrent to misconduct. Evidence presented in this paper is important for national and super-national supervisory anti-money laundering bodies and compliance authorities to understand banking practices in Cyprus.

Keywords: trusts, Cyprus, money laundering, transparency, banking practices

Introduction

One of the key components of the global economic system is transnational capital flow as an expression of the globalized environment of the markets. Transnational cooperation is a cornerstone of today's economy, and the need for regulation of this relatively new type of economic interface becomes essential. Internationally, the fight against money laundering is one of the main priorities for countries, and governments try to face the task either independently or in cooperation with other countries, agencies and organizations.

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The legislative initiatives on the part of Cyprus and other supranational and international organizations are remarkable, especially in recent years. Money laundering in offshore destinations such as Cyprus, through foreign direct investments by the round-tripping method and through trust companies, is a particularly popular phenomenon for developing countries.

Cyprus' economy grew by 2.9% in 2016 and continued to grow in 2017. In particular, Cyprus' gross domestic product increased by 3.8% during the first quarter of 2017, by an impressive 4% in the second quarter, and by 3.9% in the third quarter. The main reasons for this growth are related to the overall strengthening of the economy, and this becomes an important point of interest for companies from around the world that are considering Cyprus as an attractive destination for foreign direct investments.

In addition to the secrecy that is characteristic of trust funds, the status of international trusts are important for Cyprus' legal arrangements, that attract many investors seeking additional anonymity, combined in every way with the double taxation agreement.[4]

Trusts: Historical, Conceptual and Legislative Approach

Money laundering is inextricably linked with anonymity. The international trusts regime plays a very important role in maintaining an investor's anonymity, which is accepted in Cyprus. Because of this, many investors seeking additional secrecy are attracted to Cyprus.[5] It is, therefore, crucial to analyse certain aspects of this legal arrangement, which mainly relate to the issue of transparency, in order to understand the entire chain structure behind the crime of money laundering.

There is no accurate and comprehensive legal definition as to what a trust is (even the Trustee Law of 1955 (Cap. 193) in Part I § 3, wherein the Law 188(I)/2007 on money laundering references, does not give a clear and straightforward definition). Its meaning has been determined indirectly by legislative provisions and by domestic and international jurisprudence. The US Internal Revenue Service (IRS) gives the following definition: 'In general, a trust is a relationship in which one person holds title to property, subject to an obligation to keep or use the property for the benefit of another'.[6] According to Article 2 of the International Trust Law (ITL) of Cyprus, an

4 E. Neocleous, 'The potential impact of Russian de-offshorization legislation on Cyprus holding and finance structures', *Trusts and Trustees*, Vol.21, No.6 (2015).

5 Ibid.

6 IRS, 'Definition of a Trust', IRS.gov., available at https://www.irs.gov/charities-non-profits/definition-of-a-trust.

International Trust has the following stipulations:[7]

(a) The settlor, being either a natural or legal person, is not a resident of the Republic during the calendar year immediately preceding the creation of the trust.

(b) At least one of the trustees, for the time being, is a resident of the Republic during the whole duration of the trust.

(c) No beneficiary, whether a natural or legal person, other than a charitable institution, is a resident of the Republic during the calendar year immediately preceding the year in which the trust was created.

Historically this arrangement was created in order to protect a person's relatives who could not manage their assets properly and to promote charity.[8] The legislation for this structure was diverse and the main law was the Trustee Law of 1955 (Cap. 193), which was based on the UK Trustees Act 1925, and the 1992 International Trusts Law (Law 69(I)/1992), which, like many aspects of the legal system of Cyprus, is influenced by common law.[9]

In 2012, the Cyprus Parliament adopted a number of provisions under the Memorandum of Understanding that the Government signed with the troika (IMF, European Commission, European Central Bank), which attempted to make corporate activities taking place in Cyprus more transparent. In particular, the 1992 International Trusts Law was updated (20(I)), and the Government passed the Fiduciaries Law (Law 196(I)/2012), thus bringing much needed modernization to the legal framework of international trusts in Cyprus. Parallel to this is EU Directive 849/2015, also called the fourth Money Laundering Directive (4MLD),[10] which covers the status of trusts.

The fifth Money Laundering Directive (or 5MLD) is an update to 4MLD, and it strengthens the application of the central register which has the information of the final beneficiary of a trust. These additions are scheduled to be implemented by 2020.[11] The completion of the main provisions was introduced by EU Directive 847/2015 to

7 Cyprus International Trust Law, available at http://www.olc.gov.cy/olc/olc.nsf/all/AF600F7D0BB6F306C2258187001E13D0/$file/The%20International%20Trusts%20Laws%201992%20to%202013.doc?openelement.

8 J. Christensen, 'The hidden trillions: Secrecy, corruption, and the offshore interface', *Crime, Law and Social Change*, Vol. 57, No. 3 (2012).

9 Section 29 of the Courts of Justice Law (14 of 1960) prescribes, that there will be a commitment to English Law and the principles thereof, unless expressly prescribed something different in Cyprus Law.

10 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

11 Ibid.

combat money laundering through bank transfers. All these initiatives are based on the FATF (Financial Action Task Force) guidelines and observations, which set the global standards for fighting money laundering and terrorist financing (AML/CFT).

However, the confidential nature of trusts has not changed compared to the first ITL in 1992. More specifically, Article 11 of the law states:

> (1) Subject to the terms of the instrument creating an international trust and where the Court has not issued an order for the disclosure of information in accordance with the provisions of Subsection (2) the trustee, the protector, the enforcer of a trust or any other person included, shall not disclose to any person not legally entitled thereto any documents or information:
>
> (a) which disclose the name of the settlor or any of the beneficiaries;
>
> (b) which disclose the trustee's deliberations as to the manner in which a power or discretion was exercised or a duty conferred or imposed by law or by the terms of the international trust was performed;
>
> (c) which disclose the reasoning or the information upon which any specific exercise of such power or discretion or performance of duty had been or might have been based;
>
> (d) which relate to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty;
>
> (e) which relates to or form part of the accounts of the international trust;
>
> Provided that, where a request is submitted by a beneficiary to the trustee for the disclosure of the accounts of an international trust or of any documents or information relating to the proceeds and payments made by the trustees, forming part of the said accounts, the trustee shall have the power to disclose such accounts, documents or information to the beneficiary, only if in his opinion such disclosure is necessary and secures the bona fide interests of the trust.
>
> (2) Notwithstanding the provisions of any other law and subject to the provisions of Subsection (3) a Court in any civil or criminal proceedings may, by order, allow disclosure of documents or information referred to in Subsection (1) on the application of a party to the above civil or criminal proceedings, depending on the circumstances of the case.
>
> (3) The Court shall issue an order in accordance with Subsection (2) only if it is satisfied that the disclosure of documents or information referred to in Subsection (1) is of paramount importance to the outcome of the case.

In accordance with Art. 11 Sub. 2 and 3 of the ITL, it is necessary to obtain a judicial decision in either a civil or criminal proceeding before this information can be disclosed, and the decision must always take into consideration the principle of proportionality with respect to the disclosed information and that the information is essential to the outcome of the current process.

This framework, of course, is attractive to many companies, including those that seek to exploit these provisions for anonymity in order to commit financial crimes.

Central Registry and Real Beneficiary: A First Step

Eventually, concerns about the serious problem of money laundering began to proliferate, particularly in Europe ever since the beginning of the world economic crisis in 2008.

Many governments (especially of countries which were often accused of allowing money laundering) showed their (apparent) willingness to address corporate transparency regarding trusts by commiting to take similar measures. On 31 October 2013, David Cameron said that it is Great Britain's obligation to act to overcome the phenomenon of money laundering perpetrated by companies established in the country.[12] To this end, he invited the G8 and the EU to work together to promote transparency as required. After 4MLD was passed, all member states were required to ensure their own data complied with the provisions of this Directive. Great Britain, Malta, Luxembourg, Germany and other countries have begun to pass legislation (although not yet complete) that would comply with the Directive.

In September 2013, the Cyprus Parliament passed a supplementary to the Fiduciaries Law protocol, which extended the provisions in place since 2012 as well as the commitments Cyprus made to troika in the Memorandum of Understanding. With this additional protocol a Central Registry of Trusts was established, which was jointly maintained by Cyprus Securities and Exchange Commission (CySEC), the Cyprus Bar Association and the Cyprus Association of Certified Accountants (ICPAC), which were already the authorities supervising money laundering issues under Art. 59 of Law 188(I)/2007).

It is worth mentioning that the SEC sought primarily to maintain a balance between its regulatory and law abiding roles on one side and its desire not to obstruct the trust sector thus discouraging new trust companies and investors from coming to Cyprus.[13] Whether this can be done is questionable and only time will tell if this strategy is feasible.

The creation of a central registry where trust companies would submit their basic information was the main change the Fiduciaries Law has had on the ITL.[14] The Trust

12 D. Cameron, *PM speech at Open Government Partnership 2013*. Gov.uk (2013, October 13), available at https://www.gov.uk/government/speeches/pm-speech-at-open-government-partnership-2013.

13 Neocleous, 2015.

14 Additionally, it must be mentioned here that pursuant to Art. 27 of Law 188(I)/2007: (1) A person who: (a) knows or reasonably suspects that another person is engaged in laundering or financing of terrorism offences, and (b) the information on which that knowledge or reasonable suspicion is based, comes to his attention in the course of his trade, profession, business or employment, shall commit an offence if he does not disclose the said information to the Unit as soon as is reasonably practicable after it comes to his attention. (2) It shall not constitute an offence for an advocate to fail

Registers should contain the following information (Art. 25A Sub. 6b of Fiduciaries Law):

(a) the name of the trust;
(b) the name and full address of every trustee at all relevant times;
(c) the date of establishment of the trust;
(d) the date of any change in the law governing the trust;
(e) the date of termination of the trust.

According to *Art. 31 of the 4MLD:*

Member States shall require that trustees of any express trust governed under their law obtain and hold adequate, accurate and up-to-date information on beneficial ownership regarding the trust. That information shall include the identity of:

(a) the settlor;
(b) the trustee(s);
(c) the protector (if any);
(d) the beneficiaries or class of beneficiaries;
(e) any other natural person exercising effective control over the trust.

Until these provisions were enacted, international trusts did not have any obligation to be in any registry and particularly they did not have to share any private information before. Article 15 of the International Trusts Law states: 'International trusts are exempt from the registration requirement under any law.'

The question that arises here is whether the privacy provisions of Art. 11 of ITL and the requirement of Art. 25[A] of Fiduciaries Law to keep a registry contradict each other. The answer is negative at the moment, as the information to be entered in the Register is not in any of the five categories of confidential information of Art.11 ITL. We say 'at the moment' because the EU's fifth MLD to tackle money laundering is expected, and it ratifies and strengthens the establishment of Central Registry of Real Beneficiaries of Trusts, permitting them to have the identification of the beneficial owner of a trust. The fifth Directive also prescribes when this information can be made available to the general public and various organizations and institutions.[15] The Association of Certified Accountants has warned in a 2016 report that when this

to disclose any privileged information which has come to his attention. (3) No criminal proceedings shall be brought against a person for the commission of the offences referred to in Subsection (1), without the express approval of the Attorney General. (4) An offence under this section shall be punishable by imprisonment not exceeding five years or by a pecuniary penalty not exceeding five thousand euro or by both of these penalties.

15 European Parliament, Revision of the Fourth Anti-Money-Laundering Directive. Europarl. europa.eu (2018, April 12), available at http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2017)607260.

Registry is established, the above-mentioned laws will be in conflict.[16]

The Explanatory memorandum of the ITL said that Article 11 'was largely inserted for psychological reasons, because it serves to remind settlors, trustees and beneficiaries that a trust relationship is a highly confidential one'.[17] According to Art. 11 of ITL, the only two cases in which confidentiality can be waived remains therefore a judicial decision within a civil or criminal proceeding (if the court decides that this disclosure is a paramount issue for the outcome of the case) and the disclosure of information to the beneficiary.[18]

This also raises questions about the Foreign Account Tax Compliance Act (FATCA) and the CRS (Common Reporting Standard) and their obligation to register trustees with the Internal Revenue Service[19] and whether this is compatible with the prohibitions of Art.11 ITL. Looking at the two exceptions mentioned above, we observe that Art. 25^{A} Fiduciaries Law does not require disclosing information about the recipient; on the other hand, it is important to research the matter of a judicial decision.

Article 12^{E} ITL prescribes that the commissioner must comply with and implement the provisions of the Prevention and Suppression of Money Laundering and Terrorist Financing Law with all its amendments. This means that neither case has any connection with FATCA and CRS.[20] Again, the question arises of what will happen if a foreign tax authority asks the commissioner for information on possible tax evasion. Firstly, Art.11 para. 2 of ITL reports that a court before which a civil or criminal proceeding is pending has the power to allow the documents and information described in the para. 1 of this Article to be disclosed upon request of one of the parties of the civil or criminal proceeding.

On the other hand, the ITL defines a Court as 'the President of a District Court or Judge of the district where the trustees or the trustee of the international trust or anyone of them who is a resident of the Republic have their residence'. Therefore, the combination of these two provisions with the aforementioned 12^{E} of ITL suggests that, again, on this basis and on a foreign court's request, a Cypriot court could not

16 Institute of Certified Public Accountants of Cyprus (ICPAC) (2016) *2016 Annual Report*, available at https://www.icpac.org.cy/selk/en/annualreports.aspx.

17 T. Graham, 'Confidentiality and disclosure relating to international trusts after International Trusts (Amendment) Law 2012', *Trust & Trustees*, Vol. 22, No. 4 (2016).

18 T. Graham, 'Confidentiality and disclosure relating to international trusts after International Trusts (Amendment) Law 2012' [PowerPoint presentation] Farrer & Co (2015, June 12), available at https://www.step.org/sites/default/files/Events/2015/Cyprus/Speaker_Notes/the-international-trusts-amendment-law-2012-a-giant-leap-forward-toby-graham-tep-slides.pdf.

19 Graham, 'Confidentiality and disclosure' (2016).

20 Ibid.

order the disclosure of such information of a trust, and it would be in contravention of Art.11 ITL. Perhaps this means that some changes to the legislation are necessary to prevent a trust from operating as a vehicle to commit economic crimes.

The subsequent 4MLD provides for the establishment of a register to record basic information of trust companies, which could give a higher degree of transparency to these entities to prevent them from being used as vehicles for criminal economic activities. In accordance with 4MLD (Sub. 14 of the Preamble of 4MLD), 'with a view to enhancing transparency in order to combat the misuse of legal entities, Member States should ensure that *beneficial ownership information* is stored in a *central register* located outside the company, in full compliance with Union law'. Art. 68 of the Law 188(I)/2007 prescribes keeping the records of persons engaged in financial and other activities for at least five years. Records will contain information such as proof of the clients' identities, evidence of all business relationships and transactions and related documents of correspondence with clients and other persons with whom a business relationship is maintained. Under 4MLD (Art. 30 of 4MLD), Member States may use a central database for collecting information on the beneficial owner, or the business register, or other central register.

Furthermore, according to 4MLD (Sub. 14 of the Preamble and Art. 30 of 4MLD), 'Member States should make sure that in all cases that information is made available to competent authorities and Financial Intelligence Units (FIUs) and is provided to obliged entities when the latter take customer due diligence measures'. Also, Member States should ensure that access to information regarding the beneficial owner of trust companies is always in accordance with the rules on data protection, and that the information is only accessed by those who can show a legitimate interest regarding money laundering, terrorist financing and related predicate offenses – such as corruption, tax crimes and fraud. Persons who can demonstrate a legitimate interest should have access to information on the nature and proportion of the real property right.

According to the Directive Member States have to create the legal circumstances in order to identify and record the beneficial owner behind a trust:

> The need for accurate and up-to-date information on the beneficial owner is a key factor in tracing criminals who might otherwise hide their identity behind a corporate structure. Member States should therefore ensure that entities incorporated within their territory in accordance with national law obtain and hold adequate, accurate and current information on their beneficial ownership, in addition to basic information such as the company name and address and proof of incorporation and legal ownership (Sub. 14 of the Preamble and Art. 30 of 4MLD).

It is very important that we quote here 4MLD's definition of the beneficial owner

for cases of fiduciary management schemes (Trust) (Art. 3 Sub. 6 of 4MLD):

'Beneficial owner' means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.

A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means may be determined, inter alia, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council (29);

(ii) if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s), the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and this point;

(b) in the case of trusts:

(i) the settlor;

(ii) the trustee(s);

(iii) the protector, if any;

(iv) the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;

(v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;

(c) in the case of legal entities such as foundations, and legal arrangements similar to trusts, the natural person(s) holding equivalent or similar positions to those referred to in point (b).

In addition to that, according to Law 188(I)/2007, a beneficial owner is considered the natural person/persons who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction is conducted. For corporate entities, the beneficial owner is considered the one who owns a sufficient percentage of the shares or whose voting rights control a legal entity, including through bearer share holding a percentage of 10% plus one share (Art. 2 (1)(a)(i) of Law 188(I)/2007).

The exercise of due diligence (enhanced or simplified proportionally) and the determination of a client's identity are, according to Law 188(I)/2007, very important aspects in combating this crime. Art. 61 para. 1 of the above Law states:

> 'Customer identification procedures and customer due diligence measures shall comprise:
>
> (a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;
>
> (b) identifying the beneficial owner and taking risk-based and adequate measures to verify the identity on the basis of documents, data or information obtained from a reliable and independent source so that the person carrying on in financial or other business knows who the beneficial owner is; as regards legal persons, trusts and similar legal arrangements, taking risk based and adequate measures to understand the ownership and control structure of the customer;
>
> (c) obtaining information on the purpose and intended nature of the business relationship;
>
> (d) Conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the information and data in the possession of the person engaged in financial or other business in relation to the customer, the business and risk profile, including where necessary, the source of funds and ensuring that the documents, data or information held are kept up-to-date". In para. 3 of the latter provision it's prescribed that the proof of a person's identity is sufficient, if it is reasonably possible to establish, that the customer is the person he claims to be and there is a satisfactory number of identification certificates as evidence according to the examiner.'

This information must be available for five years (Sub. 44 of the Preamble of 4MLD, Art. 25A Sub. 9 of Fiduciaries Law) and it must be easy for the competent authorities and the FIU to access (Sub. 37 of the Preamble of 4MLD and Sub. 14 of the Preamble and Art. 30 of 4MLD). The issue of confidentiality is so important that Art. 39 4MLD states that it is prohibited to reveal the perpetration of money laundering to affected customer or to other third parties, expect to the competent authorities (where this disclosure is obligatory).

The reason for this is because there is a great risk that, if the information was disclosed to the general public without any control, the final beneficiary could become

a victim of fraud, kidnapping, extortion, violence or threats.[21] Also very important is that timely access to such information should be given without notifying the company under investigation, obviously to prevent the company from trying to conceal any evidence during the investigation (Sub. 16 of the Preamble and Art. 30 para. 6 of 4MLD).

How should organizations that are responsible for investigating the details of various companies conceptually decide what information needs to be collected in order to prevent economic criminal activities? The 4MLD suggests to use a risk-based approach. In short it seeks a holistic assessment of the individual risk in light of the evidence, e.g. when the monitoring procedures must be decided. According to 4MLD, a risk assessment should be made on the nature of the financial activity, i.e. if the company is particularly susceptible to being used or to becoming the subject of abuse in order to commit criminal economic activities. Furthermore the circumstances relating to customer groups, geographic regions and specific products, services, transactions or delivery channels for banking services are being examined. Key feature for this categorization is the exercise of due diligence.

In order to protect the orderly functioning of the EU's financial system, a separate approach should exist for third countries which 'have strategic deficiencies in national control of combating money laundering and the financing of terrorism ("high-risk third countries")'. In accordance with 4MLD (Art. 9, paras. 1, 2), 'the European Commission shall be empowered to adopt delegated acts', which identify high-risk third countries which do not have taken measures to combat money laundering activities, and which constitute a serious threat to European financial interests and the financial system in general.

After discovering certain irregularities regarding the creation of this list and how a country would be added to it, the Commission decided, at the end of 2018, to adopt a delegated regulation based on a new, more concise methodology.[22] We expect, therefore, to see the developments in the near future in view also of the EU's fifth MLD on combating money laundering with an implementation horizon until 2022.

21 A. Cremona and A. Galea, 'Trusts Regulations on Central Register of Beneficial Owners'. Ganadoadvocates.com (2017, December 22), available at https://www.ganadoadvocates.com/resources/publications/trusts-regulations-on-central-register-of-beneficial-owners/.

22 See Delegated Regulation of the EU Committee of 27.10.2017, C (2017), 7136/17 final. For the problematic methodology, it is necessary to cite Barbados, which the OECD removed from its 'black list', whereas the Tax Justice Network gave Barbados a score of zero based on 12 transparency features in the Financial Secrecy Index.

Conclusion

The present study shows the numerous and varied legislative provisions and initiatives in Cyprus to reduce the illegal movement of funds and money laundering through trusts. The main crimes are laundering the proceeds of crime, tax evasion and terrorist financing. The ability to eliminate the phenomenon is often questioned if one considers the plethora of tools and options perpetrators have to commit money laundering, as well as the legal loopholes on AML/CFT (Anti-Money Laundering/Combating the Financing of Terrorism) which exist worldwide.

Therefore, it is crucial to analyse certain aspects of this legal arrangement, which mainly relate to the issue of transparency, in order to understand the entire chain structure behind the crime of money laundering through trusts and ultimate beneficial owner.

Money laundering is inextricably linked with anonymity. The status of trusts is related to and distinct from the issue of countries exchanging information in their battle against the above phenomena, as Cyprus in recent years tends to be pressed particularly to disclose bank secrecy data. Under the provisions voted since 2012 and afterwards, the Cyprus Parliament passed a supplementary to the Fiduciaries Law protocol, which was the Central Registry of Trust. Cyprus must ensure that beneficial ownership information is stored in a central register located outside the company. Also, the greater transparency over the identity of Ultimate Beneficial Owner through the establishment of public registers would act as a deterrent to misconduct.

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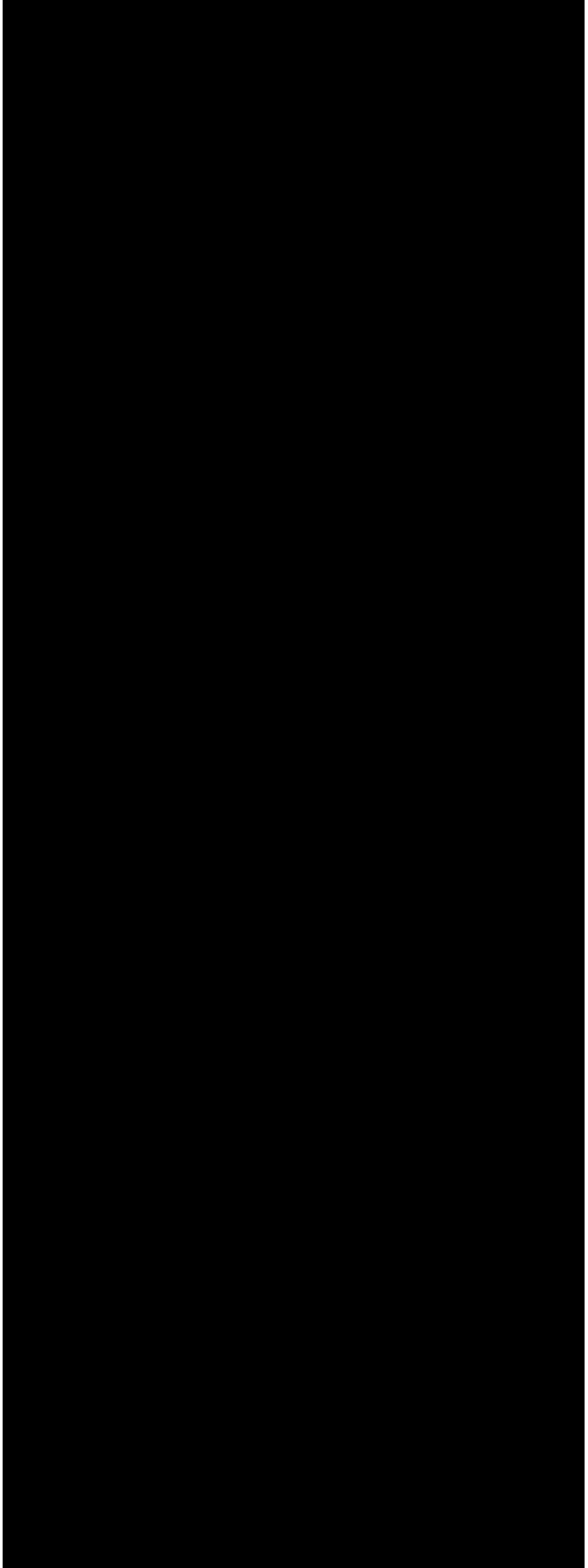

GUEST-EDITED SECTION

The Emerging Blockchain Revolution and its Implications for Cyprus

Dear Readers,

As the fourth industrial revolution gets under way, a number of exponential technologies are emerging and moving fast toward commercial maturity. A wide range of technologies – blockchain, artificial intelligence, biotechnology, nanotechnology, robotics, augmented and virtual reality, drones, decentralized autonomous organizations, computational medicine, the internet of things, autonomous vehicles – will start reaching commercial viability by 2020. Most of these technologies are foundational in nature, in the sense that they can provide the infrastructure on which further specialized applications can then be built. Each of these technologies on its own has the potential to completely transform the digital world of today. However, when viewed as a whole, their applications can really redefine the limits of what is considered possible today.

Cyprus has, fortunately, been at the forefront of academic research, education and training, as well as practical development of applications around these technologies. For example, the University of Nicosia was the first university in the world to offer a full academic program on Blockchain (MSc in Digital Currency, offered since 2014) and has recently launched the Institute For the Future (IFF) to explore the hypothesis that technological progress will cause rapidly accelerating societal change over the coming decades. The goal of IFF is to push students, researchers, policy-makers and business leaders to prepare for these changes and to aim for societally beneficial outcomes.

As part of IFF's work, this special section of *The Cyprus Review* presents a collection of five papers authored by IFF faculty and researchers, showcasing the potential of exponential technologies (with an emphasis on Blockchain), but also the challenges associated with their successful implementation and incorporation in Cyprus.

Spyros Makridakis kicks off the special section with a thought-provoking paper on the future direction of artificial intelligence. Complementary to the popularized future of AI replacing human labor, Professor Makridakis offers a perspective of co-existence between artificial and human intelligence. Under this scenario, the author presents a future of intelligence augmentation (IA) in which machines will allow humans to transcend their own biologically limited intelligence boundaries and to reach new levels of understanding, perception, cognition and perhaps even conscience. Further to a thorough analysis of our possible IA-augmented futures, the paper goes on to discuss the place and role of a small country, like Cyprus, in the ongoing competitive wars between the world's superpowers to dominate the artificial intelligence landscape. According to the author, Cyprus does not stand to lose so much in the early stages of AI/IA, due to the island's focus on services, as opposed to more easily machine-replaceable manufacturing jobs. The challenge facing Cyprus would instead be to upgrade its service sector to keep ahead of developments and to improve its competitiveness through specialized, niche applications. The author goes on to offer insight and suggestions on two dimensions: research spending on AI/IA and dedicated academic institutions to build know-how and world-class expertise locally.

The second paper is by Professor Maria Michailidis, who focuses on the challenges and

opportunities that blockchain and artificial intelligence will bring to human resource management, with a special emphasis on recruitment practices. The paper discusses how these technological developments will impact employment and the ways in which companies hire their future workforce. According to the author, blockchain and AI are revolutionizing the way HR practices are performed, as they can automate the verification of information, resulting in more accurate approaches to hiring employees. Applications like automated validation of curriculum vita, smart contracts specifying hiring and compensation terms, and cryptocurrency utilization for international payrolls, will disrupt the status quo of future HR practices. The paper concludes by looking into the emerging patterns of income inequality and how these will affect future societies, an issue of significance for Cyprus.

The third paper, by Christodoulou et al., adopts a technical viewpoint to present a specific example of how applications like the above can be implemented in practice. The authors present a prototypical smart contract and an associated decentralized application (dApp) to investigate the potential impact of blockchain on logistics operations. Further to demonstrating the potential (as well as the current technological limitations) of such applications, the paper also provides an analytical exposé of the various design challenges that software developers may face when implementing such applications. The paper is also important in that it shows the expertise currently existing in Cyprus for the implementation of such applications and how these can be used to leverage Cyprus into becoming a world-leader in the blockchain-enabled global supply chain management and logistics industries.

The fourth paper, by Professor Marinos Themistocleous, remains in the application domain to showcase the potential of Blockchain in enabling applications related to the domain of land registries. The author presents an extensive list of the current problems associated with the proper recording and processing of land and building ownership on a national level, before discussing how blockchain can be employed to address these problems in an open, transparent, fair, trusted, accurate and cost-effective fashion. After presenting examples from other countries that have been early adopters of blockchain-based land registries, the author concludes by providing specific directions in which Cyprus could move to realize the benefits of blockchain to this important to the Cypriot economy application area.

The fifth and final paper in this section, by Themistocleous et al., continues on the path of Blockchain applications in areas of interest to Cyprus and discusses the results of research that showcases how blockchain can be combined with the Internet of things (IoT) and artificial intelligence (AI) to disrupt the energy sector, with emphasis on solar energy. The paper goes beyond theory to demonstrate a working application in which the Ethereum platform was employed to develop smart contracts to handle agreements between different parties and reduce the role of the middlemen in energy trading from solar panels. The results show how the current ecosystem and business models in the sector can be disrupted, with new roles (like the prosumer) emerging to replace previous business models. At the same time, the paper discusses the role of regulators to provide a fertile ground for the proliferation of such application by instituting a clear and favorable legal and regulatory framework in Cyprus.

George M. Giaglis
Guest Editor

High Tech Advances in Artificial Intelligence (AI) and Intelligence Augmentation (IA) and Cyprus

Spyros Makridakis[1]

Abstract

In the last several years, technological progress has accelerated rapidly. Artificial intelligence (AI) has brought self-driving cars to our streets, super-automation to our factories, deep learning algorithms that beat world champions, image recognition programs that diagnose cancer more accurately than experienced oncologists can, voice recognition machines that understand speech on a par with humans and a host of other achievements which would have been hard to imagine even a decade ago. The critical interest, however, is not in what has been accomplished, but rather where technology is going and what will be the implications of forthcoming advances in all aspects of our lives, work and societies, including the possibility, some argue, of mass unemployment and huge income inequalities, as machines and robots powered by AI replace human labor. It is the purpose of this paper to discuss AI and related technological advancements and consider their implications for humanity in general and for a small country like Cyprus in particular. The paper is organized into three parts. It first looks at AI and its achievements and considers four scenarios of how it could affect us. In the second part, the paper presents a complementary to AI technology, that of intelligence augmentation (IA) that provides a different perspective to where technology is leading us and the implications involved. The final, third part considers the consequences of AI and IA for Cyprus and what would need to be done to exploit their advantages whilst minimizing their drawbacks.

Keyword: artificial intelligence (AI), intelligence augmentation (IA), blockchain, societal implications, singularity, unemployment, income inequalities, AI/IA impact on Cyprus

Artificial Intelligence, Its Achievements and the Four Possible Scenarios

Artificial Intelligence (AI), as its name implies, is a different form of intelligence to our own. As AI advances at an accelerating speed, its proponents declare that there will be a time when it will reach and then surpass human intelligence, reaching what is popularly known as singularity. At such time, machines and robots would be capable of performing all manual and mental tasks being presently performed by humans, presenting for the first time, a formidable competitor to our own dominance of the world. The implications, hard to predict, are summarized by the late Stephen Hawking:[2]

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1 Spyros Makridakis is a Professor at the University of Nicosia and Director of the Institute For the Future (IFF).

2 A. Kharpal, 'Stephen Hawking says A.I. could be "worst event in the history of our civilization"',

'AI has the potential to be the best or worst thing humanity has ever seen and the scary reality is we just don't know which yet.' The uncertainty about the implications of AI has given rise to four groups of thought we call the Optimists, the Pessimists, the Pragmatists, and the Doubters,[3] each arguing about what they predict to be the impact of AI on our future.

The Optimists

Ray Kurzweil[4] and other optimists predict a utopian 'science fiction' future, with genetics, nanotechnology, and robotics (GNR) revolutionizing everything and allowing humans to harness the speed, memory capacities, and knowledge-sharing ability of computers. Robots would be doing all the actual work, leaving humans with the choice of spending their time performing activities they simply enjoy and working (when they want to) at jobs that interest them. Furthermore, improvements in medicine will reduce or even eliminate disease and double or triple life expectancy. In other words, a utopian world of plenty with practically unlimited freedom to pursue one's own interest.

The Pessimists

In a much-quoted article from *Wired* magazine in 2000, Bill Joy wrote: 'Our most powerful 21st-century technologies – robotics, genetic engineering, and nanotech – are threatening to make humans an endangered species.'[5] Joy pointed out that as machines become more and more intelligent and as societal problems become increasingly complex, the situation will eventually and inevitably end in a reality where machines are in control of all important decisions. Joy and other scientists and philosophers[6] believe that the optimist camp vastly underestimates the magnitude of the challenge and the potential dangers that can arise from thinking machines and intelligent robots. They point out that in a world of abundance, where all work will be done by machines and robots, humans may be reduced to second-rate status – even the equivalent of 'computer pets', losing their interest in doing meaningful work and becoming lazy and apathetic in the process.

CNBC (2017, November 6), available at https://www.cnbc.com/2017/11/06/stephen-hawking-ai-could-be-worst-event-in-civilization.html.

3 See S. Makridakis, 'The forthcoming Artificial Intelligence (AI) revolution: Its impact on society and firms, *Futures*, Vol. 90, (2017): 46–60.

4 R. Kurzweil, *The Singularity Is Near: When Humans Transcend Biology* (New York: Viking Press, 2005).

5 B. Joy, 'Why the Future Doesn't Need Us', *Wired.com* (2000, April 1), available at https://www.wired.com/2000/04/ joy-2/.

6 For example, N. Bostrom, *Superintelligence: Paths, Dangers, Strategies* (Oxford: Oxford University Press. 2014).

The Pragmatists

At present, the majority of views about the future implications of AI are negative, as people are concerned with its potential dystopian consequences. Elon Musk, the CEO of Tesla, says it is like 'summoning the demon' and calls the consequences worse than what nuclear weapons are capable of. There are few optimists in the rank of thoughtful people. However, there is a small contingent of experts that can be thought of as being pragmatic about how AI will change and evolve in the future. Two of these include Sam Altman and Michio Kaku,[7] who believe that AI technologies can be controlled through 'OpenAI' and effective regulation and that people will always be able to stay ahead of machines and robots (see next section about the rise of IA).

The Doubters

The doubters do not believe that General AI will ever be possible or that it will ever become a threat to humanity. Hubert Dreyfus,[8] this scenario's major proponent, argued that human intelligence and expertise cannot be replicated and captured by machines using formal rules. He believed that AI is a fad promoted by the computer industry. Dreyfus pointed to the many AI predictions that did not materialize, such as those made by Herbert A. Simon, another optimist, in 1958 that 'a computer would be the world's chess champion within 10 years' and those made in 1965 that 'machines will be capable within 20 years of doing any work a man can do'.[9] Dreyfus claimed that Simon's optimism was totally unwarranted, as it was founded on the false assumption that our intelligence works like an information-processing machine while in reality our brain works in a completely different way than a computer. There is an increasing number of recent doubters, including Pearl and Mackenzie and Larson.[10]

Intelligence Augmentation (IA)

AI has proven to be excellent in games, easily beating world champions, as well as in image, speech and text recognition where it is on a par with and often surpasses humans. However, it underperforms compared to humans in practically all other tasks.

7 M. Peckham, 'What 7 of the World's Smartest People Think about Artificial Intelligence', *Time.com* (2016, May 5), available at http://time.com/4278790/smart-people-ai/.

8 H. Dreyfus, *What Computers Still Can't Do: A Critique of Artificial Reason* (Cambridge, MA: MIT Press 1972).

9 D. Crevier, *AI: The Tumultuous History of the Search for Artificial Intelligence* (New York: Basic Books, 1993).

10 J. Pearl and D. Mackenzie, (2018) *The Book of Why: The New Science of Cause and Effect* (New York: Basic Books, 2018); E. Larson, 'Questioning the Hype About Artificial Intelligence', *The Atlantic* (2015, May 14), available at https://www.theatlantic.com/technology/archive/2015/05/the-humanists-paradox/391622/Larson 2015.

It cannot make causal connections, does not understand meaning and cannot acquire common sense. Additionally, it cannot match the competences of a one-year-old and it will probably take decades before it will be able to do so. People on the other hand are creative, capable of strategic thinking and having entrepreneurial ideas, while they are not good with computations, remembering many facts, while getting easily bored from performing repetitive tasks, which is an area where computers excel. There is, therefore, a complementarity between humans and computers/AI. Equally as important, we humans possess a tremendous ability to adapt to environmental changes and AI is another challenge we face. We will therefore need to exploit it successfully to our own benefit. It is naïve then to believe that in the face of a great danger, we humans will do nothing to overcome such a challenge and we will allow this technology to reach our own intelligence and eventually dominate us. There is no reason that our own intelligence cannot also improve to keep up and eventually surpass that of machines, through a process that has been labeled Intelligence Augmentation (IA).

'Instead of just fretting about how robots and AI will eliminate jobs, we should explore new ways for humans and machines to collaborate,' says Daniela Rus,[11] the director of MIT's Computer Science and Artificial Intelligence Lab. The value of IA is easily seen in games like chess where the 'centaur' concept – half human, half computer – is being advanced. In a recent chess game, a group of four Englishmen managed to draw with mighty AlphaZero for the first time.[12] In such play, the complementarity between humans and computer is exploited with humans being in charge of strategy and the computer responsible for the tactics as well as verifying the correctness of possible moves. By harnessing the speed and memory of computers, there is nothing to prevent us from being able to compete with the most advanced chess/Go program, and my prediction is that this will happen in the not too distant future. The centaur idea is supported by Moravec's Paradox, which states that it is comparatively easy to make computers exhibit adult-level performance on intelligence tests or playing checkers, and difficult or impossible to give them the skills of a one-year-old when it comes to perception and mobility. The same is true for tactics, where computers possess a great advantage and strategy, where humans excel. IA can naturally amplify human intelligence by exploiting AI's considerable tactical benefits and people's superior strategic capabilities.

Future developments would focus on finding innovative ways to turn AI into

11 W. Knight, 'More Evidence That Humans and Machines Are Better When They Team Up', *MIT Technology Review* (2017, November 8), 1, available at https://www. technologyreview.com/s/609331/more-evidence-that-humans-and-machines-are-better-when-they-team-up/.

12 L. Watson, 'Englishmen held mighty AlphaZero to draw', *Chessable* (2018, December 10), available at https://www.chessable.com/blog/2018/12/10/alphazero-google-david-howell-draw/.

IA, working toward a symbiosis of humans and machines rather than an adversarial face-off in a lose/lose competition. This symbiosis will reduce the perceived danger that one day AI will end human supremacy, degrading our roles and importance to second-rate citizens. There is little reason to doubt that humans will learn to tap into the power of computers to augment their own intelligence and in doing so, keep up with the increasing capabilities of computers. The chances are that they will achieve much more, exceeding AI and always remaining a step ahead of it. There are endless possibilities to augment human intelligence.[13] Initially voice commands will make the keyboard obsolete while computer projection to any surface will do the same to computer screens. This would mean that computer interactions would be possible without bulky equipment, even using a digital watch to communicate with computers. The next step would be direct brain-to-computer links allowing us unlimited computer power and to search for data. Such power will provide us with the ability to become smarter than any human without a brain-computer interface (BCI). Some say that voice commands are already being used by blind people to use computers, while brain to computer links are being used by paraplegics to allow them to move their hands and walk. So the future may already be here, and what would be required is to be able to implement it in a wide, affordable way. Futurists envisioned three required steps for this to become a reality available to everyone:[14]

- Create a direct neural link to all available information stored in the computer – the equivalent of a 'telepathic' Google – that would tell us whatever we would want to know but would also process this information at lightning speed.
- Build a brain-computer interface (BCI) that would augment our visual cortex, the best-understood part of our brain.
- Genuinely augment our prefrontal cortex, enhancing the way we combine perceptual data into concepts, thus achieving hitherto impossible intellectual feats.

This vision of intelligence augmentation may seem difficult at present but could become a reality in the next 20 to 50 years, drastically amplifying our intelligence, as we will be able to interact directly with computers, exploiting their huge memory capacities and their lighting speed processing power. If such an advancement seems like science fiction, consider to have told someone in the middle of the nineteenth century, a time when someone holding a red flag had to run before cars to warn pedestrians of their arrival, that 170 years later there would be self-driving cars. There would have

13 S. Makridakis, 'Forecasting the Impact of Artificial Intelligence, Part 5: The Emerging and Long-Term Future', *Foresight: the International Journal of Applied Forecasting,* No. 51 (2018).

14 See G. Dvorsky, 'Humans with Amplified Intelligence could be More Powerful than AI', *Futurism* (2013, May 22). Available at https://io9.gizmodo.com/humans-with-amplified-intelligence-could-be-more-powerf-509309984.

been no way for anyone to believe you. Cars driving on their own in the middle of a busy city around other cars, pedestrians, bicycles and other obstacles were beyond the imagination of even the most wildly imaginative person. What is clear is that we always underestimate long-term technological progress by our tendency to extrapolate in a linear fashion. The three most disruptive technologies of our century, computers, the Internet and email, as well as mobile phones, were not predicted even 30 years before their widespread adoption, while now everyone wonders how it had been possible to live without, say, email or smartphones. Thus, BCI on a grand scale may indeed seem like science fiction today, but so were the most disruptive innovations of the past. The interesting thing we cannot predict is the timing and the speed that BCI will become a mainstream application and its specific implications for our lives, work environment, education and our societies in general. Will BCI provide an advantage to developed countries that would be able to exploit its advantages sooner than to poorer ones? Will the rich obtain an advantage over the middle class and the poor? These issues are covered in the next section.

Cyprus: In the Age of Artificial Intelligence (AI) and Intelligence Augmentation (IA)

There is a global competition among large countries like the USA, China, Russia, UK and France to win the AI race.[15] The stakes are high, both in the economic sphere and in the military domain. 'Whoever becomes the leader in AI will become the ruler of the world', Russian President Vladimir Putin told a group of students last fall.[16] However, becoming an AI leader requires substantial investments and a scientific infrastructure capable of successful research and turning it into successful applications. Clearly, sufficient funding, adequately trained scientists and appropriate infrastructures will become critical components for succeeding in the global AI race. For the time being, China is getting ahead in the game, having established the goal of becoming the world's AI frontrunner by 2030 and probably leaving other countries behind. Its great size and lack of restrictions for using personal, confidential data to advance AI will be a positive factor, as will be its willingness to finance AI research both through state funds and with government-controlled companies. But, other countries are not willing to be left behind, with the USA unwilling to lose its technological advantage and Russia spending huge sums to gain superiority in military AI applications. In addition to AI, there is less talk about IA, but still, the implications of useful applications in this area can be equally important, providing a niche market for smaller countries to develop an expertise and to not be left out of the AI/IA race.

Cyprus' economic model is based almost exclusively on services, much less on

15 Radu, 2018.

16 Ibid.

light manufacturing and practically nil on agriculture. As such, it will not be affected as much as some other countries in losing significant amounts of manufacturing/agricultural jobs to AI automation. The challenge would be to upgrade its service sector to keep ahead of new AI developments and to improve its competitiveness through specialized, niche AI/IA applications. Doing so would not require huge funding as Cyprus would need to concentrate on tourism and a few other sectors, like auditing, education and perhaps medicine, where it can specialize and be able to stay competitive. This would not mean that a good number of service jobs (bookkeepers, professional service firms, bank tellers, hotel clerks and travel agents) will not be commoditized by specialized AI applications in the next two to ten years, but, hopefully, new jobs will be created to replace most of the ones that are lost.[17]

Below, some more specific suggestions are discussed in the two areas that Cyprus could concentrate its AI/IA efforts.

Research Spending on AI/IA

The EU, fully aware of the need to stay ahead in AI, has already announced a great number of AI projects to be funded, while more are being planned. It would therefore be possible for Cyprus to stay ahead by applying for funds to develop such projects in collaboration with scientists in other EU countries and, therefore, achieving expertise without having to spend huge amounts of internal funds to do so. Critical for pursuing EU funds would be political support and a concerted effort to disseminate information about the importance of AI and the need for Cyprus not to be left behind. Maybe one or two of the several, excellent, publically available reports[18] about the future of AI and its importance/implications could be adopted and disseminated to interested parties in Cyprus, providing background information and making decision- and policy-makers aware of the situation and its importance for the future wellbeing of Cyprus. A second step could be to start a discussion of what would need to be done and how to start formulating an AI strategy on how Cyprus can achieve excellence, or at least not be left behind in this area. Part of the strategy could be choosing some niche areas to concentrate its efforts where, as was mentioned, there is a lesser need for huge funding in order to be developed. What is clear, however, is that in addition to many jobs being replaced by AI, there will be new, highly paid ones created to fill AI and IA positions to implement the new technologies.

17 K. Coats, 'Let The Robots Take Over: How The Future Of AI Will Create More Jobs', *Forbes* (2018, December 28), available at https://www.forbes.com/sites/forbestechcouncil/2018/12/28/let-the-robots-take-over-how-the-future-of-ai-will-create-more-jobs/#524d72ba3c6d.

18 See for example World Economic Forum, *The Future of Jobs Report* (2018), available at https://www.weforum.org/reports/the-future-of-jobs-report-2018; Coats, 'Let the Robots Take Over'.

Dedicated Academic Institutions or Specialized Academic Departments

More important than money would be the need for an adequate number of specialized scientists to be involved conducting AI/IA research, as well as open-minded managers to apply the new AI/IA developments to their firms and non-profit organizations, including government departments. In addition, it would require visionary and motivated entrepreneurs to found new startups capable of offering the needed, dedicated AI/IA services. All tasks would require education and training, as well as an expansion of the role of Cypriot universities. The challenge involved would be threefold. First, the Ministry of Education, or some other government body, must be involved in providing strategic directions and, most importantly, incentives to universities to develop expertise and courses in high-tech areas and, more specifically, in AI and IA. Second, the universities themselves must realize the need for change and adapt their curricula to include new high tech, degree programs in such areas, as well as executive courses covering new technologies and their applications. Today there is a great need for deep learning experts, AI learning and development specialties, data scientists, software engineers and specialized programmers. There is a great need to educate and train students/personnel in these areas as well as related ones like blockchain, the Internet of Things, virtual and augmented reality, and related areas. In addition, universities must also become involved with applied research to further advance AI and IA in Cyprus, specializing as was previously mentioned, in some niche areas. Finally, in addition to the state universities, private ones need to be included in the Cyprus strategy to advance AI/IA and related high techs, as they are often ahead in these fields compared to state universities.

Conclusions

Disruptive technologies are affecting firms, economies and our societies in general, and AI/IA are at the heart of this disruption. Some big countries have realized their great potential and are racing to become the leaders of such technologies, while most others understand that they must adapt so as not to be left behind. The aim of this short article was to present the challenge of AI and IA and some ideas of what Cyprus can do to be able to stay ahead of the new developments in these disruptive technologies that would greatly affect it, along with the rest of the world.

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The Challenges of AI and Blockchain on HR Recruiting Practices

Maria P. Michailidis[1]

Abstract

Blockchain, artificial intelligence (AI) and other technological innovations are affecting all aspects of our societies and causing some profound changes in human resource (HR) practices in business and non-profit organizations. Critical to these high tech advances is how they will affect employment patterns and the way companies will hire their workforce, influencing HR practices and the way they will manage their employees. This paper, after a short introduction, consists of three parts. The first discusses how blockchain and AI are affecting HR practices. The second looks at hiring practices at firms, while the third discusses employment patterns in the emerging age of high-tech super-automation. There is also a concluding section, discussing the implications of the forthcoming AI on employment (or unemployment) and the inevitable income inequality that is bound to develop and affect our societies.

Keywords: blockchain technology, human resource management, artificial intelligence (AI), disruptive innovation

Introduction

Blockchain and artificial intelligence (AI) technologies are bringing some profound changes to the way human resource (HR) practices are performed in business organizations.[2] Critical advances in these areas have caused overwhelming transformations of our societies and have begun to affect employment patterns and the way companies hire and manage their workforce, influencing HR practices to a great extent. This paper, after a short introduction, consists of three parts. The first

1 Maria Michaelides is Professor, School of Business, Department of Management and MIS, University of Nicosia.

2 G. Wisskirchen, B. T. Biacabe, U. Bormann, A. Muntz, G. Niehaus, G. Jiménez Soler and B. von Brauchitsch, 'Artificial Intelligence and Robotics and Their Impact on the Workplace', *IBA Global Employment Institute* (2017), available at https://www.ibanet.org/Document/Default.aspx?DocumentUid=c06aa1a3-d355-4866-beda-9a3a8779ba6eR. 'The Impact of Artificial Intelligence on Human Resources: An age of Experimentation'. *Kerridge and Partners.com.* (2017), available at https://www.kerridgepartners.com/blog/impact-artificial-intelligence-human-resources-age-experimentationE. 'Top 5 ways to use artificial intelligence (AI) in human resources', BigDataMadeSimple (2017), available at http://bigdata-madesimple.com/5-ways-to-use-artificial-intelligence-ai-in-human-resources/.

discusses how blockchain and AI are affecting HR practices. The second looks at hiring habits, while the third discusses employment patterns in the emerging age of high-tech. There is also a conclusion discussing the implications of the forthcoming super-automation in employment (or unemployment) and the inevitable income inequality that is bound to develop and affect our societies.

There is considerable apprehension and even fear about the impact of automation on our future caused by artificial intelligence, blockchain and related technologies. Recent research was published at the end of 2018 by Forrester,[3] one of the most influential research and advisory firms in the world, entitled Predictions 2019: Automation and Predictions 2019: Artificial Intelligence. It states that, in 2019, an estimated ten percent of jobs in the USA will be replaced by automation; however, new technologies will trigger the creation of roughly three percent of today's jobs. Forrester also estimated that over 40% of companies will employ robots and machines to substitute humans.[4] And although the effects of automation on employment are debatable, caution is recommended for the many different challenges that will be created as the unemployed may have a hard time training to perform their new 'digital' jobs. Forrester (2018) highlights issues of the 'quality', 'explainability' and 'transparency' of decision-making. These issues will not only encourage companies to invest in information architecture but to also take into consideration the directives of the European Union's General Data Protection Regulation (GDPR), and Forrester states that 'explanations of the decisions reached' is a right for those affected that must be enforced, requiring organizations to invest in transparency.

Although overall the effects of new technologies on unemployment cannot be known, there is little doubt that the road toward digitalized and automated workplaces will not be without challenges and difficulties. Nonetheless, in terms of the recruitment processes of HR, Forrester forecasts that 'in 2019, AI-driven recruitment will become widespread, leading to unprecedented job match success rates'.[5]

Even so, Forrester (2016) predicted that by 2025, a net 7% of jobs (close to 9 million jobs in the United States alone) will be lost to robots and other intelligent machines. What is not clear is how many new jobs will be created and whether or not such jobs (e.g., robot specialists, data scientists, deep learning experts, monitoring specialists and

3 J. P. Gownder, C. Le Clair, B. Martorell, C. Gardner, G. O'Donnell, C. Condo, J. Thai, and D. Lynch, *Predictions 2019: Automation* (Cambridge, MA: Forrester, 2018), available at https://www.forrester.com/report/Predictions+2019+Automation/-/E-RES144739#; M. Goetz, B. Purcell, C. Le Clair, D. Lo Guidice, M. Gualtieri, S. Sridharan, J. P. Gownder, E. Hoberman, *Predictions 2019*: *Artificial Intelligence* (Cambridge, MA: Forrster, 2018), available at https://www.forrester.com/report/Predictions+2019+Artificial+Intelligence/-/E-RES144617.

4 Gownder et al., *Predictions 2019: Automation.*

5 Ibid.

content curators) will compensate for the ones that are lost. As Forrester forecasts, over eight million new jobs will be created in the USA by 2025 that could be needed to satisfy the demand for hiring in new technologies. However, this means a small decline in new jobs created in the US, but it could be much larger in less developed countries that are unlikely to be able to finance and implement new technologies. This would also translate into jobs lost to automation at the same time that new ones are not created in new technologies, as it would happen in advanced countries. Furthermore, the World Economic Forum reports that 'double the number of jobs could be created as lost through the application of new technologies'.[6] However, for these new kinds of professions to form, it will entail rigorous and collaborative efforts by employers, policy-makers and governments. Additionally, according to Gratton,[7] these new jobs are expected to require different types of skills, such as people-centred ones. Besides, companies and HR teams need to take into account the time lag between these new jobs that are currently being created and the ones that will be lost. Consequently, HR teams should be intensely involved in 're-skilling' and 'up-skilling' employees.[8]

Heric reports about HR's new digital mandates, referring to the Bain survey, where three-quarters of the 500 HR executives participated.[9] They stated that current technologies have not yet achieved the business results they require and that their performance was far from optimal. The main problems mentioned concentrated around the large number of digital tools that exist, which are dispersed, unintegrated, and unconnected. Furthermore, according to the same report, some of these tools have omitted critical functions and have interfaces that are not easy to understand. Thus, HR teams are now being challenged with integrating the new digital technologies while being concerned with how to deal with the complexity that is created by adopting them, as well as integrating them into the existing ones.

How Blockchain and AI Are Affecting HR Practices

Blockchain is revolutionizing the way HR practices are performed, as its decentralized nature automates the verification of information, resulting in more accurate approaches to hiring employees. Employment history can now be placed on public blockchain

6 World Economic Forum (2018)

7 L. Gratton, 'Davos 2018: the imperatives for job reskilling', *FoWLAB Blog* (2018, January), available at https://lyndagrattonfutureofwork.typepad.com/lynda-gratton-future-of-work/2018/01/davos-2018-the-imperatives-for-job-reskilling-.html.

8 P. Illanes, S. Lund, M. Mourshed, S. Rutherford, M. Tyreman, 'Retraining and reskilling workers in the age of automation', *McKinsey Global Institute* (2018), available at https://www.mckinsey.com/featured-insights/future-of-work/retraining-and-reskilling-workers-in-the-age-of-automation.

9 M. Heric, 'HR new digital mandate', Bain & Company (2018, October 10), available at https://www.bain.com/insights/hrs-new-digital-mandate.

containing candidates' successes and failures, storing detailed performance indicators such as transfers, promotions, layoffs, and making employment management a different game for the HR teams. Thus, automated validations of CVs, records of contracts and cryptocurrency utilization for international payrolls have all disrupted the way of doing things in HR in a top-notch technologically advanced HR era. According to an article published in Future of Work,[10] blockchain is likely to transform HR practices in several ways. Examples are given of Bitwage and Chronobank, which facilitate employee payroll since payments take a shorter and faster time to process without intermediaries such as banks. Bitwage, which is used for international employee payments, combines mobile, cloud and blockchain technology. With the use of bitcoin, employees are paid in their local currency and Bitwage facilitates the currency conversion. Additionally, Chronobank, facilitates payments of employees via the use of blockchain technology with no banking institutions involved. Furthermore, in the same article in Future of Work,[11] Smart Contracts are discussed as well as educational and career record verification systems. Examples of these are platforms such as APII and TechnoJobs.[12] APII is equipped with an 'Intelligent Profile', thus carrying an employee's information such as educational background, vocational training, work history and other career details, and it is also capable of facilitating the candidates to maintain their records by updating them. APII is assisting TechnoJobs (jobsite) in becoming the world's first jobsite to offer employers CVs verified by blockchain. Likewise, Jobeum, another blockchain-based recruitment platform, is creating a 'LinkedIn-like recruitment tool' using this type of technology, whereas HireMatch (an employment company specializing in talent acquisition), which is the first to offer decentralized blockchain-based HR solutions for recruitment purposes, finds talent, interviews and also hires candidates, thus significantly cutting costs of its users.

As noted earlier, the streamlining of routine HR tasks, such as contracts and payroll, is a way that blockchain improves HR work. This disruptive nature of blockchain will be more effective and less expensive in the long run. Several factors contribute in two ways to the upgraded value of this technology when used in HR practices: first, by how an employee's employment history is being kept; and second, by how information about current or prospective employees' qualifications can be obtained and maintained. These two advantages come from the inability to modify blockchain

10 K. Hartog, 'How blockchain could transform the core of HR', *Welcome to the Jungle* [website] (Paris: Recruiters, 2018, May 25), available at https://recruiters.welcometothejungle.co/en/articles/how-blockchain-could-transform-the-core-of-hr.

11 Ibid.

12 HRT News Desk, 'Oracle Considers Using Blockchain to Boost Employee Productivity'. *HR Technologist*.com. (2017, May 4), available at https://www.hrtechnologist.com/news/hr-analytics/oracle-considers-using-blockchain-to-boost-employee-productivity/.

employment records and the fact that all employees' degrees and job qualifications can be obtained directly from the Internet, using the right blockchain key provided by the employee. Moreover, such trustworthy information can be obtained no matter where an employee has obtained his/her educational degrees and/or the country/region of his/her employment. This means that educational and employment qualifications can be trusted, allowing objective comparisons between applicants/employees. Furthermore, these new technologies can increase employee efficiency and effectiveness by being able to hire the most appropriate ones for the specific job. Similarly, hiring people by using advanced AI technologies can contribute to the development of employees who are highly devoted to their job and are strongly connected to their employer. This is a result of the 'best-fit' and 'non-fit' candidates that AI is able to select from, since best-fit candidates will contribute and develop, and feel connected and engaged with their place of work. Possessing best-fit characteristics will ultimately enhance the candidates' drive for innovation, leading their company forward by focusing on continued growth, and in the long run they will maintain meaningful and lasting relationships with their firm. Therefore, AI can help recruiters identify candidates with inefficiencies, appraise potential, and facilitate hiring the best-fit minds at optimized costs. Forrester forecasts that in 2019, AI-driven recruitment will become widespread, leading to unprecedented job match success rates.[13]

Hence, the impact of AI on HR practices is 'wide ranging', with applications and virtual application solutions all powered by AI, which have automated numerous HR processes, have helped improve decision-making, and have strengthened employee-employer relationships. Companies, such as IKEA, L'Oreal, Unilever and Amazon, that have used AI-led hiring systems like Robot Vera, chatbot called Mya, HireVue Assessments, have all helped in their specialized ways to enhance their candidate sourcing strategies from diverse hires to eliminating unqualified candidates, to evaluating potential recruits, to collecting data from body language and facial expressions.[14] Furthermore, AI advocates believe that these types of intelligence can enhance employee selection by also using techniques that are intelligent enough to read 'microexpressions' and to perform 'vocal analysis', ways to single out traits that are equivalent to those traits that are processed by existing high-performing employees.[15]

13 Gownder et al., *Predictions 2019: Automation.*

14 C. BasuMallick, '3 B2C Companies Using AI to Transform their Candidate Sourcing Strategies'. *HR Technologist* (2019, January 10), available at https://www.hrtechnologist.com/articles/recruitment-onboarding/3-companies-using-ai-to-transform-their-candidate-sourcing-strategies/.

15 S. Buranyi, '"Dehumanising, impenetrable, frustrating": the grim reality of job hunting in the age of AI'. *The Guardian* (2018, March 4), available at https://www.theguardian.com/inequality/2018/mar/04/dehumanising-impenetrable-frustratingthe-grim-reality-of-job-hunting-in-the-age-of-aiBuranyi.

Nonetheless, the IT revolution discussed in this paper needs to harmonize its capabilities and features with human judgement, understanding and rationality, in order to stay realistic and be useful.

Hiring Practices in the Social Media Era

Attracting sufficient numbers of the right talent that have the most appropriate credentials in a timely manner, and then hiring the right person from that pool is one of the most crucial HR tasks. This is the essence of recruitment. Such recruitment, as discussed earlier in this paper, is being reinvented and reshaped by AI technologies. Where AI is being used for numerous aspects of HR, for instance in identifying job candidates and acquiring talent, interviewing and testing, blockchain is being used in sourcing verified candidate profiles, hiring pre-verified contract workers, creating smart (tamper-proof) contracts, and in securing faster payments. Therefore, this increased emphasis on automation is dramatically altering the way companies think about business processes in general, for example scheduling, data entry, resource management, IT support, and HR processes, such as selecting and recruiting talent, which certainly all translate to business growth. In examining the 'automation of things', we cannot help but look at how HR processes, specifically recruitment, were performed in the past. People in charge have been recruiting employees ever since there was a need for additional help. The only things that have changed between then and now is the speed and accuracy, which are the main reasons to invest in automation as suggested by the Bain survey.[16] When did it all change and what shall be expected in the future is actually what excites and challenges HR teams.

Recruitment was not as easy, as fast and as accurate as it is now. It is a fact that successful recruiting is dependent upon finding the right candidate, the best 'fit' among the right people, at the right time. For this approach to work, the best possible job candidates must be identified quickly and efficiently, irrespective of where they are in the world. Thus, a Curriculum Vitae can be delivered to the prospective employer in a matter of seconds today, and it can also be screened and verified very quickly; however, not too long ago, it had to be printed out and sent by post with the hope that it would arrive before the deadline. Candidates used to be invited to the HR/Personnel manager's office for a face-to-face recruitment interview. Candidates were screened for their 'job fit' by in-person communication and taking tests that were administered by individuals in HR who could possibly be biased and hold stereotypes. Once hired, all applicant tracking systems and new employee records were manually updated, tasks that took time to perform, and were vulnerable to occasional human errors.

16 Heric, 'HR new digital mandate'.

According to a report by PwC[17] on AI in HR and its reference research conducted on the use of AI in international companies, 40 percent of HR functions of international companies are currently using AI applications, making the work of HR more efficient and effective. One of these applications is Robotic Process Automation (RPA technology) by Maruti Tech Labs,[18] which uses AI to automate business processes to human-like efficacy. RPA utilizes bots to replicate time consuming tasks and human activities, allowing users to organize bots to communicate with other business systems, to collect data and to also give prompt responses. Thus, HR functions have been transformed via automation to become faster and shorter. Additionally, RPA uses marketing recruitment campaigns which reliably communicate and engage with passive and active candidates and prospective employees in an automated way, by using job postings and strong talent hunting methods. Furthermore, RPAs support the HR team and the candidates with interview scheduling. When organizations utilize a video interviewing platform, automated emails with instructions on how to complete the video interview are sent by bots. Then the HR team can review interviews and select the 'right' candidates for the continuation of the recruitment process.

Today's recruiting is mostly done through social networking, which has in fact become business networking. Many job openings can be found on Facebook and LinkedIn, which has over 450 million registered members, with thousands of new job offers made every single day. Now businesses 'hunt' people's social profiles in order to recruit. Traditional face-to-face communication has been transformed to online, virtual conference calls and recruitment interviews through the likes of Skype, which have revolutionized the way people interact by abolishing physical space and conserving time and speed. All these indicate that, in the future, it will be even easier and faster to recruit employees, and similarly to find a job. What remains certain is that the businesses that adapt to the new era of digitalization and technology will be the ones that have a competitive advantage.

Employment Needs and Patterns

Currently, HR is witnessing a dramatic change in work patterns. Today's employees are not ready to settle into a job forever. Instead, they are eager for growth-oriented roles, can move to new opportunities within two to five years, and are continually looking for 'something better'. Remote workers, freelance operatives, and other forms of consultative workers are redoing recruitment for good. HR is now starting

17 PricewaterhouseCoopers, 'Artificial Intelligence in HR: a No-brainer', *PwC* (2017), available at https://www.pwc.at/de/publikationen/verschiedenes/artificial-intelligence-in-hr-a-no-brainer.pdf.

18 Maruti Tech Labs, 'What is Robotic Process Automation? How is RPA Different from Traditional Automation?', *Marutitech.com* (2019), available at https://www.marutitech.com/robotic-process-automation-vs-traditional-automation.

to search for talent among the Generation Z prospective employees. These are the new job candidates characterized as the 'Digital', the 'Independent', the 'Unafraid', the 'Global', the cohort that is also known as iGeneration (iGen), Gen Tech, Gen Wii, Net Gen, Digital Natives and Plurals. Certainly, HR is moving to a cognitive era using AI, blockchain, augmented reality, experimentation and cognitive thinking. Generation Z needs to be challenged enough to create, to innovate, and to succeed.

A study by Fitsmallbusiness.com[19] refers to the gig economy's 10 highest paid jobs, starting with Deep learning/AI, blockchain architecture, Robotics, Ethical hacking, Cryptocurrency and ending with Instagram marketing, as the jobs that are in demand today. Thus, HR technology has transformed the employee experience; however, blockchain technology will take this experience even further, by accelerating the rise of the gig economy. HR is testifying on the trend of from recruitment to talent acquisition, and on the urgent need to adjust from intuition to intellect via Artificial Intelligence and blockchain which are the accelerators for these major changes.

In examining blockchain and HR, Jason Cassidy, the co-founder and president of Blockchain TV, commented that "The talent recruitment industry is one of the most opportune for positive disruption via blockchain technology". Recently they partnered with HireMatch, the first vendor to offer a decentralized blockchain-based solution for recruiting purposes, using an ERC20 token called iHIREi. Blockchain has the potential to transform recruitment by managing costs, reducing the cost of finding, interviewing, and hiring new employees, removing unnecessary impediments, and creating streamlined and efficient records resistant to modification.

Blockchain's database offers a host of benefits which include: transparency, since numerous computers can host specific information simultaneously, thus anyone on the internet can access the data it holds; immutable-hack proof since the network of a blockchain exists at a place of consensus and is self-auditing. Changing even the smallest part of this blockchain would take an enormous amount of computer power to take over an entire network. Additionally, blockchain usage is key in the recruitment industry since it can be used for verification of educational background, thus fraudulent claims of education could be a thing of the past. Today several higher education institutions are creating blockchain databases for their students. The issuing of such certificates is hard to tamper with and so, very easy to validate. This tool saves time, money and effort of searching through candidates' credentials.

Blockchain can gather data and then store it. Consequently, it can track a person from one job to another, providing data on the candidate's experience and skills to recruiters and HR personnel. Other key records include length of employment of

19 H. Kanapi, '10 highest paid Gig economy jobs in 2018'. *FitSmallBusiness.com* (2018, February 22), available at https://fitsmallbusiness.com/gig-economy-jobs/.

past jobs, wages, bonuses and set goals they have achieved for former employers. Blockchains can contain specific computer protocols to control the distribution of digital contracts. All these features can influence benefits, wages, retirement packages and bonuses. At the same time, there must be some safeguards of how the data is obtained to avoid negative consequences of infringing on one's privacy.[20]

Conclusions

The impact of artificial intelligence and blockchain adoption on business and HR practices, particularly the employment recruiting industry, is clear. As both evolve, their value will only grow as HR professionals find more ways to use them in order to save money, time, and effort, while immensely improving the quality of the candidates being chosen. Today, AI is helping to improve the selection of a diversified pool of candidates through an algorithmic assessment platform, which can be set up to reduce biases and maximize objectivity. With the use of predictive analytics and neuroscience tools (Emotion Recognition software like Affectiva, Emotional Intelligence and Truthfulness Help), HR is assisted in the removal of human biases, conscious and unconscious bias, with the identification of emotional traits, soft skills and cognitive traits to be able to select the 'best fit' candidates. AI is increasingly becoming more valuable in automating repetitive recruiting tasks such as sourcing resumes, scheduling interviews and providing feedback. Furthermore, it can evaluate the current workforce and help the HR team to make better decisions on who to hire. CareerBuilder company, as cited by Biro,[21] developed AI technology that can create a CV or a job description in less than a minute. The CEO of CareerBuilder, Irina Novoselsky, commented that 'Our research shows that more than half of HR managers feel AI will become a regular part of HR within five years', and also 'What is exciting is that we're just at the cusp of what this technology can do'.

As discussed, automation is one of the most popular emerging technologies currently being deployed in business that make it possible to enhance the human experience for both the organization and the employment candidate. Technology, especially AI and blockchain, are certainly transforming the human resource task. Although it appears expensive, the benefits, which include saving time, far outweigh the cost. Even though it is hard to find the right-fit candidate, the HR teams' targets on quality and efficiency are not about sacrificing meaningful relationships and

20 M. Cerrone, 'The Evolution of the Background Verification Industry In the Gig Era'. *HRTechnologist* (2018, October 26), available at https://www.hrtechnologist.com/articles/background-verification/the-evolution-of-the-verification-industry-in-the-age-of-the-gigworker/?utm_source=editors_pick.

21 M. M. Biro, 'Five Ways Technology is Changing the Face of HR'. *Talent Culture.com* (2018, December 11), available at https://talentculture.com/5-ways-technology-is-changing-the-face-of-hr/.

communication, but having the right balance aiming at the best possible outcome. Over time, both blockchain and AI will disrupt recruitment in its entirety. HR professionals will be able to leverage these tools to make hiring humans an agent for both individual and organizational growth and productivity. These radical changes that we are all witnessing in technology, with their potentialities and complexities, which result in innovation, are indeed creating their own challenges. There will be concerns to have greater security and higher levels of transparency, dependability and quality, as well as emotional capacity and a stronger moral code. Human beings will be behind these transformations, taking up opportunities and revolutionizing threats.

In closing, I express my own concerns about the feelings and moral codes of any form of technology including AI. I wonder when the day will come when we can answer Williams' question, 'How can you tell the difference between speaking to some form of artificial intelligence and an actual human being?'[22] His response was, 'Ask them how they feel about dying'. Similarly, O'Shea stated that 'tech has no moral code'.[23] To Williams' and O' Sheas' comments, I will add my own: 'Ask AI robots how they feel about starving children, catastrophes or wars'. Will the day come when AI understands these concepts?

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22 R. Williams, 'How dying offers us a chance to live the fullest life', *New Statesman.com* (2018, April), available at https://www.newstatesman.com/culture/books/2018/04/how-dying-offers-uschance-live-fullest-life.

23 L. O'Shea 'Tech has no moral code. It is everyone's job now to fight for one', *The Guardian* (2018, April 25), available at https://www.theguardian.com/commentisfree/2018/apr/25/tech-no-moralcode-racist-ads-cambridge-analytica-technology-ethical-deficit.

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A Decentralized Application for Logistics: Using Blockchain in Real-World Applications

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Abstract

A prototypical smart contract (wrapped as a decentralized application) is presented for investigating the potential benefits for applying Blockchain for Logistics. The decentralized application proposed exposes the various design challenges that programmers are likely to face when realizing the implementation of the application. The proposed methodology utilises the implementation of a dedicated smart contract that was developed based on a special-purpose structure for satisfying the requirements of the use-case. The evaluation was based on the execution of each of the functions measuring the gas costs and execution time. The prototype design was deployed and evaluated on a real-world Blockchain framework and can be considered as a first solution to how the Blockchain technology can be utilized within Logistics to overcome any barriers that may exist between professionals. In this paper we present a real implementation of a smart contract for the Logistics industry. The proposed dApp provides a live example of how Blockchain can be utilized within Logistics as it enables users to send and track products.

Keywords: decentralized applications, blockchain, smart contracts, decentralized logistics

Introduction

A transformation shift is inevitable, considering Cyprus' vision to invest in the digital era. In reality, the technological advances and digitalisation facilities are now an internal part of our daily activities and processes, becoming a part of our society gradually, and constantly influencing the economy, industry, education, and science. Considering the fast growing international competition fostered by the complexity of the manufacturing industry, increasing market volatility, and more efficient product life cycles, Industry 4.0 (namely the Fourth Industrial Revolution) is transforming and digitising the future of many business processes.[4] Under the Industry 4.0 vision,

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4 D. Spath, O. Ganschar, S. Gerlach, M. Hämmerle, T. Krause, and S. Schlund, *Produktionsarbeit der*

emerging and disruptive technologies, such as IoT (Internet of Things), Distributed Ledger Technologies (including blockchains), and cyber-physical systems (CPS) opened up a range of potentials and opportunities. Taking into account the increase in the presence of shipping and logistics companies in Cyprus,[5] the emerging blockchain technology can be used to leverage Cyprus' position to become an exemplar to the supply-chain and logistics industry in the region of digital technologies and other related services.

Transparency is one of the major characteristics of blockchains, where actors are given access to a single point of truth, assessing the same data publicly, without the need for any intermediaries. In supply chain and logistics, transparency is a major challenge due to the various networks of actors involved, often in several key locations with concealed products. This poses a challenge to monitoring the transportation and provenance processes at various levels.[6] The lack of transparency often raises questions on matters such as the lack of provenance information, environmental footprint, and trust, while the information is stored in private silos and cannot be obtained. Blockhains can provide an alternative solution while at the same time removing intermediaries and providing self-verifiable data for shipment tracking. For example, a blockchain-enabled system can be used to record data (e.g., location, timestamp) from IoT devices that are attached to various products as they move through a supply chain or even as they move from production to a consumer. Such data are exposed publicly and can be used for self-verification and as proof-of-delivery, especially for shipment containers. As a result, shipment delays are expected to be minimized since it would be easier to predict what times products would be delivered.[7]

Firstly introduced in 2008, blockchain is considered to be one of the top technological advances of the 21st century.[8] Blockchain is a distributed and immutable public ledger, which enables people to perform transactions in a secure but transparent way over a peer-to-peer (p2p) network.[9] As the network grows, more transactions are recorded on the ledger, forming a chain of blocks, namely blockchain. Each block consists of a series of transactions and each new block generated is linked with the

Zukunft-Industrie 4.0 (Stuttgart: Fraunhofer Verlag, 2013).

5 Cyprus Profile, 'Steering into Growth', *Cyprusprofile.com* (2018, September), available at https://www.cyprusprofile.com/en/sectors/maritime-and-shipping/.

6 J. Baker and J. Steiner, 'Provenance blockchain: the solution for transparency in product', *Provenance.org* (2015, November 21), availabe at https://www.provenance.org/whitepaper..

7 D. Miller, 'Blockchain and the internet of things in the industrial sector'. *IT Professional,* Vol. 20, No. 3 (2018).

8 M. Swan, *Blockchain: Blueprint for a new economy*, (Sebastopol, CA: O'Reilly Media, 2015).

9 A. Brandstadt, V. B. Le and J. Spinrad, *Graph Classes: A Survey* (Philadelphia: Society for Industrial and Applied Mathematics, 1999).

previous block so that every transaction executed can be traced.

Bitcoin, the world's first cryptocurrency, is considered to be the first blockchain application ever made. There were many attempts in the past to develop a digital currency, but all of them failed as they could not solve the double spending problem without the requirement of a trusted third party.[10] Bitcoin was the first application that managed to deal with this problem using a p2p network: once a transaction is confirmed it is impossible to double spend it. Nowadays, there are hundreds of blockchain frameworks that used and evolved the Bitcoin concept. One of them is the Ethereum blockchain, which was introduced in 2015.[11] Ethereum was the first blockchain framework that allowed users to deploy smart contracts, enabling the execution of programmable code on the blockchain. On Ethereum, every transaction that changes the state of a smart contract costs a small fee, known as the *gas*. In brief, gas represents the unit of measurement for the computational tasks that are required on a specific smart contract, and it is the unit that sustains the Ethereum ecosystem, since this fee is rewarded to the nodes that support the network (aka the *miners*). This new dimension provided the opportunity for developers to design and implement the so-called decentralized applications (dApps) for any purpose.[12]

This article presents a dApp for the logistics industry implemented on the Ethereum network. According to Badzar,[13] the reduction of transaction costs, the easier execution of transactions, the exclusion of a central authority, the open access to information regarding the company's activities, and the ability to evaluate the product or supplier before deciding are just some of the factors that illustrate the potential benefits of blockchain as an advance within logistics. The proposed dApp provides a live example of how blockchain can be utilized within logistics as it allows users to send products and track them until they reach a delivery location. A unique element of the proposal is that any item can be traced during its whole life cycle; once a product is no longer in use and it is disposed, it can still be traced until it is recycled or it decomposes. All transactions are recorded on the blockchain and are publicly

10 S. Nakamoto, 'Bitcoin: A peer-to-peer electronic cash system', *Bitcoin.org.* (2008), available at http://bitcoin.org/bitcoin.pdf.

11 V. Buterin, 'A next-generation smart contract and decentralized application platform'. white paper *Ethereum.org* (2014), available at https://www.weusecoins.com/assets/pdf/library/Ethereum_white_paper-a_next_generation_smart_contract_and_decentralized_application_platform-vitalik-buterin.pdf.

12 G. Suryanarayana and R. N. Taylor, 'A survey of trust management and resource discovery technologies in peer-to-peer applications' (Technical report, UC Irvine, 2004).

13 A. Badzar, 'Blockchain for securing sustainable transport contracts and supply chain transparency-an explorative study of blockchain technology in logistics', Master's thesis, Lund University, Department of Service Management and Service Studies (2016), available at http://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=8880383&fileOId=8880390.

available for ensuring transparency.

The remainder of this paper is structured as follows. Section 2 provides an overview of the related work with blockchain ecosystems and logistics, while Section 3 outlines important blockchain technological terms needed for our work. Section 4 summarizes the proposed methodology, and Section 5 presents experimental results. Finally, Section 6 concludes the paper.

Blockchain in Logistics

Even though there are various studies that propose designs of a blockchain application for logistics, very few of them are actually implemented, deployed, and tested on the actual blockchain network. Most of the studies present the vision/concept on how blockchain can actually help the logistics industry and its operations, but they lack providing any experimental results or design consideration based on the gas consumption.

Tian[14] first studied the use of radio-frequency identification (RFID) and blockchain technology, and then analyzed the advantages and disadvantages of the proposed approach in building an agrifood supply chain system. The study demonstrates the development process of the proposed system and concludes that any traceable trusted information in the agrifood supply chain would effectively guarantee food safety.

Hacklius and Petersen[15] conducted a web survey in which they asked logistics professionals for their opinion on case studies, obstacles, catalysts, and other general projections of blockchain in logistics and supply chain management. The outcomes of this survey demonstrated that most of the participants are fairly positive about blockchain and are aware of the benefits it can offer. However, factors such as cryptocurrencies and other bad blockchain experiences have a negative impact on the participants' overall evaluation and acceptance. The authors argue that more cases must be further investigated before logistics become more enthusiastic about blockchain.

Badzar's study,[16] which was conducted on a real-world use case, explored the potential application of blockchain in the field of logistics in regard to transparency and transport contract fulfillment. The study aimed to empower consumers, suppliers and manufacturers regarding any information about the product and the activities associated with the supply chain. Findings demonstrate that the deployment of

14 F. Tian, 'An agri-food supply chain traceability system for China based on RFID & blockchain technology', in *13th International Conference on Service Systems and Service Management (ICSSSM)* (2016).

15 N. Hacklius and M. Petersen, 'Blockchain in logistics and supply chain: trick or treat?', in *Proceedings of the Hamburg International Conference of Logistics (HICL)/Digitalization in Supply Chain Management and Logistics Smart and Digital Solutions for an Industry 4.0 Environment,* eds W. Kersten, T. Blecker and C. M. Ringle (Berlin: epubli, 2017).

16 Badzar, 'Blockchain for securing sustainable transport contracts'.

blockchain in logistics can generate more awareness about the supply chain and can contribute in improving service management within companies.

Finally, Francisco and Swanson introduced the Unified Theory of Acceptance and Use of Technology to increase end-users' acceptance of blockchain applications.[17] This theory presents behavioral theory as a means to understand users' adoption of blockchain in the supply chain, and, as a result, they derived conceptual model, which is supported by various scenarios and balanced with supply chain management implications and future suggestions.

According to our findings, blockchain can actually act as an innovation within logistics. The proposed approach, which was deployed and evaluated on a real-world blockchain framework, can provide a template solution for how blockchain can be utilized within logistics to overcome any barriers that may exist among professionals.

Technological Background

Smart Contracts

Smart contracts were introduced by Nick Szabo as self-executing programs that consist of rules which include the terms of agreement between part A and part B.[18] Smart contracts are essentially lines of executable code accompanied by conditions; the latter are checked automatically and, if certain conditions are met, the code is executed and recorded on the blockchain; therein, they exist across a distributed, decentralized blockchain network. But how does a smart contract actually work? The answer is quite simple: each smart contract has its own blockchain address, so any user can call a function on the smart contract by initiating a transaction and passing the function hash code into the contract. Smart contracts allow trusted transactions to take place among various parties without the need for a central authority or a middleman. Smart contracts inherit all capabilities of blockchain, and therefore, all transactions are transparent, secure and traceable.

Decentralized Applications

Decentralized applications run on a peer-to-peer network of computers instead of a single computer, and they are designed to exist on the Internet without being controlled by any single authority. Some classic examples of dApps that are not operating on a

17 K. Francisco and D. Swanson, 'The supply chain has no clothes: technology adoption of blockchain for supply chain transparency', *Logistics*, Vol. 2, No. 1 (2018), 2, available at DOI.org/10.3390/logistics2010002.

18 N. Szabo, 'Formalizing and securing relationships on public networks'. *First Monday*, Vol. 2, No. 9 (1997, September 1), available at DOI.org/10.5210/fm.v2i9.548.

blockchain framework are BitTorrent,[19] Kazaa,[20] and Tor.[21] Blockchain provided the ability for users to trust decentralized applications and at the same time it tackled some of applications' limitations, such as the missing nodes and the virus affected software. Decentralized applications that exist on the blockchain require the deployment of a smart contract in order to function properly.

Methodology

The proposed methodology utilises blockchain technology through the functionality of a dedicated type of smart contract that was developed based on a special-purpose structure. The latter provides encryption, and hence, secured transmission of data. All transactions recorded and verified on the blockchain cannot be reversed, hacked or deleted. The main purpose of the proposed dApp is to allow users to securely send and track items on the blockchain and then share them with others. For the design of the dApp, we first used the Solidity language for the implementation and deployment of the smart contract on the Ethereum ledger, and then we utilized the Web3.js library, which is a collection of modules that contain unique functionalities for the Ethereum framework, to develop a user-friendly interface that allow users to easily interact with the smart contract. The proposed methodology was first tested on the Ropsten Test Network taking into consideration various validation scenarios and then it was executed on the Ethereum Mainnet.[22]

Smart Contract: Implementation

The proposed smart contract comprises of a series of writable and readable functions (i.e., getter/setters) that are called using their unique function hash. More specifically, each smart contract once deployed has its own blockchain address, so a user can call

19 D. Qiu and R. Srikant, 'Modeling and performance analysis of bittorrent- like peer-to-peer networks'. In *Proceedings of the ACM SIGCOMM 2004 Conference on Applications, Technologies, Architectures, and Protocols for Computer Communication, August 30 - September 3, 2004*, Portland, Oregon, USA, (New York, NY: ACM, 2004).

20 N. S. Good and A. Krekelberg, 'Usability and privacy: a study of kazaa p2p file-sharing', in *Proceedings of the SIGCHI conference on Human factors in computing systems.* (New York, NY: ACM Digital Library, 2003).

21 D. McCoy, K. S. Bauer, D. Grunwald, T. Kohno, and D. C. Sicker, 'Shining light in dark places: Understanding the Tor network', in *Privacy Enhancing Technologies, 8th International Symposium, PETS 2008, Leuven, Belgium, July 23-25, 2008, Proceedings*, eds N. Borisov and I. Goldberg (Berlin-Heidelberg: Springer, 2008).

22 Y. Hu, T. Lee, D. Chatzopoulos and P. Hui, 'Hierarchical interactions between ethereum smart contracts across testnets'. In *Proceedings of the 1st Workshop on Cryptocurrencies and Blockchains for Distributed Systems, CRYBLOCK@MobiSys 2018, Munich, Germany, June 15, 2018* (New York, NY: ACM, 2018).

a function on the smart contract by initiating a transaction and passing the function Hash code into the contract.

Writable Functions The purpose of the *sendProduct*() function (as in Listing 1) is to

```
sendProduct (string date, string details, string location,
    string final destination, address senderAddress,
    address receiverAddress)
```

Listing 1: *sendProduct*() function

pass information on the blockchain regarding the item that will be shipped from part A to part B. This transaction provides information about the item, the sender and the recipient.

```
\textbf{\textrm{sign}}(uint256 index, string location)
```

Listing 2: *sign*() function.

The *sign* function (as in Listing 2) is called to verify that the item was received at a checkpoint until its reaches its final destination.

```
\textbf{\textrm{maintenance}}(uint256 index, string details)
```

Listing 3: *maintenance*() function

The *maintenance*() function (as in Listing 3) is optional and can be used to add additional details on an item such as 'second-hand product' or 'fixes', or to track the item's history.

```
\textbf {\textrm {changeReceiver}}(uint256 index,
    address receiverAddress)
```

Listing 4: *changeReceiver*() function.

The *changeReceiver*() function (as in Listing 4) is used to change the recipient address at a checkpoint until the product reaches its final destination. This function can only be triggered if the receiver first signed that he/she had received the product.

Readable Functions The proposed implementation consists of various readable functions, including but not restricted to: (i) view the details of a sent item; (ii) track the location of an item; and (iii) track the maintenance history of an item. More functionality could be added to the core implementation based on the requirements and design logic.

Function Hashes Based on the proposed smart contract we outline below the function Hash of each function. The function Hash is used on a transaction in order to call a specific function.

```
{
"34461067": "records(uint256)",
"ed1d4870": "changeReceiver (uint256 , address)",
"5b61646c": "getAllMaintenanceItems ()",
"1f696924": "getAllRoutes ()",
"447fe289": "getParties(uint256)",
"6813b53b": "getProductDetails(uint256)",
"5786fd40": "getProductsCount()",
"b9e0db35": "locations(uint256)",
"a2c7f450": "maintenance(uint256 , string)",
"6533b77b": "maintenancemap (uint256)",
"8da5cb5b": "owner()",
"529f78a5": "send Product(string , string , string ,
    string , address , address)",
"a855418f": "sign(uint256 , string )",
"f2fde38b": "transferOwnership (address)"
}
```

Listing 5: Function Hashes of the deployed contract.

A Use-Case Example

The following use-case provides an overview of how our dApp works. John, an individual from Cyprus, is interested in sending an item to Alice, another individual living in the Netherlands. John visits a logistics company, which initiates, on his behalf, a transaction on the blockchain. As shown in Figure 1, the transaction is initiated by the logistics company in Cyprus, but as there is no direct link between Cyprus and the Netherlands the item must first travel to Italy before reaching its final destination. When a product reaches a destination, the end-user signs that she/he received the product and chooses one of the two options below:

- If the product did not yet reach the final destination (intermediary), the end-user assigns a new receiver and the procedure is repeated.
- If the product has reached the final destination, then the final recipient is called and it is required that she/he signs.

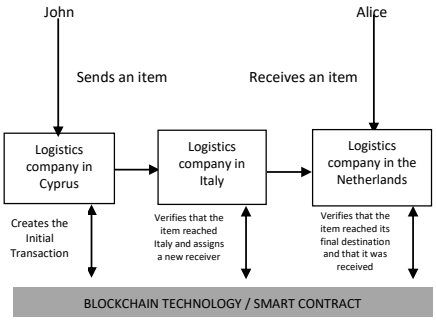

Figure 1: Abstract description of a real-world scenario

Experimental Evaluation

As already outlined in the previous section, the proposed implementation was first tested on the Ropsten Test Network, and then it was executed and evaluated on the Ethereum Mainnet. The address of the proposed smart contract is the following: `0x1E24e91148e6AfEbCD7Ac3E1DC54DC535a84B188.`

All transactions executed using the proposed smart contract are recorded on the aforementioned address and are publicly available on Etherscan.[23] Etherscan allows anyone to investigate the Ethereum blockchain for transactions, addresses and other activities that are taking place.

Besides the contract address, in order to interact with a deployed smart contract, the application binary interface (ABI) is required.[24] A user can call any function of the deployed contract only when she/he has the contract address and the ABI. A dApp can be called either on the application's Website or through MyEtherWallet (MEW),[25] which is a free, open-source, client-side interface for interacting with the Ethereum blockchain.

Tables 1 and 2 present the gas limit and gas price needed for the deployment of the smart contract, along with the execution of each writable function. In the Ethereum network, gas is a unit of cost for a specific function that needs to be executed, gas limit is the maximum amount of gas a user is willing to spend on a transaction and gas cost is the Gwei price per unit of gas. For each deployment, or function call, Ethereum proposes a certain amount of gas limit that is needed for the transaction, which value depends on the smart contract requirements, and it can be adjusted. If a lower gas limit is used, the contract deployment,

23 Etherscan: https://etherscan.io/address/0x1e24e91148e6afebcd7ac3e1dc54dc535a84b188.
24 Ethereums.com: https://ethereums.com/wp-content/uploads/2018/09/ABI.pdf.
25 Myetherwallet.com: https://www.myetherwallet.com.

or the function call, will be dropped, so it is advised to use the default limits or even increase them. The gas price value is also adjustable. This value affects the execution time: the higher the gas price, the quicker the deployment/function call will be verified on the blockchain. As already mentioned, Table 1 presents the gas values used for the contract deployment and Table 2 outlines the gas values used for calling each function.

Table 1: Gas used for contract deployment

	gas limit	*gas* price (Gwei)
Smart Contract Deployment	2262196	2.3

Table 2: Estimated execution gas per function

Function	*gas* limit	*gas* price (Gwei)
sendProduct()	292435	3
sign()	792936	41
maintenance()	112607	41
changeReceiver()	35573	41

For each function of the proposed smart contract we have used various gas values in order to highlight the main executional differences. In the Ethereum network if you multiply the gas limit with the gas price, you can calculate the maximum transaction fee needed for each function to be verified. Those values are presented in Table 4. The transaction fee is the amount that you will have to pay for the transaction to be verified on the blockchain; the higher the cost, the less time needed to verify the transaction on the blockchain.

Nowadays, execution time is not really an issue in the Ethereum network as this can be adjusted by the Gas values. According to Table 4 the Maintenance function has the higher cost; therefore, using Table 3 we notice that this function needs just 3 seconds to be verified on the Blockchain. The rest of the functions used the values either proposed by the Ethereum network or adjusted by us and they also need a few seconds to be verified.

Table 3: Execution time per function

function	execution time (sec)
contract deployment	<20
sendProduct()	< 20
sign()	< 10
maintenance()	< 3
changeReceiver()	< 15

As it can be observed from Table 4, the cost for deploying the proposed smart contract on the Ethereum Mainnet and being able to add and manage millions of records is significantly low at just $1.48 (Ethereum price (ETH) on the day experiments where conducted was $285 per Ethereum).

Table 4: Execution costs per function

function	max fee (in ETH)	max fee (in USD)
contract deployment	0.005203	$1.48
sendProduct()	0.000877	$0.25
sign()	0.003810	$0.98
maintenance()	0.004616	$1.19
changeReceiver()	0.001458	$0.38

Finally, the cost for calling a function of the proposed dApp ranges from $0.25 to $1.19, depending on how quickly the transaction is to be executed and verified on the blockchain. Taking into consideration the average costs, we conclude that one can run the whole process and send and track an item through blockchain for less than $2, and in less than one minute. With the gas values adjusted this cost may become lower or higher.

Conclusions

The emerging blockchain technology can be used to leverage Cyprus' position to become an exemplar in the supply-chain and logistics industry in the region of digital technologies and other related services. This paper presents a prototype implementation of a logistics decentralized application to minimize the gaps between professionals and blockchain in order to help them realize its benefits. The proposed dApp was executed and evaluated on the Ethereum Mainnet and the results were presented in this work. Based on our findings, we may argue that any professional can utilize blockchain in order to develop a secure and transparent application. A logistics dApp was just one of our implementations. In the near future we plan to investigate how to develop and evaluate real-world dApps of other business domains and to verify the suitability of blockchain in different market disciplines.

Acknowledgments

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Blockchain Technology and Land Registry

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Abstract

Land registries are successful when trust is ensured between all involved parties. In this paper we introduce the idea of improving the quality of land registries by using blockchain technology. With blockchain we can overcome the limitations (e.g. centralization) of the existing land registries and offer a trusted service that provides significant benefits to the participants. This paper also highlights the functionality of a blockchain land registry solution that can be adopted by the Republic of Cyprus and it suggests the implementation of a small pilot that can be used as proof of concept.

Keywords: blockchain technology, land registry, Cyprus

Land Registries and Their Limitations

Departments of lands (or land registry) are a significant pillar of economic development as they deal with construction, growth and development in all countries. Land registry authorities record property rights and promote internal confidence between people, enterprises and government. In doing so, they help countries to maintain stability within their boundaries, or economic development within the wider world.

Despite their importance, not all the countries have developed advanced land registries. Based on land registry services, we can classify countries into three main categories:

Category I: Countries with well-organized land registries: Cyprus and other developed countries (e.g. USA, UK, Holland, Sweden) have very well structured and organized land registry departments that seek to adopt advanced technologies to improve their quality of services. Countries of this category promote widespread and secured ownership of real estate as a foundation of social and economic policy. These countries are more open to adopt state-of-the-art technologies, like blockchain, to speed up their processes and to enhance their functionality.[2]

Category II: Countries with less organized land registries: Many countries in this category face numerous problems due to: (a) outdated practices and systems; (b)

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2 J. Abbott, 'Moving to our second year on Digital Street'. HM Land Registry (blog) (2018, October 9), available at https://hmlandregistry.blog.gov.uk/2018/10/09/moving-to-our-second-year-on-digital-street/.

bureaucracy; (c) complicated processes; and, in some cases, (d) corruption and fraud. An example of this is Greece, about which many articles have been written covering the limitations of the existing system.[3] The problematic operation of land registries of this category has an impact on economic development and growth. For instance, an €8 billion investment in the old Athens airport (Elliniko) has been delayed for more than four years due to various reasons including a dispute between the national forest agency, the government and the contractor.[4] As a result, this has had a huge impact on the Greek economy, especially in a period of financial crisis, capital controls, high unemployment rates, lack of investors, etc.

Category III: Countries with no land registries or inefficient registries: Countries in this category have the same problems as those of Category II but corruption and fraud are increased compared to Category II. In Ghana, for instance, more than 80% of landowners lack title deeds, as most land is held customarily with oral agreements between involved parties. This has increased corruption and fraud and causes tremendous problems to property owners as well as to the government.[5]

Most land registries present numerous limitations that havea negative impact on their business processes, property owners, taxpayers and the involved entities. The main limitations are summarized below:

Difficulties to implement new business models: It is estimated that cross-border real estate investments will grow to 50% in the next two years, and the trend to introduce new business models and technologies has been amplified. However, existing practices hold back the implementation of new business models, and this leads to a reassessment of the current status in many countries.

Time-consuming and expensive functions: Many land registry functions need to be redesigned and automated to allow a simpler, faster and cheaper way to integrate the processes. Transactions that take weeks to be completed can be reduced to hours or minutes and transaction costs could come down from thousands of euros per sale to a reasonable service fee. In doing so, property sales will be increased, and a wide

3 For example, S. Daley, 'Who Owns This Land? In Greece, Who Knows?' *NYTimes.com* (2013, May 27), available at https://www.nytimes.com/2013/05/27/world/europe/greeces-tangled-land-ownership-is-a-hurdle-in-recovery.html; N. Christodoulakis and S. Skouras 'Electoral misgovernance cycles: Wildfires and tax evasion in Greece'. Paper presented at the 8th Conference on Research on Economic Theory and Econometrics, Tinos (2009, July 8 - 12), available at http://www2.aueb.gr/conferences/Crete2009/papers_senior/Christodoulakis.pdf.

4 Taylor, P and Papadimas, L., 'Typically Greek, delayed land register is never-ending epic'. *Reuters.com* (2015, October 18), available at https://www.reuters.com/article/eurozone-greece-cadastre/insight-typically-greek-delayed-land-register-is-never-ending-epic-idUSL8N12E1Z520151018.

5 Sittie, R. 'Land Title Registration. The Ghanaian Experience', Paper presented at 23 International FIG Congress, 8–13 October 2006, Munich, available at https://www.fig.net/resources/proceedings/fig_proceedings/fig2006/papers/ps07/ps07_15_sittie_0848.pdf.

range of involved parties will benefit (e.g., sellers and buyers, local authorities, central government, and developers).

Too many intermediaries: Real estate transactions rely on entities like attorneys, notaries, brokers, agents, appraisers, inspectors and government authorities, to name a few. All these stakeholders add unnecessary cost, complexity and delays in the process. A reduction of the intermediaries will automatically make the land registry processes faster, cheaper and simpler. Reducing the role of the intermediaries may have a negative impact on their business activities, but the overall benefits for citizens, the economy, society, the real estate industry and the country will be much more important.

Centralization: Existing transaction and record keeping systems used by land registry authorities are centralized. This often raises concerns about fault tolerance, resilience and security. Information repositories and databases are vulnerable to major security risks and disaster, as what happened in Haiti after the devastating earthquake in 2010. In that case, many countries helped Haiti to rebuild the nation, but recovery efforts were delayed due to property ownership issues. In many cases the owners of a property could not be identified as the records had been destroyed. In other cases, ownership was in dispute for the same reason. People in Haiti who wanted to sell their property could not do so, as the buyers were unsure whether the seller legally owned that property or not.

Corruption and Fraud: Most cases of corruption and fraud take place in Category II and Category III countries (defined above). Corruption and fraud are also related to the centralized nature of the land registry authorities. The lack of transparency 'allows' bureaucrats to change the ownership of a piece of land. Many countries still do not have title deeds but oral agreements, which makes fraud easier.

Blockchain Technology and Its Potential

Blockchain technology is considered the 'New Internet', since it is transparent, decentralized, and user-centric, and it provides secured transactions and information that is characterized by openness.[6] The *Economist* described blockchain as the 'Trust Machine' since it replaces intermediary trust brokers to ensure privacy, security and trust. In simple terms, blockchain technology implements a shared record of transactions (ledger) where anyone can hold a copy of it and read it. Transactions refer to uniquely identifiable 'fingerprints' of the actual files (e.g., property title) and are grouped into blocks that are then verified and added to a chain of blocks (blockchain). A secure mechanism is employed to prevent fraud. Therefore, it is almost impossible to modify data stored in older blocks without changing the subsequent blocks, as

6 D. Tapscott and A. Tapscott, *Blockchain Revolution: How the Technology Behind Bitcoin is Changing Money, Business, and the World* (New York: Penguin Random House, 2016).

changing the block would change its fingerprint and invalidate the chain.[7]

Blockchain technology addresses the land registry problems reported in the previous section. A blockchain solution can provide immutable history of transactional records and thus guarantees authenticity, which has an immediate effect on increasing trust. Records are validated, permanently linked to the system, they are tamperproof and can be seen at any time by any party. With blockchain there is a single source of truth history of a property and ownership status. In other words, blockchain technology can help Departments of Land to implement new business models, change time-consuming and expensive functions, significantly reduce the number of intermediaries, and develop decentralized applications that terminate corruption and fraud.

The Information Technology (IT) strategy of the Cypriot Department of Lands and Surveys (DLS) reports that:[8]

> [O]ur vision is to transform the DLS IT environment to support a modern cadastre that will be needed for the future; this is based on an architecture that facilitates the delivery of services to citizens and interested entities, enables people to readily and confidently identify the location and extent of all rights, restrictions and responsibilities related to land and property through also the use of spatial data.

The best way for DLS to achieve its goal is by adopting a blockchain solution. Different scenarios that can support the Cypriot DLS can be implemented through blockchain. For instance, envision two citizens in Cyprus, a seller and a buyer, who negotiated and agreed on the sale of a house, and they would like to register the sale agreement with the land registry service. They can visit the local authorities to register the sale agreement as they normally do. The land registry authority will then enter the information related to the agreement into the blockchain system. The latter will take control and will place this transaction in a block with other transactions and send them for approval. Once the block is approved, it is added to the blockchain and copies of these transactions are saved in multiple computers. In the extreme case where the land registry authority is destroyed by a disaster (e.g., earthquake or fire) the information related to the property title deeds will not be destroyed, as it is saved on numerous computers around the globe. As a result, the land registry authority will be able to continue its operation, and property owners will be able to negotiate and sell their properties without problems.

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7 D. Tapscott, 'How the blockchain is changing money and business', filmed June 2016 in Banff, Canada, TED video, 18:50, available at https://www.ted.com/talks/don_tapscott_how_the_blockchain_is_changing_money_and_business, accessed on 5 March 2018. M. Lansiti and K. Lakhani, 'The Truth About Blockchain'. *Harvard Business Review*, (2017, January–February), available at https://hbr.org/2017/01/the-truth-aboutblockchain.

8 Cyprus Department of Lands and Surveys, 'Vision'. DLS.moi.gov.cy (2016), available at http://portal.dls.moi.gov.cy/en-us/thedepartment/Pages/Vision%20and%20Mission.aspx.

Benefits of Blockchain Application in Land Registry

Land registries worldwide are interested in blockchain technology, as it has the capacity to revolutionize land transfers and it can manage regulatory obligations, asset transfers and financial transactions. Blockchain can be considered as the future of land registries due to the important benefits it offers and includes among others the following:

- increases transparency
- provides trusted and accurate property data
- secures the ownership of all registered properties
- reduces cost
- speeds up processes – they can now be completed in a few hours instead of weeks/months
- provides strong audit-ability for transactions with a time stamp
- offers a distributed system to help disaster recovery
- reduces paperwork,
- allows people to trade properties remotely
- benefits many participants (e.g. taxpayers, government, insurance companies)
- assists to build smart cities
- eliminates potential fraud
- achieves simpler, faster and cheaper land registry services

Last but not least, Goldman Sachs estimated that blockchain could lead to an annual savings of up to USD 2 to 4 billion in the real estate title insurance market alone.

Examples from Early Adopters

Blockchain technology has attracted the attention of land registry authorities around the globe, and numerous applications have been adopted since 2016. Below is a list of important attempts from the early adopters:

Adopters from Category I:

Dubai: Dubai has a vision strategy to become world leader in adopting blockchain technology in the public domain by 2020. Its strategy aims to record all government transactions on the blockchain, and this will result in an estimated EUR 1.2-billion savings per annum, from the documents processing only. Part of this strategy is the 'blockchainization' of land registry. In 2016, Dubai designed a blockchain solution that records each step of the history of a property, from its conception to its sale to a client (Smart Dubai, 2016).

Illinois: In 2017, Cook County in Illinois participated in a pilot project to investigate blockchain adoption barriers in land registry as well as the potential benefits

from overcoming these barriers. To better explore these issues, Cook County built a blockchain solution which has proved successful. The state of Illinois is planning to use this solution as a model in the widespread adoption of blockchain by land registries throughout the state.

Sweden: It was estimated that a blockchain land registry could save Swedish taxpayers over EUR 100 million per annum by speeding up transactions, reducing fraud and eliminating paperwork. Based on this estimation, Sweden's land registry authority launched, in June 2016, an application to record land property transactions. The application was successful, and the authority is now extending the functionality of this application.

UK – HM land registry: Currently the UK land registry is working on a ground-breaking research and development project that combines new business models with property, financial and law technologies to explore how land registry will be simpler, faster and cheaper. In doing so, UK land registry has developed an on-going project called Digital Street to explore the disruptive innovation effect of blockchain technology in land registration.

Adopters from Category II:

Republic of Georgia: In 2016, the government of Georgia launched an application to register land title deeds on a private blockchain and then to make those transactions verifiable using a public blockchain (bitcoin blockchain). This is the first time in history where bitcoin blockchain is used by a national government to secure and validate official actions.

Ukraine: Ukraine's farmland registry has been vulnerable to fraud, which has led to conflicts over ownership and has held the economy back. The Ukrainian government is confident that the establishment of a comprehensive, transparent and secure blockchain farmland registry solution will help it to lift a ban on the sale of farmland and boost the economy.

Adopters from Category III:

Ghana: According to Ghana's land commission, 80% percent of landowner's lack title deeds as most land is customarily held with oral agreements. Blockchain technology has been used to address this problem and to produce secure digital land registries.

Honduras: Due to corruption, land title fraud is common in Honduras. For many years ill-intentioned public employees could penetrate the register and illegitimately change property ownership. The application of a blockchain land registry solution has eliminated land title fraud and guarantees seamless protection of property titles and

maximized security.

Moving Forward

The Cyprus Department of Lands and Surveys (DLS) should immediately move forward to run pilot projects in the area of blockchain land registry in order to test this new technology and assess its potential and impact. A starting point for a pilot project may be an application that will support functions to:

Register existing ownership rights on the blockchain;

Create new ownership rights on the blockchain;

Transfer ownership rights on the blockchain and **digitalize** the whole process.

Such a blockchain land registry solution may facilitate the automation of ownership rights transfer, as explained above, with direct impact on time and costs involved. Such enablers should significantly impact investment liquidity, transparency and tradability. In removing bureaucratic barriers and delays for citizens and investors alike, and by carrying out direct property rights transfer in a secure and tamperproof manner, via an entirely digital platform, allows for investment opportunities to be cultivated, leading to new revenue streams and global outlook. Blockchain and AI technology stand to help improve bureaucratic, legal, and governance aspects of the property market in the most efficient and future proof manner possible, creating new opportunities for novel business models.

Concluding Remarks

Although real estate is an important pillar of modern economy, most land registry services have many significant limitations that need to be addressed. Blockchain technology can be considered as a promising solution for land registry services. Blockchain operates in a decentralized manner and results in trusted, transparent, immutable and secured solutions that overcome most of the limitations of existing land registry services. Early blockchain land registry adopters, like Sweden, Dubai, Ghana and others, report excellent results such as cost savings, better quality of service, and the elimination of fraud and corruption. Blockchain is not an illusion but a real solution, and in this paper, we propose a blockchain-based land registry system for the Republic of Cyprus. Since we are still in the early stages of adopting this technology, numerous actions need to be taken to speed up its acceptance. Thus, a pilot system that can be used as a proof of concept will be highly beneficial for the Republic of Cyprus. The pilot will highlight the impact that blockchain will have on land registry, will help to explore the potential benefits that will be delivered to the involved entities, and will emphasize the necessity for implementing such a system.

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Blockchain in Solar Energy

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Abstract

Blockchain technology disrupts existing business models and practices in different sectors of the economy. It has the potential to revolutionize the way we do business, and it can be combined with other technologies like Internet of Things (IoT) or Artificial Intelligence (AI) to increase its disruptive effect. In this paper we study the impact of the implementation of a blockchain solution in the area of solar energy. The results of this research demonstrate that blockchain technology can disrupt the energy sector in various ways including, among others, disruption in process, product, position and paradigm, and platform innovation.

Keywords: blockchain technology, smart contracts, solar energy, action research, disruptive innovation

Introduction

Just weeks after the September 2008 Lehman Brothers collapse, blockchain technology was first introduced on 31 October 2008 by an author or a group of authors under the nickname Satoshi Nakamoto.[4] In January 2009, Nakamoto sent the first ten bitcoins to Hal Finney, a bitcoin supporter. Sixteen months later, in May 2010, the first business transaction took place between a pizza restaurant in Jacksonville, Florida and Laszlo Hanyecz. The latter paid 10,000 bitcoins to buy two pizzas, which obviously is the most expensive pizza sale in history if we consider the average bitcoin price for the last 10 years. Soon after that pizza sale, enterprises, banks, universities and governments realized the potential of bitcoin and blockchain (the technology that supports the functionality of bitcoin) and invested in it.

One of the first adopters of blockchain technology in academia and in Cyprus is the University of Nicosia, which since 2014 has established the world's first and largest full academic program in blockchain education,[5] has accepted bitcoins as

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4 S. Nakamoto, 'Bitcoin: A peer-to-peer electronic cash system', *Bitcoin.org* (2008), available at http://www.bitcoin.org.

5 UNIC (2018), available at https://digitalcurrency.unic.ac.cy.

tuition fees (since 2014) and publishes its academic certificates on a blockchain. Apart from education, blockchain technology has been adopted in many sectors, including fintech, insurtech, healthcare, land registry, and supply chain management.[6]

In this paper we study blockchain in the energy sector and we introduce an innovative way of doing business through a disruptive application that combines blockchain technology, Artificial Intelligence (AI), Internet of Things (IoT) and smart energy grids.[7] The proposed application points to drastic changes to the existing business models and introduces a series of new challenges for the energy market and energy companies.

The remaining sections of this paper are as follows: Section 2 reviews blockchain technology, followed by the conceptualization of this research and the research question under investigation. Section 4 presents the empirical data and Section 5 discusses and analyses the data. Conclusions are reported in the last section of the paper.

Literature Review

Blockchain technology has the potential to address integration and interoperability challenges, and it can enable involved parties to securely and trustfully share their data. Blockchain technology is a distributed ledger that saves digital events (transactions) in a chronological order that are shared in a decentralized network and establishes transparency and trust. It is the underlying technology for cryptocurrencies, and it is based on three main components.

Transactions and Blocks: A transaction refers to any digital information (e.g., an encrypted reference to blood test results) that could be stored in a blockchain. Transactions are encrypted and placed in a block in a linear chronological order.

Shared Ledger: The block with the transactions is sent to the shared ledger for

6 L. Cocco, A. Pinna and M. Marchesi, 'Banking on blockchain: Costs savings thanks to the blockchain technology', *Future Internet*, Vol. 9, No. 3 (2017), DOI.org: 10.3390/fi9030025et al.; P. Cuccuru, 'Beyond bitcoin: an early overview on smart contracts', *International Journal of Law and Information Technology*, Vol. 25, No. 3 (2017), DOI.org: 10.1093/ijlit/eax003; P. Gomber, R. J. Kauffman, C. Parker and B. W. Weber, 'On the Fintech Revolution: Interpreting the Forces of Innovation, Disruption, and Transformation in Financial Services', *Journal of Management Information Systems*, Vol. 35, No. 1 (2018); A. Lei, H. Cruickshank, Y. Cao, P. Asuquo, C. P. A. Ogah and Z. Sun, 'Blockchain-Based Dynamic Key Management for Heterogeneous Intelligent Transportation Systems', *IEEE Internet of Things Journal*, 4662(c) (2017); V. L. Lemieux, 'Trusting records: is Blockchain technology the answer?', *Records Management Journal*, Vol. 26, No. 2 (2016).

7 G. Li, H. Meng, G. Zhou and Y. Gao, 'Energy management analysis and scheme design of microgrid based on blockchain', *Dianli Jianshe/Electric Power Construction*, Vol. 39, No. 2 (2018), 43–49.; Novo, 'Blockchain Meets IoT: an Architecture for Scalable Access Management in IoT', *IEEE Internet of Things Journal*, Vol. 5, No. 2 (2018).

validation. Once it is validated, it is added to a chain of blocks (shared ledger). After a block is added to the chain it cannot be changed or removed.

Distributed Network: Each participant of the network has a computer node that stores an identical copy of the blockchain (shared ledger). The additions of new blocks to the shared ledger are reflected in all copies. The network nodes are responsible for validating and certifying network transactions, and participants cannot modify or tamper with transactions/blocks once these are validated and added to the chain.

In addition to these, blockchain technology has the following characteristics:

Consensus: Consensus mechanisms attest that each new block that is appended to the blockchain is a valid one. There are various consensus mechanisms that are used today, like Proof Of Work (PoW), Proof Of Stake (PoS), Delegated Proof Of Stake (DPoS), Proof Of Capacity (PoC) and Proof Of Elapsed Time (PoET).

Provenance: In using blockchain technology, information and cryptocurrencies are traceable, and all participants are aware of the history of the assets or information exchanged (e.g., in a land registry blockchain application we know the full history of a property, from its initial form as a piece a land to the construction of a block of flats and the changes in ownership of this asset over time).

Immutability: A blockchain is an append-only ledger, and thus transactions cannot be changed once recorded.

Finality: The blockchain ledger is trusted by all participants and it is the only source of truth.

Research Question and Methodology

This article investigates blockchain technology adoption in the energy sector and more specifically in solar energy. Solar energy and renewable forms of energy are significant for our planet, but they face some challenges. Specifically, in solar energy there are concerns about its: difficulty to store excess energy supply due to the limitations of the existing equipment used; inability to match supply and demand which is related to the amount of time that the sun shines; the cost of the equipment that is used to generate solar energy.

Today, most solar energy applications are based on a producer-consumer model where the former produces the energy and sells it to the latter. The production and distribution process is based on outdated practices. For instance, solar energy companies deploy thousands of solar units to build their infrastructure and to produce solar energy. The energy is then converted, and it is distributed through an electricity grid to industrial or residential users for consumption. However, the application of a peer-to-peer network for energy is not feasible in many cases for various reasons (technological, legal, etc.).

Even though solar energy is environmentally friendly, it has some limitations that need to be investigated. In this paper, we focus more on the limitations of the existing landscape in solar energy, sharing as our empirical data from that area.[8] Below is a list of the most important limitations:

- The solar energy price is somehow fixed between producer and clients and there is no negotiation process between them. There are periods of time (e.g., summer time) where daylight and sun light lasts longer, and the production of solar energy is higher, whereas the opposite happens in winter time. In this respect, consumers should be able to buy solar energy at a lower price during periods of high production and at a higher price during times of low production. Such a policy would be fair for clients as in summer, for example, they consume much more energy for air-conditioning, and in winter they might use other forms of energy (e.g., natural gas, fossil fuels) to heat their houses.
- Solar energy production companies are not paid immediately by customers but after one or two months. This has an impact on their cash flow and line of business.
- Solar energy customers have to believe that the energy production companies are truthfully reporting the volume of renewable energy they consume.

In order to investigate the role of blockchain technology as a disruptive one, we formulate the following research question:

RQ1: How do blockchain solutions disrupt the current ecosystem and models in the energy sector?

In an attempt to test our research question, we collaborated with a solar energy company in Cyprus that has presence in various countries in Europe and North America. Part of our collaboration was to propose and develop a blockchain solution for its business activities. For that reason, we adopted an action research approach, which is more appropriate in this case since we had an active role and we took decisions related to the development and testing of the solar blockchain solution.

Use Case Data

The project began in the first half of 2017 and lasted for one year. Due to the nature of the project, we initially searched for similar implementations, but we did not find anything relevant. Then we assessed existing technologies and we finally decided to use Ethereum as the blockchain platform to exchange the data and tokens of our application. For the implementation, we used software tools like Ethereum Request for Comment 20 (ERC20), Remix-IDE, solidity and testRPC. A hierarchical deterministic

8 C. Pop, T. Cioara, M. Antal, I. Anghel, I. Salomie, and M. Bertoncini, 'Blockchain based decentralized management of demand response programs in smart energy grids', *Sensors*, Vol. 18 (2018): 162, DOI.org: 10.3390/s18010162.

(HD) wallet was also used to facilitate the exchange of tokens in our Ethereum based solution. Smart contracts were developed to handle agreements between different parties and to reduce the role of the middleman. Smart contracts save data about an application and automate the token transfer between users, based on an agreement.

The blockchain solution that was developed for the purposes of this research automates the following scenario:

- Solar panels are installed on the roof of home users to produce energy;The solar energy that is produced is stored locally using smart batteries;Smart batteries use Internet of Things (IoT) to enhance their functionality;The battery owner sets the price and the quantity of the energy s/he wants to sell, based on competition and the weather conditions;When s/he reaches an agreement with a potential buyer, s/he discharges the electricity from the battery to the energy grid;Smart meters are used to calculate the quantity of the electricity sold and the transaction is completed using smart contracts and paid for using cryptocurrencies. All relevant transactions are put in a block that is sent for validation;Proof of work is used as a consensus mechanism to validate the block, and the block is finally attached to the blockchain;Using the smart grid, the buyer receives the energy purchased and consumes it at home or uses it to charge his/her electric car.

Currently we design Artificial Intelligence (AI) algorithms to improve the performance and to enhance decision-making. Upon completion of these algorithms, the smart battery will automatically be able to:

- decide whether to sell or buy energy;
- analyze existing and historical data to define the selling price;
- operate on a machine-to-machine (M2M) mode with no or limited human intervention.

Data Analysis and Discussion

In order to test our research question, we used the 4Ps framework proposed by Tidd and Bessant that investigates innovation at Product, Process, Position and Paradigm levels.[9]

Product innovation deals with improvements in the products or services that a firm offers, for example a new product design. From the empirical data, it appears that our blockchain solution resulted in the development of decentralized trust services and smart contracts that have a disruptive effect in the existing line of business. Moreover, the combination of IoT, smart contracts, blockchain, tokens and security mechanisms results in product innovation.

9 Tidd and Bessant (2013).

Process innovation refers to changes in the ways in which processes are created and delivered. Our blockchain solution for solar energy achieves process innovation in various ways like: (a) governance, which is now based on consensus mechanisms instead of a single point of control; (b) the use of tokens, which forms an innovative way to do business; and, (c) early experiments using AI algorithms with the IoT incorporated in the battery and our blockchain solution demonstrate that, with the completion of all AI algorithms, we will be in position to support machine-to-machine financial transactions based on tokens as well as automatic decision-making (to sell or to buy solar energy).

Position innovation reports changes in the way the product or service is positioned / introduced in the market. Take, for instance, the case of Amazon, which, based on continuous product and process innovation, has managed to reposition itself in the market (i.e., it went from being an online retailer to a cloud provider). In our case, we can see changes in position innovation in terms of decentralized governance, initial coin offerings (ICOs) and autonomous economic agents.

Paradigm innovation focuses on changes in issues related to the underlying business models, among others. The research findings illustrate a change in the business model used. Applying blockchain technology to solar energy, we managed to build a peer-to-peer communication environment, which changes the relationships among the involved parties. The underlying business model has shifted from producer-consumer to prosumer. In such a model, a user with solar panels installed in his/her property can become a solar energy producer who sells energy to the other users through the smart grid. In case of need, the same user can buy energy from other solar energy producers on the grid. This is a fundamental change in the business model, but it cannot currently be applied in Cyprus due to legal and regulatory barriers. For that reason, the organization that collaborated with us on this experiment is now exploring the possibility to introduce this system in countries like United Kingdom or Netherlands, where the regulatory framework is friendlier to such business models.

Conclusion

In this paper we explored the development and introduction of a blockchain solution for a Cyprus-based solar energy company. In doing so, this article focused on the investigation of the research question: *How do blockchain solutions disrupt the current ecosystem and models in energy sector?* To test the research question, we collaborated with our use case organization and built a blockchain application using Ethereum. The results reveal that the development of our blockchain solution in solar energy has disrupted the current ecosystem and models in that sector. The business model of prosumer has emerged and it can now replace the previous model of producer-

consumer. Not only is the underlying business model changed, but we are in a position where producers of energy can negotiate the price of solar energy with their clients and receive payment immediately. These were significant limitations of the practices that do not use blockchain technology. In addition, our application has resulted in a series of disruptive innovation in the areas of product, process, paradigm and position innovation. However, due to the legal and regulatory framework, the proposed solution cannot be adopted in the Cyprus energy market at the moment, which indicates that regulators should improve and transform their regulatory framework as soon as possible.

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POLICY PAPER

Cyprus in Search of a New Economic Paradigm

Andreas Theophanous[1]

Introduction

The objective of this paper is to assess the current state of the Cyprus' economy and to put forward some major guidelines for a new paradigm.[2] This discussion takes place almost six years after the collapse of March 2013 and its ongoing repercussions. We also briefly review the causes of the crisis and attempt to evaluate to what extent it has been effectively dealt with. Within this framework the current structural problems and challenges are assessed.

In the first section, we overview the background and the context of this discussion. The political and historical dimensions are briefly assessed. We also focus on the economic crisis which led to the advent of the Troika. Furthermore, the socioeconomic cost of the Memorandum of Understanding is outlined. This is followed by a brief presentation of the stabilization and the recovery that eventually took place as well as the shortcomings of this process.

The second section addresses the record of the pursued economic policies focusing on the gap between the rhetoric and the actual results. Furthermore, a brief overview of developments that took place is put forward with an emphasis on specific sectoral dimensions. This section also underlines the fundamental structural problems that still exist. In addition, a brief reference is made to the socioeconomic and political situation in the northern occupied part of Cyprus.

In the next section, we describe the existing challenges and opportunities. Initially we assess the position of Cyprus in the regional and international context. Subsequently, the problems of the financial sector are examined. Within this framework special emphasis is given to the non-performing loans (NPLs). The importance of attracting foreign investment is also stressed. The socioeconomic and political implications of a solution to the Cyprus Problem are also assessed.

Then we briefly summarize the structural problems that have to be addressed.

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2 This paper was initially presented in Luxembourg within the framework of a conference entitled 'Competitiveness Strategies for the EU Small States' that took place in Luxembourg in 18-19 April 2018. This conference was organized by the Observatoire de la Compétitivité of the Ministry of the Economy of Luxembourg in collaboration with the Islands and Small States Institute of the University of Malta and the National Statistics Institute of Luxembourg (STATEC).

It is also stressed that almost six years after the collapse of March 2013 Cyprus has no comprehensive economic paradigm yet. We also underline the importance of enhancing the effectiveness of public administration as well as of the optimal utilization of human capital. A comprehensive economic paradigm should also include new engines of growth. Last but not least we also briefly refer to the unresolved Cyprus Problem and to the relevant implications.

Finally, a short epilogue places issues and challenges into perspective.

Background and Context

Political and Historical Context

It is essential to briefly review the economy of Cyprus and the causes of the economic collapse. When Cyprus became an independent state in 1960, it was basically an agrarian country with a very low level of development.[3] Following independence there was a remarkable process of economic growth and development. From 1960 to 1973 the real annual average rate of growth was about 7%; furthermore, there were major infrastructural projects while the secondary and tertiary sector of the economy grew gradually both in size and relative importance. Within this framework tourism gradually emerged as a new sector of growth and development.[4]

This process was abruptly interrupted by the Turkish invasion of 1974 and the occupation of almost 38% of the territory of the Republic of Cyprus. The socioeconomic disruption that took place was unprecedented. Nevertheless, Cyprus managed to survive following a severe depression. The recovery after 1976 and the sustained growth rates and the development that followed were impressive. This was described as an economic miracle; its most important aspect was the survival and the continuity of the Republic of Cyprus.[5]

The economic success was a major factor which enabled Cyprus to apply for

3 D. Christodoulou, *Inside the Cyprus Miracle: Labours of an Embattled Mini-Economy*, (Minneapolis: Modern Greek Studies, University of Minnesota, 1992); A. Theophanous, 'Economic Growth and Development in Cyprus 1960-1984', *Modern Greek Studies Yearbook*, Vol. 7 (1991), 105-132; A. Theophanous, 'Cyprus: From an Economic Miracle to a Systemic Collapse and its Aftermath', in *Small States and the European Union: Economic Perspectives*, ed. L. Briguglio (London: Routledge, 2016), 28-49 and *The Economist*, 'Cyprus: Miracle in Half an Island', Vol. 264, No. 6991 (1977), 50-51.

4 Ibid.

5 Christodoulou, *Inside the Cyprus Miracle*. Be that as it may it is also essential to acknowledge that this process had its shortcomings. For example, tourist development and reconstruction took place in a way which did not take into consideration the environment. Moreover, the enhancement of the sophistication of the society and the political system lagged behind the sharp improvement of the material standard of living. For a comprehensive analysis see D. Christodoulou, *Where the Miracle has not Reached* [in Greek] (Nicosia: Intercollege Press, 1995).

membership to the European Union (EU) in 1990. The Republic of Cyprus joined the EU on 1 May 2004, despite the fact that the Cyprus Problem remained unresolved. Had Cyprus been denied accession to the EU because of the Cyprus Problem this would have amounted to rewarding Turkey for its aggression – the 1974 invasion and the ongoing occupation of the northern part of the island.[6]

The Annan Plan[7] which the Greek Cypriots rejected a few days before accession – on 24 April 2004 – could not have been accepted as it was an imbalanced plan and was in many ways legitimizing the Turkish actions since 1974. Moreover, it was replacing the Republic of Cyprus with a new three headed state structure in which no major decision could have been reached without the consent of the Turkish-Cypriot side. Given the effective control of Turkey on the would be Turkish-Cypriot constituent state, Greek Cypriots were very concerned. Be that as it may the Republic of Cyprus was seriously criticized for rejecting the Annan Plan.[8]

With the accession to the EU, the adoption of the euro on 1 January 2008 and the ongoing globalization, the economic structure of Cyprus continued to undergo a serious transformation. By 2008 the tertiary sector of the economy was around 78% of GDP. The financial sector had emerged by this time as one of the most important sectors of the economy.[9]

It should be also noted that the collapse of the Soviet Union, Yugoslavia and the socialist block as a whole affected Cyprus in many ways. Suffice to say that Cyprus gradually attracted huge amounts of funds from the former Soviet Union and South Eastern Europe. There was an evident underestimation of the risks involved in the huge size of the banking sector: total banking sector assets were 808% of GDP at the

6 For an interesting discussion of all these issues, see A. Theophanous, *The Cyprus Question: The Challenge and the Promise*, (Nicosia: Intercollege Press, 2004).

7 United Nations, Annan Plan, 2002, I, II, 2003, III, 2004, V http://www.un.org/Depts/dpa/annanplan/annanplan.pdf.

8 President Papadopoulos was also under serious criticism from the opposition in Cyprus and from various foreign circles. There were serious critical reports in the international press. For example, see C. Deloy, 'Failure of the referendum on the reunification of the Island', Fondation Robert Schuman (2004, April 24), available at https://www.robert-schuman.eu/en/eem/0291-failure-of-the-referendum-on-the-reunification-of-the-island; S. Sachs, 'Greek Cypriots Reject a U.N. Peace Plan', *The New York Times* (2004, April 25), available at https://www.nytimes.com/2004/04/25/world/greek-cypriots-reject-a-un-peace-plan.html; S. Cagaptay, 'UN Plan Fails in Cyprus: Implications for Turkey, the European Union and the United States', The Washington Institute for Near East Policy (2004, April 29), available at https://www.washingtoninstitute.org/policy-analysis/view/un-plan-fails-in-cyprus-implications-for-turkey-the-european-union-and-the- and R. Bryant, 'An Ironic Result in Cyprus', *Middle East Report Online* (2004, May 12), available at https://merip.org/2004/05/an-ironic-result-in-cyprus/. Also see International Crisis Group, 'The Cyprus Stalemate: What Next?', Europe Report No. 171 (2006, March 8).

9 Statistical Service of the Republic of Cyprus.

end of 2010.[10] By 2012 total assets dropped to 633% of GDP.[11] The problems of the banking sector were very serious. These entailed imprudent practices including reckless lending as well as lack of effective controls and supervision. There was overexposure in highly risky markets like Greece and elsewhere as well as poor corporate governance and risk management.[12] Furthermore, foreign, mostly Russian deposits, constituted a relatively high proportion of the total amount. Cypriot banks were also accused of money laundering practices.[13] Furthermore, there were also corrupt interlinkages with several pillars of the socioeconomic and the political structure of the country. Inevitably the impact on the economy was negative.

Moreover, there was an inadequate understanding of the architecture of the Eurozone and its implications. When the Euro was created its implications were not fully realized. Leading economists, above all, Professor Martin Feldstein of Harvard University and Former Chairman of the White House Council of Economic Advisers had warned since the '90s of the faulty aspects of the architecture of the Eurozone and pointed to the prerequisites for its success.[14] He also stressed that the Eurozone architecture did not have the tools to deal effectively with a major crisis and with serious asymmetric business cycles. Furthermore, instead of automatic stabilizers the system has embedded automatic destabilizers.[15] There was a hidden assumption in the Eurozone structure that, more or less, the markets would be self-regulating.[16] This was not a valid assumption.

There were countries which fulfilled the criteria for participating in the Eurozone, like Britain, but opted to stay out and countries that did not fully meet the criteria, such as Greece, but were accepted. It is tragic that Greece is in a protracted crisis with a very

10 Stockwatch, 'EY: Cypriot banking sector large' (2015, December 3), available at https://www.stockwatch.com.cy/en/article/trapezes/ey-cypriot-banking-sector-large.

11 Ibid.

12 Independent Commission on the Future of the Cyprus Banking Sector, *Final Report and Recommendations*, (2013, October), available at https://www.centralbank.cy/images/media/pdf/LSE_ICFCBS_Final_Report_10_13.pdf.

13 For example see A. Rettman, 'Leaked report damns Cyprus on money laundering', *euroobserver.com* (2013, May 20), available at https://euobserver.com/economic/120167.

14 See the following articles by M. Feldstein: 'The Case Against the EMU', *The Economist* (1992, June 13), 12-19; 'EMU and International Conflict', *Foreign Affairs*, Vol. 76, No. 6 (1997, November/December), 60-73 and 'The Political Economy of the European Economic and Monetary Union: Political Sources of an Economic Liability', *The Journal of Economic Perspectives*, Vol. 11, No.4 (1997, Fall), 23-42.

15 See J. E. Stiglitz, *The Euro: How a Common Currency Threatens the Future of Europe*, (New York, NY: W.W. Norton, 2016) and A. Theophanous, 'Troika Fixes Fail: How to Fix the Troika', Friends of Europe (2014, December 4), available at http://www.friendsofeurope.org/future-europe/troika-fixes-fail-fix-troika/.

16 For a comprehensive analysis of the errors on the Eurozone structure see Stiglitz, *The Euro*.

high socioeconomic and demographic cost; some economists have described it as 'the depression of the century'.[17]

Cypriots had very high expectations of the EU especially in relation to the Cyprus Problem. The main hypothesis was that the EU and its value system would contribute in various ways to the resolution of the Cyprus Problem. Cypriot policymakers also thought that the adoption of the Euro would entail economic as well as political implications.

When Cyprus found itself in a deep economic crisis the troika recipe was harsh. Cypriots knew that to a great extent the structural problems were of endogenous nature but it was clear that there was an exogenous dimension of the crisis as well. These included the Greek crisis and expediencies arising from the German elections of September 2013 which influenced the way Cyprus was handled.[18] In March 2013 Cypriots felt that the package they received was extremely harsh in comparison to their sins. Cypriots have been also convinced that what was enforced upon them would never have been imposed on, for example, Italy or Luxembourg. The prescriptions given to Cyprus deepened the crisis. In addition, prudent Greek Cypriot institutions and citizens not responsible for the crisis were penalized.

The Economic Crisis and the Troika

The adoption of the Euro on 1 January 2008 was an important development. When Cyprus acceded to the Eurozone on 1 January 2008 the economic indicators were satisfactory. There was a fiscal surplus 0.9% of GDP; the public debt was 45% of GDP, inflation 4,7% and unemployment 3.2%.[19] Cyprus' successful record was a major factor which led to complacency and to the underestimation of developments that could lead to an abrupt end of this successful record.

After 2008 there were sustained deficits which also led to a dramatic increase of the public debt from 45% in 2008 to 79.7% of GDP by the end of 2012. It is important to stress that in the fall of 2014 the way GDP was calculated by the European Statistical Service changed.[20] Before this change the public debt was, in 2012, higher than 85% of

17 See Th. Pelagidis, *Greece: From Exit to Recovery?* (Washington, D.C.: Brookings Institution Press, 2014, June) (see in particular Chapter II).

18 This has been the conclusion of several discussions I had with foreign diplomats and expects. See also A. Apostolides, 'Beware of German Gifts Near Their Elections: How Cyprus Got Here and Why it is Currently More Out than in the Eurozone', *SSRN.com* (2013, May 3), DOI.org/10.2139/ssrn.2260222, and A. Orphanides, 'What happened in Cyprus', *SAFE Policy Letter*, No. 6, Goethe University (2013), available at http://nbn-resolving.de/urn:nbn:de:hebis:30:3-294834.

19 Statistical Service of the Republic of Cyprus.

20 *The Economist*, 'Calculating European GDP Changing the scales', (2014, August 23), available at https://www.economist.com/finance-and-economics/2014/08/23/changing-the-scales.

GDP. It is also essential to understand that the dynamics of the growth of the public debt was creating great concerns. Indeed, from 2008 to 2012 the public debt increased by 77%.

It was obvious that the economic model of Cyprus required urgent restructuring. Cyprus' membership of the Eurozone made this change imperative. Unfortunately though, no major actions was taken. This had very negative repercussions.

There was lack of adequate leadership at almost all levels of public life. The government of President Christofias (2008-2013) did not have a full understanding of the shortcomings of the Cypriot economic model and the way the Eurozone functioned. Thus, the structural problems of the economy were underestimated. What is even worse bankers at almost all levels underestimated the implications of participation in the Eurozone. This included the Central Bank of Cyprus. A long period of relatively high rates of economic growth and full employment led to complacency and a misleading perception of invincibility. In addition, both the state and the society spent beyond their means. Indeed, the public and in particular private debt were extremely high (see Table 1). There were voices of warning from prudent institutions and a few opinion leaders but these constituted an exception, not the norm. Any suggestions for restraint were faced with opposition by populist politicians and trade union leaders, especially those of the broad public sector and of the banking system.[21]

Table 1: Public, Private and Total Debt in the government controlled areas of the Republic of Cyprus

Year	Public debt (% of GDP)[1]	Private debt (% of GDP)[2]	Total debt (% of GDP)
2008	45.1	285.0	330.1
2009	53.8	306.0	359.8
2010	56.3	315.6	371.9
2011	65.7	321.6	387.3
2012	79.7	328.1	407.8
2013	102.6	340.1	442.7
2014	108.0	352.4	460.4
2015	108.0	353.5	461.5
2016	105.5	337.8	443.3
2017	96.1	316.3*	412.4*

Source: [1]Central Bank of Cyprus, [2]Eurostat, *provisional

21 An overview of the Greek Cypriot press during that period and, moreover, statements of leading politicians and trade unionists point out to this unfortunate reality.

The Mari explosion, which destroyed the major electricity plant of the country on 11 July 2011 and led to the death of thirteen persons, was a turning point as it was symbolic of an imminent collapse.[22] This incident also entailed adverse economic repercussions; the overall cost was estimated about €2.5 billions.

Cyprus joined the Eurozone at a time when a financial crisis was starting in the US that soon spread to the EU and internationally. Cypriot policymakers naively thought and stated that 'Cyprus will not be touched'.[23] If Cyprus had its own currency the impact of the crisis would have been of a lower magnitude due to the automatic stabilizers. A depreciation of about 15%-20% of the national currency would have acted in a corrective way at least for a period of time. But participation in the Eurozone led to higher real salaries and more borrowing at a lower interest rate. Furthermore, given the faulty architecture of the Eurozone and the lack of its comprehensive understanding by Cypriot policymakers at various levels matters became worse.

Furthermore, the exposure of Cypriot banks to Greece had a very serious negative impact on the banking system balance sheet. The restructuring and 'haircut' of the Greek debt in October 2011 led to a loss of about €4.5 billion in the Cypriot banking system; this amounted to about 25% of Cyprus GDP.[24] The Cypriot leadership gravely misunderstood the serious impact of the Greek PSI on the two major banks (Bank of Cyprus and Laiki/Popular Bank) and did not request European support before accepting this deal. Had Cyprus applied for EU support in late 2011/early 2012 the package of the Memorandum of Understanding would have been substantially different from the one in March 2013. Most likely, troika would have insisted on salary reductions, but not on bail-in. This did not take place as a result of the ideological positions of President Christofias and the lack of statesmanship. In March 2013 Cyprus was to pay a huge price. In addition to the major multidimensional crisis facing Cyprus the exaggerated negative European and international narrative around the Cyprus banking sector as well as the expediencies of the German national elections

22 P. Polyviou, *Report of Single Member Commission of Investigation on the explosion that occurred at the Naval Base 'Evangelos Florakis' in Mari on July 11, 2011*, (Nicosia, 2011, September 30).

23 Statements by President Christofias and the Minister of Finance Charilaos Stavrakis in the Press. See 'A Historical Overview of the Economic Crisis: October 2008 – February 2013' [in Greek], Part 1, available at https://https://stockwatch.com.cy/search.?gq=χρονικό%20εξελίκεων%20οικομικής%20κρίσης; *Kathimerini*, 'A. Neofytou: C. Stavrakis should apologize to the citizens' [in Greek] (2010, February 15), available at http://www.kathimerini.com.cy/gr/14525/?ctype=ar. Furthermore see C. Ioannou and A. Emilianides, 'How and Why Cyprus was shaken by the Crisis: The Real Causes' [in Greek], *Foreign Affairs: The Hellenic Edition*, Vol. 12 (2013), 41-51.

24 S. Clerides, 'The Collapse of the Cypriot Banking System: A Bird's Eye View', *Cyprus Economic Policy Review*, Vol. 8, No. 2 (2014), 3-35.

which were scheduled to take place in September 2013 should not be discounted.[25]

Undoubtedly, the newly elected President Anastasiades in February 2013 had inherited an extremely difficult situation that could be described as 'scorched earth'. But this was no excuse for the lack of adequate preparation for the negotiations with the Eurogroup in March 2013. Cyprus could have secured a less painful deal.

The Socioeconomic Cost of the Memorandum of Understanding

There is no doubt that the EU-IMF imposed bail-in program and its effects remain highly controversial. Those supporting the troika-imposed program indicate that this was inevitable. Moreover, today Cyprus has a promising future.[26]

Nevertheless, this is only one way to assess the situation. The bail-in/haircut of deposits (and bank debt) was not the most effective way to address these problems, without touching the issues of fairness and equitable treatment. We should also take into consideration the total massive loss of wealth of about €9.4 billions excluding the shareholders of the Laiki/Popular Bank which was resolved and of the Bank of Cyprus which was restructured. The following table shows that the total sum bailed-in by bank.

Table 2: Cyprus Banks Bail-in, € billion, March 2013

	Bank of Cyprus	Laiki/Popular Bank	Total
Uninsured deposits	3.9	4.0	7.8
Senior debt	0.0	0.1	0.2
Subordinated debt	0.6	0.8	1.3
Total	4.5	4.9	9.4

Source: IMF

It is also important to comprehensively assess the broader implications of these developments. The bail-in had severe social and economic repercussions. First, it caused an enormous redistribution of wealth with inevitable adverse impact on inequality, on the saving and consumption rate and of course the potential growth rate of the economy. Second, the bail-in contributed significantly to the rise of the non-performing loans since it hampered the households' ability to repay loans. Third, the bail-in seriously undermined trust in the banking sector and the political system.

The banking system of Cyprus suffered a huge loss and bank ownership changed hands. With the collapse of the Cooperative Central Bank in the latter part of 2018 the cost for the tax-payers will be even higher. In 2013 the method of bail-in was

25 Apostolides, *Beware of German Gifts Near Their Elections*; A. Orphanides, 'What happened in Cyprus', and Rettman, 'Leaked report damns Cyprus on money laundering'.

26 *Philelefθeros* (Financial section), Interview with Jeroen Dijsselbloem (2018, November 18), 6.

chosen; in 2018 for the Cooperative Central Bank the bail-out option was chosen by the government. In effect today there is no Cypriot Bank with Greek Cypriot majority ownership.

The Cyprus economy entered into a deep recession in 2013 following the bailout agreement signed with the troika in March 2013 based on the bail-in pre-condition. Real GDP fell by 2.9% in 2012, 5.8% in 2013 and 1.3% in 2014 (see Table 3). The austerity measures led to a sizeable shrinking of the economy. Cyprus GDP at constant prices shrank from €18.8 billion in 2012 to €17.7 billion in 2013 and €17.5 billion in 2014.[27] GDP fell by almost 11% in nominal terms and almost 10% in real terms in 2014 compared to 2011; it is now struggling to catch up to pre-crisis levels.

Table 3: Real and Nominal GDP in the government-controlled area of the Republic of Cyprus

Year	Real GDP (Bil. €)	% change	Nominal GDP (Bil. €)	% change
2008	19.437	3.6	19.006	8.5
2009	19.045	-2.0	18.674	-1.8
2011	19.377	0.4	19.731	2.2
2012	18.820	-2.9	19.490	-1.2
2013	17.728	-5.8	18.140	-6.9
2014	17.496	-1.3	17.610	-2.9
2015	17.839	2.0	17.746	0.8
2016	18.698	4.8	18.490	4.2
2017	19.489	4.2	19.571	5.8

Source: Statistical Service of the Republic of Cyprus

As it was noted earlier in November 2014, the Statistical Service of the European Commission changed the way of estimating GDP for all EU countries. Given the increase of GDP as a result of this methodological change, it appeared that there was an improvement of the fiscal deficit and public debt indicators. For example, it was reported that the public debt of Cyprus was 107.5% of GDP in 2014 under the revised system; while under the previous methodology of calculation, the public debt would have been around 120% of GDP. If this change had taken place at the end of 2012 the troika requirements for Cyprus would have been much less.

27 Statistical Service of the Republic of Cyprus.

Table 4: Demographic indicators in the government-controlled area of the Republic of Cyprus 1975 - 2016

Year	Fertility rate	Net migration	Marriage rate	Divorce rate	Percentage of old to young people
1975	2.01	-23.0	11.2	0.24	--
1982	2.50	-0.1	10.8	0.41	43
1992	2.49	16.4	8.1	0.71	43
2001	1.57	6.6	15.1	1.71	54
2010	1.44	19.2	7.3	2.33	75
2011	1.35	21.4	7.3	2.28	78
2012	1.39	-0.7	6.7	2.36	81
2013	1.30	-14.0	6.4	2.15	85
2014	1.31	-17.4	6.3	2.21	89
2015	1.32	-2.4	7.2	2.14	92
2016	1.37	2.9	7.5	2.29	96

Source: Statistical Service of the Republic of Cyprus

The drastic decrease of economic activity led to high unemployment and underemployment. Furthermore, the country witnessed serious demographic outflow.[28] It is also essential to note that inequality increased. In addition, not surprisingly there was greater uncertainty. Furthermore, the gap in the terms of employment between the public and the private sector widened sharply. Indeed Cyprus had become a different country.

Stabilization and Recovery

The economy showed positive growth for the first time in 2015 with a growth rate of 2%. Real GDP grew by 4.8% in 2016 and by 4.2% in 2017. It is important though to note that stabilization and recovery took place at a lower level of GDP in comparison to the beginning of the crisis.

28 See the relevant figures in Tables 4 and 7. Furthermore, see A. Theophanous and A. Sakadaki, *The Economic Crisis and the Demographic Challenges* [in Greek], Policy Paper 6/2015, (Nicosia: Center for European and International Affairs, 2015, October).

Table 5: Selective macro-economic indicators in the government controlled areas of the Republic of Cyprus 2010-2017

Year	GDP (Real growth %)	Unemployment*	Deficit (% of GDP)	Public debt (% of GDP)	Total Public debt** (% of GDP)
2010	1.3	6.3	-4.7	56.3	95.0
2011	0.4	7.9	-5.7	65.7	105.2
2012	-2.9	11.8	-5.6	79.7	120.8
2013	-5.8	15.9	-5.1	102.6	146.7
2014	-1.3	16.1	-9.0	108.0	152.7
2015	2.0	14.9	-1.3	108.0	152.4
2016	4.8	12.9	0.3	105.5	148.1
2017	4.2	11.1	1.8	96.1	137.7

Source: Central Bank of Cyprus

*This data comes from the Statistical Service of the Republic of Cyprus

**including intragovernmental debt and short-term

Liabilities of the Central Bank to the IMF

Unemployment gradually decreased: 16.1% in 2014, 14.9% in 2015, 12.9% in 2016 and 11.1% in 2017. Nevertheless, this was not only as the outcome of the creation of new jobs; many Cypriots and others left the country while more and more Cypriots who study abroad do not return. We also note that there is a great degree of underemployment which is not captured by conventional statistics based on the labour force survey. Public debt was 96.1% of GDP in 2017; it remains to be seen to what extent the resolution of the Cooperative Central Bank will affect the public debt. In this regard we should be reminded that the deal with the Hellenic Bank also essentially involved a bail-out.

The recovery was not made possible because of the troika's prescriptions alone but mostly because of the resilience of the Greek Cypriot people. I would even argue that the economy recovered despite the troika's prescriptions.[29] In view of the large adverse shock to the Cyprus economy from the bail-in and the austerity measures the recovery started from a statistically low base. It came at a huge economic, social and individual cost, lower living standards and great sacrifices primarily from the bailed-in victims and secondarily from the taxpayers, which included the former. Be that as it

29 I made this statement in my opening address on 12 November 2018 in a special event for the 25 years of the Cyprus Center for European and International Affairs. See A. Theophanous, *The Eurozone Crisis and the Future of the EU*, Eastern Mediterranean Policy Notes, No. 32 (Nicosia: Cyprus Center for European and International Affairs, November 2018).

may and despite some degree of Euroscepticism, Cyprus remains committed to the European Project.

The Cyprus Economy Today

The Rhetoric Versus the Results

The record of the Cypriot economy following the troika imposed program has been debated both in Cyprus and abroad. The government as well as the troika tried to convey the message that it was a success story.[30] Certainly, this was an exaggeration. In actual fact there was stabilization at a rather low level of economic activity. It is worthwhile noting that Jeroen Dijsselbloem in an interview with *Philelefθeros* stated that taking all relevant factors into consideration and given the high social cost it cannot be considered a success story.[31] He, nevertheless, stressed that Cyprus has a promising future. In relation to this debate I repeatedly expressed the view that Cyprus is a 'success story only when compared with Greece.'

The reality though is that to the present day Cyprus lacks a comprehensive vision for the future, despite the fact that the country needs a new paradigm following the economic collapse of 2013. It is essential to assess the factors which led to stabilization as well as the shortcomings.

An Overview of Developments: A Sectoral Approach

The banking sector still faces serious challenges. The non-performing loans constitute perhaps the greatest challenge for the economy. With the economic collapse in 2013 the Laiki/Popular Bank was resolved, the Bank of Cyprus was restructured and the entire banking system was recapitalized, including the Cooperative Central Bank. Nevertheless, poor management and the lack of effective leadership led to its collapse. The 'good' part of the Cooperative Central Bank was taken over by the Hellenic Bank and the 'bad' part was transformed into a State Asset Management Company with the objective to deal with the non-performing loans. It remains to be seen what this deal will eventually mean for the tax payers and the public debt. Some initial estimates point out that a new debt over €5 billions has been transferred to taxpayers.

In 2017 the non-performing loans were around €21 billion or about 110% of GDP. This in itself is indicative of the magnitude of the problem for the banking system and the economy as a whole. Furthermore, it is interesting to note that the non-performing loans were about 44% of the total in 2017, which fell to 32% by

30 For example, see G. Psyllides, 'Cyprus a success story, EIB president says', *Cyprus Mail* (2016, April 8), available at https://cyprus-mail.com/2016/04/08/cyprus-a-success-story-eib-president-says/.

31 Interview with Dijssebloem.

September 2018; in 2013 the respective indicator was about 25%.[32] The 44% figure in 2017 is the second highest in the EU.[33]

In order to effectively address this thorny problem, in addition to sustained growth 'thinking outside the box' is required. This may include various schemes of long-run leasing by the existing house owners.

Tourism has been a strong pillar of growth and recovery. Tourist arrivals in the government controlled area of the Republic of Cyprus grew from 2,464,908 in 2012 to 3,652,073 million in 2017, an increase of 48.16%. By the same token revenues grew from €1,927.2 million in 2012 to €2,639.1 million in 2017, an increase of 36.93%.

Table 6: Tourist arrivals and revenues in the period 2012-2017 in the government controlled areas of the Republic of Cyprus

	Tourist Arrivals (Mil.)	Change (%)	Revenue (Mil. €)	Change (%)
2012	2,464,908	3.0	1,927.2	10.2
2013	2,405,390	-2.4	2,081.4	8.0
2014	2,441,239	1.5	2,023.1	-2.8
2015	2,659,405	8.9	2,112.1	4.4
2016	3,186,531	19.8	2,363.4	11.9
2017	3,652,073	14.6	2,639.1	11.7

Source: Central Bank of Cyprus

Following a fall in the bail-in year of 2013 the accommodation and food service activities sector kept growing in both real and nominal terms at solid rates especially in 2016 and 2017 when the sector grew at 11.2% and 6.5% respectively at constant prices.[34] The downward pressure on prices and wages due to the internal devaluation triggered by the Memorandum of Understanding in conjunction with the offer of better-priced packages and higher foreign disposable incomes have been contributing factors.

Following the economic collapse in 2013, the property market as well as the construction sector suffered a serious blow; by 2016 a gradual recovery in both sectors began. The construction sector grew at a phenomenal average rate of 10.8% in real terms during the 7-year-period between 2001 and 2007 leading to a property market bubble. The sector began its expectable unwinding when the world economic crisis hit in 2008 since the sector was largely dependent on foreign demand. Over the 8-year period 2008-2015 the sector decreased at an average real negative rate of 12.2% per

32 Central Bank of Cyprus.

33 Ibid.

34 Statistical Service of the Republic of Cyprus.

year.[35] The construction sector rebounded in 2016 and 2017 with constant-price growth rates of 16.6% and 26.8% respectively[36] due to the Limassol casino resort project and in particular the government policy of 'passport for investment', leading to the erection of sky scrapers.

There have been great expectations from the energy sector given the prospect for discovery of huge amounts of hydrocarbons in the Cyprus Exclusive Economic Zone. Nevertheless, the hydrocarbons exploitation and development phase seems to be a difficult and complicated issue given the hegemonic aspirations of Turkey and its puppet state in the occupied northern part Cyprus. While the prospect of the exploitation of hydrocarbons remains open Cyprus should simultaneously seek alternative energy sources including solar energy.[37] Recent experiences may indicate that Cyprus could become more energy self sufficient potentially meeting its growing electricity needs.[38]

Cyprus has developed into an international shipping centre combining a sovereign flag and a resident shipping industry, as well as one of the world's largest third-party ship management centres. Cyprus is certainly very competitive in this sector offering tremendous services and advantages to shipping companies registering their vessels under the Cypriot flag. Shipping has proved to be one of Cyprus' most resilient industries and most promising sectors giving the island substantial political and financial strength. The shipping sector attracts foreign direct investment and contributes more than €1 billion a year to the economy. This accounts for almost 7% of GDP.[39] The industry directly employs thousands of shore-based personnel with more than half of them being Cypriot graduates. The sector survived the 1974 Turkish invasion as well as the devastation inflicted on the global shipping industry by the collapse of Lehman Brothers in 2008. It emerged from Cyprus' bail-in in 2013 unscathed in terms of taxation and operational framework. The Cyprus shipping sector is already benefiting from Brexit with the registration of companies moving out of London due to the island's recognized comparative advantages.

35 Statistical Service of the Republic of Cyprus..

36 Ibid..

37 International Renewable Energy Agency (IRENA) *Renewable Energy Roadmap for the Republic of Cyprus Summary for Policy Makers* (2015, January), available at http://www.mcit.gov.cy/mcit/energyse.nsf/C1028A7B5996CA7DC22580E2002621E3/$file/IRENA_Cyprus_Roadmap_Booklet_2015.pdf.

38 European Commission, 'Making sun-blessed Cyprus a solar energy leader', November 2017 http://ec.europa.eu/research/infocentre/article_en.cfm?id=/research/headlines/news/article_17_11_21-7_en.html?infocentre&item=Infocentre&artid=46502.

39 Statement of the Minister of Transport, Communications and Works for the approval of the bill for the establishment of a Deputy Ministry for Shipping, Deputy Ministry of Shipping, (2017, July 14), available at http://www.dms.gov.cy/dms/dms.nsf/All/D8CEAE7A43A1CBE6C225816B003FD335?OpenDocument.

During the crisis years, there was a significant deterioration of labour market conditions. Real wages dropped on average by 22% while purchasing power receded to the levels of the mid-1990s. The troika austerity measures in association with the bail-in pushed the Cyprus economy into deep recession, with the negative growth rates adversely affecting the creation of new jobs and the rate of unemployment. Unemployment hit particularly the construction, the banking sector, the young and the newcomers into the labour market. Rising unemployment exerted pressure on wages and widespread job insecurity for people previously employed on a regular basis. Consequently, irregular employment, undeclared work and underemployment rose as the only available options for the unemployed. Certainly, the introduction of flexibility in the labour market was part of the troika desired neoliberal package. Inevitably, labour retreated both as a force organized in trade unions with substantial negotiating power through collective agreements as well as in terms of its share in national income as a factor of production. In addition, the crisis converted Cyprus from a country of immigration to a country of emigration, and population decline accompanied with labour force contraction. The younger and especially the more highly educated persons consider the overall economic environment difficult and not as promising. One of the outcomes is that Cyprus also faces the problem of brain drain.

Table 7: Selective socio-economic indicators in the government controlled areas of the Republic of Cyprus

	2012	2013	2014	2015	2016	2017
Total Population	831,156	827,582	818,497	814,630	820,036	832,619
Change (%)		-0.4	-1.1	-0.5	0.7%	1.5
Unemployment (%,15+)	11.8	15.9	16.1	14.9	12.9	11.1
Change (%)		34.7	1.3	-7.5	-13.4	-14.0
Labor Force	436,742	433,949	432,288	420,961	417,069	426,789
Change (%)		-0.6	-0.4	-2.6	-0.9	2.3
Gini Coefficient	0.31	0,324	0,348	0,336	0,321	0,308
Change (%)		4,5	7,4	-3,4	-4,5	-4,0
Risk Of Poverty Rate	14.7	15.3	14.4	16.2	16.1	15.7
Change (%)		4.1	-5.9	12.5	-0.6	-2.5

Source: Statistical Service of the Republic of Cyprus

In sum, due to demographic outflows the labour supply was adversely affected. With the recovery unemployment dropped from over 20% to about 11%; this indicator may be misleading given that there are many underemployed persons. Moreover, to some extent the improvement of figures was also associated with emigration of many Cypriots who have been searching for opportunities in other countries. At the same

time income inequality grew. The middle class shrank dangerously while over one quarter of the population (25.2% in 2017) are at risk of poverty.

Even though the shrinkage of the middle class is not exclusive to Cyprus but is a wider phenomenon associated with economic and financial crises,[40] the bail-in particularly harmed the Cypriot middle class as a social group. Furthermore, middle class earnings and disposable income were hit both by the salary cuts included in the austerity measures and by the increase in taxation.

Fundamental Structural Problems Still Persisting

As already noted the non-performing loans still constitute perhaps the most pressing problem not only of the banking system but of the economy as a whole. Furthermore, it is essential to address the newly-introduced bureaucratic procedures by the banks and facilitate borrowing.

In relation to fiscal issues while it is acknowledged that much progress has been made much more remains to be done. It is not only the magnitude of spending that matters; equally important it is how it is spent. By the same token it is essential to pay attention not only to the level of tax revenues but also to how these are collected; the objective is to minimize the negative side effects such as the impact on economic activity.

It is also essential to push aside the patron–client relations and to promote meritocracy. Lack of public sector reforms and growing inefficiency is reflected in Cyprus' falling standing in international rankings:[41]

- Competitiveness rank: # 83 (2017) vs # 34 (2010)
- Corruption perception rank: # 42 (2017) vs # 27 (2009)
- Ease of Doing Business: # 53 (2017) vs # 36 (2008)

It is indeed unfortunate that the competitiveness rank and the corruption perception rank worsened despite the collapse of March 2013 and the advent of the troika. Unfortunately, the ease of doing business deteriorated in the last decade as well.

One of the great challenges is also the implementation of the General Healthcare System (national health system). Although its implementation is expected to start in mid 2019 it seems that there are several bottlenecks that create serious difficulties. It is essential to avoid a situation in which citizens end up paying more without any improvement in the health system. Be that as it may it is important that at last Cyprus will have an efficient health system with high quality.

40 Furthermore, it seems that this is not a phenomenon exclusive to Cyprus. For a comprehensive analysis see: D. Vaughan-Whitehead (Ed.), *Europe's Disappearing Middle Class? Evidence from the World of Work* (Edward Elgar Publishing, 2016), available at https://EconPapers.repec.org/RePEc:elg:eebook:17301, and M. J. Casey, *The Unfair Trade: How Our Broken Global Financial System Destroys the Middle Class* (New York, NY: Crown Publishing, 2012).

41 Trading Economics, available at tradingeconomics.com.

It is also important to improve the quality of education at all levels. Although considerable resources are allocated to this domain much can be done to obtain better results. Above all rationalization of public expenses in tertiary education is imperative. With the current allocation of resources in higher education it is impossible for Cyprus to maximize its potential and turn itself into a regional academic centre. More specifically the existing policy and practice discriminate in favour of state institutions. For example, the state pays the tuition fees of all students at the state universities (irrespective of income criteria). In addition, the state supports very generously the public universities while private universities have to rely almost exclusively on student fees. It is also worthwhile noting that there is a notable gap in the terms of employment between public and private universities.[42] Furthermore, in relation to research and development it is unfortunate that Cyprus allocates only 0.54% of GDP for research and development or just €99 million in absolute terms in 2016 according to the latest available data.[43]

In 2016 public debt was 105.5% and in 2017 96.1% of GDP. Private debt was 337.8% and 316.3% in 2016 and 2017 of GDP respectively (see Table 1). Reducing the public and the private debt are vital objectives which must be addressed decisively and effectively. Higher growth rates and good planning are essential. Prudent as well as intelligent debt management practices are also very important. In this regards, public debt management has been acknowledged by troika and its post program surveillance missions to have been well-organized and methodical. The application of a medium-term public debt management strategy and the implementation of an Action Plan approved by the Council of Ministers has further strengthened the efficiency and competence of Cyprus public debt management.

The Occupied Northern Part of Cyprus

Developments in the occupied northern part of Cyprus must be analysed taking into consideration the broader objectives of Turkey in the island and the Eastern Mediterranean. The population in the occupied part of Cyprus, excluding the 40,000 occupation troops, is about 351,000. It is estimated that only about 35% are Turkish Cypriots. The vast majority of the population in the occupied area are settlers.[44]

42 A. Theophanous, 'The importance of turning Cyprus into a regional academic and research centre after the economic crisis', Policy Paper 4/2017 (Nicosia: Cyprus Center for European and International Affairs, 2017, October).

43 Statistical Service of the Republic of Cyprus.

44 A. Theophanous, *Governance and the Political Economy of a Federal Cyprus* [in Greek] (Athens: I. Sideris Press, 2016), 90-98, and A. Djavit An, *The Turkish Cypriot Community in Historical Perspective and the Changes in its Structure and Identity*, Policy Paper 2/2018, (Nicosia: Center for European and International Affairs, 2018, October).

Gradually and inevitably the composition of the Turkish Cypriot community is changing.

Table 8: Total Population in Cyprus (Government-controlled area and occupied area, 2011, 2014 and 2017)

	Greek Cypriots	Citizens of other countries	Republic of Cyprus controlled areas	Occupied area Turkish Cypriots,* Settlers and others	Total
2011	684.000	178.000	862.000	286.257	1.148.257
	59,6%	15,5%	75,1%	24,9%	100%
2014	694.700	152.300	847.000	313.626	1.160.626
	59,9%	13,1%	73,0%	27,0%	100%
2017	713.500	150.700	864.200	351.000	1.215.200
	58,7%	12,4%	71,1%	28,9%	100%

Sources: Statistical Service of the Republic of Cyprus; 'TRNC- State Planning Organization', Economic and Social Indicators 2013, 2014, April 2015.[45] *It is estimated that the Turkish Cypriots constitute around 35% of the population in the occupied northern part of Cyprus. The vast majority are settlers.

Essentially the self proclaimed 'TRNC' is de facto part of Turkey's economy. The use of the Turkish lira as the 'official' currency since the summer of 1974 is indicative. It is estimated that Turkey subsidizes by about 25% the annual budget of the 'TRNC'; this amount is estimated to be about €350 million annually. Furthermore, Turkey also subsidizes infrastructural projects.

Before the partial lifting of restrictions of people's free movement in April 2003 the ratio of the per capita GDP in relation to the government controlled areas was estimated at 1:4. This has improved to about 1:2 but following the depreciation of the Turkish lira it is now estimated to be 2:5. Despite the support of Turkey the interlinkages with the government controlled areas of the Republic of Cyprus are of critical importance for the economy of the 'TRNC'.

There has been much discussion in relation to the prospect of reunification and the economic ramifications. Within this context when EU and IMF officials expressed their will to examine the banking sector in the 'TRNC' for some fundamental assessment this proved impossible. Most likely this is related to corrupt practices and interlinkages with Turkey which certainly include money laundering and other illegal activities.

45 See J. Christou, 'North's population tops 350 thousand', *Cyprus Mail Online*, 18 November 2017 https://cyprus-mail.com/2017/11/28/norths-population-tops-350-thousand/?hilite=%27population%27%2C%27north%27%2C%27has%27%2C%27reached%27%2C%27351%27%2C%27000%27.

Despite the fact that the 'TRNC' is essentially integrated with the Turkish economy, Turkish Cypriots have always preferred the Cyprus national currency, i.e. the Cyprus pound and since 2008 the euro. With the Turkish economic crisis and the depreciation of the Turkish lira, the idea was put forward by some circles in the Turkish Cypriot business community for the adoption of the euro. Such an idea is not realistic. There is no doubt that the requirements for participation in the Eurozone as well as its architecture are not understood in the 'TRNC'.

In this regard it is essential to understand that the 'TRNC', which is an integral part of the Turkish economy, is characterized with a high degree of statism. Given Turkey's economic support in various ways one can also understand Ankara's full control of the 'TRNC'.

Tourism and higher education constitute two of the most important sectors of the economy of the 'TRNC'. Yet these are characterized by a high proportion of shadow economy, including gambling, money laundering and prostitution.[46] Moreover, in the last few years, there have been intensified efforts to enhance the islamization in the 'TRNC'.[47] There is no doubt that the 'TRNC' has been created in Turkey's image.[48]

Last but not least it should be stressed that there is no 'tax culture' in the 'TRNC'.[49] This is important especially in view of the debate for a solution of the Cyprus Problem. Given the high deficit of the 'TRNC' and the lack of tax culture, much has to change. This is essential within the framework of a solution to the Cyprus Problem in a way in which the northern part of Cyprus should be part of the Eurozone.

Challenges and Opportunities

Cyprus in the New Regional and International Context

While addressing challenges and opportunities for Cyprus it is essential to understand the broader context within which developments take place. Developments in the Eastern Mediterranean, the broader region and the international environment will exert an impact on the Cypriot economy. Consequently, policymakers must be proactive.

While some of the problems of the Eurozone architecture have been addressed much more remains to be done. In this regard Cyprus despite its size has to make its own contribution to issues of European integration. In this context it could advance the objective of more flexibility and discretion while at the same time responsibility

46 Djavit An, *The Turkish Cypriot Community in Historical Perspective*.

47 Ibid.

48 This has been intelligently observed much earlier. In this regard see Ch. Ioannides, *In Turkey's Image: The Transformation of Occupied Cyprus into a Turkish Province* (New Rochelle, NY: Caratzas, 1991).

49 This has been the conclusion of discussions with Turkish Cypriots as well as with Greek Cypriots and foreign officials.

should be an integral part of the architecture.

Brexit cannot be ignored as it will influence both the United Kingdom and the EU. Cyprus as a member-state of the EU and of the Commonwealth must have a strategy which safeguards the best interests of the country.

Developments in the Eastern Mediterranean, the broader region and the international environment will also have their own impact on the Cypriot economy. Furthermore, developments in Turkey as well as Ankara's policies will also be influencing Cyprus in multiple ways. Cypriot policymakers must be proactive.

Cyprus must devise a low-tensions strategy while at the same time it must involve itself in a network of regional cooperation and security agreements and arrangements. Developments in the broader Middle East cannot be ignored. Cyprus will have to cooperate with other EU member states to advance an EU level policy in relation to the ongoing migration crisis. It is also understood that Cyprus has to pursue policies to deter increasing waves of illegal immigration.

There is no doubt that the ongoing technological revolution taking place will have far reaching implications in almost all aspects of life and economic activity. Cyprus cannot be an exception; consequently, it has to prepare accordingly.

We must also acknowledge the socioeconomic and political fallout of demographic changes and developments taking place. Obviously these have an impact on taxes, pensions as well as the need for increased allocation of resources to health care and related activities for retired people.

It is also important to follow developments in relation to changing paradigms in the region, in the EU and internationally and adjust proactively in due time. Cyprus must also assess the trends and implications of regional geopolitics and plan accordingly. Within this framework it must also fully analyse the multidimensional challenges and threats from Turkey, including the demographic changes in the occupied northern part the island.

Addressing the Challenge of the Financial Sector and of the Non-Performing Loans

Following the collapse of 2013 the ownership of the banking system changed dramatically. With the resolution of the Laiki/Popular Bank and the restructuring of the Bank of Cyprus as well as the recapitalization of the Hellenic Bank the controlling participation of the Greek Cypriots was not dominant anymore. The last vestiges of Greek Cypriot control of the country's banking system disappeared, with the resolution of the Cooperative Central Bank in August 2018.

At the same time it should be noted that the banking system passed from a situation of no controls and checks before 2013 to a new state of affairs with excessive controls and bureaucracy, obstructing its financial intermediation role. In relation to the

pressing problem of non-performing loans, which constitutes the greatest challenge of the financial sector and perhaps of the economy, new ideas and thinking 'outside the box' will be required to address it effectively over time.

Table 9: NPLs of the General government, Corporations, Household and Total as % of GDP

	General government € thousands		Corporations € thousands		Households € thousands		Total € thousands	
	Amount	% of GDP	Amount	% of GDP	Amount	% of GDP	Amount	% of GDP
2014	62,304	0.35	14,686.569	83.42	12,579.419	71.45	27,328.292	155.22
2015	47,907	0.27	13,933.116	78.53	12,688.051	71.51	26,669.074	150.32
2016	39,426	0.22	11,733.566	64.40	12,037.053	66.07	23,810.045	130.69
2017	35,679	0.19	9,925.096	51.66	11,179.671	58.19	21,140.446	110.03

Source: Central Bank of Cyprus

Table 10: Percentage of Non-Performing Loans to total gross loans ratio 2009-2017

Year	Non-Performing loans ratio (%)
2009	4.51
2010	5.82
2011	9.99
2012	18.30
2013	28.56
2014	44.97
2015	47.75
2016	48.68
2017	40.16

Source: Statista-The Statistics Portal, 2019

In order to address this major problem it is necessary to utilize some new ideas such as long-run leasing. Furthermore, more borrowing should be encouraged. This may lead to a decrease of the percentage of the non-performing loans while at the same time economic activity will be stimulated. To this end the big difference between deposits and loan interest rates should be reduced to a minimum.

It is also important to strike a new balance between effective controls and monitoring vis à vis flexibility and discretion. Overall, it is necessary to assess creatively the fundamental problems of the financial sector and generate a road map for addressing them. Within the framework of such an approach it is possible that the

credibility of the financial sector will be gradually re-established.

Attracting Foreign Investment

Attracting foreign investment is an important chapter for the economy of all countries. Cyprus after the collapse of 2013 and the deep recession required qualitative foreign investment. It is essential to assess the record so far and also raise the question of what kind of investments the economy requires. Given the imperativeness of new engines of growth, it is important to explore the capabilities and prospects of each type of investment. For example, the policy of incentives for the purchase of real estate and the acquisition of passports has its disadvantages. More specifically, this has been affecting the price of land and of rents in ways which do not help the middle class and the lower income groups.[50] Investment in real estate construction should be re-evaluated given the fact that this sector is still seriously affected by the price bubble of the period 2001-2007. It is also underlined that the sale of passports benefits mostly specific interests in the financial and legal sectors without sufficient financial benefit across society. It would make much more sense to have a comprehensive policy (with specific incentives, including passports) encouraging qualitative foreign investment which creates new high value-added jobs.

The Socioeconomic and Political Implications of a Solution to the Cyprus Problem

Although much attention has been given to the solution of the Cyprus Problem, not much attention has been given to the day after. It is surprising how frivolously this issue is dealt with. Indeed, repeatedly there have been statements and reports which have been suggesting that following a solution there will be an economic boom. This seems to be the outcome of inflated expectations rather than the outcome of sound economic analysis.[51]

The reality, however, is that there will be diverse forces pushing toward opposing sides. A solution within the framework of what is being discussed will create a new state of affairs with a very complex decision making process.

It is essential to take into consideration problems and bottlenecks in the decision making process that will be the outcome of a very complex constitutional arrangement. Furthermore, it is doubtful whether a bizonal bicommunal federal state with three governments, three parliaments and a senate, as well as a complex public administration, can survive the very strict rules of the Eurozone. It is also misleading

50 See *Phileleftheros,* 'Stable salaries, rising rents' (2019, January 21), 8, which was based on information from several studies and data of the government, trade unions and some business enterprises.

51 For example, see F. Mullen, O. Oğuz and P. Kyriacou, *The Day After: Commercial Opportunities Following a Solution to the Cyprus Problem* (Nicosia: PRIO Cyprus Centre, 2008).

to assume that irrespective of the content of the solution of the Cyprus Problem the outcome will be the same. Indeed, each scenario for the solution of the Cyprus Problem entails a specific outcome.[52]

Economics aside, from a political perspective a solution within the framework of a bizonal bicommunal federation would render Cyprus a protectorate of Turkey. Indeed, several academics and analysts have pointed out that such a solution will satisfy the objectives of Turkey as defined after 1950.[53]

Toward a New Paradigm

No New Paradigm Yet

Cyprus has not yet advanced a new comprehensive paradigm despite the turning point of the 2013 major crisis including the bail-in. It is acknowledged that inadequate planning and the lack of a comprehensive paradigm entail a high cost. There is no doubt that the country requires a new vision. Cyprus has to address gradually but effectively the serious structural problems it is facing. These include the non-performing loans. Furthermore, it is essential to fully re-establish the credibility of the banking system and the financial sector as a whole. Given that the financial sector has been shrinking, new sectors and niches will be required to generate more employment opportunities. It is also imperative that both the public and the private debt are reduced gradually but steadily.

The Importance of Leadership

Cyprus requires better leadership in all aspects and levels of public life. This includes the political system which needs much improvement as well as sophistication. The necessity of a new economic paradigm for Cyprus is stressed. Cyprus has to address effectively the pressing challenges and also take advantage of opportunities that arise. An effective leadership with vision should be in a position to understand and act up on a changing regional and international environment. This includes the new technological revolution as well as the demographic changes.

52 See A. Theophanous, *The Political Economy of a Cyprus Settlement: The Examination of Four Scenaria*, PRIO Report 1/2008 and A. Theophanous, *Governance and the Political Economy of a Federal Cyprus* [in Greek], (Athens: I. Sideris Press, 2016).

53 For example, see the excellent book by S. Sakellaropoulos, *Cyprus Social Formation 1191-2004: From construction to partition* [in Greek] (Athens: Topos Press, 2017), especially.784.

The Huge Credibility Deficit and the Need to Overcome It

Despite the great socioeconomic and political cost of the collapse of March 2013 it seems that many of the practices and mistakes of the past continue to the present day. The vast majority of Cypriots also believe that corruption has not yet been tackled. On the contrary it continues to be a characteristic of socioeconomic and political life.

Six years after the collapse of March 2013, it is unfortunate that the country is still facing a huge credibility deficit at various levels. The level of trust in institutions is at low levels. Furthermore, despite major steps in the right direction, Cyprus has to overcome bad publicity in the EU and the US.[54] Indeed, great efforts will be required to reestablish credibility for the major institutions of the country internally and externally.

Rationalization of Public Expenses

A major problem that has not been addressed comprehensively despite the economic crisis and the Memorandum of Understanding is the lack of rationalization of public expenses. It is essential that the pension system is revisited and reformed accordingly. Furthermore, within this framework it is important to revisit public spending on higher education.[55] Indeed, the political system must proceed with the necessary changes without any fear for the possible political cost. In this respect, populism should not be allowed to have a serious impact on the budgetary process.

Importance of Enhancing the Effectiveness of Public Administration

The pillar of public administration is of the highest importance in any country. It is thus imperative to address the serious problems of bureaucracy, nepotism and corruption. The importance of meritocracy and of pushing aside the patron-client relationships as well as mediocrity is particularly important. Indeed, a meritocratic system of appointments and selection procedures should be a priority. Furthermore, it is essential to increase productivity and also take advantage of technological advances.

Effective Utilization of Human Capital

We must also reassess the composition of the labour supply and examine ways for its full utilization. Obviously this requires adequate planning as well as enhancement of economic activity in all sectors. It is unfortunate that despite the fact that most young Cypriots acquire higher education, Cyprus has one of the highest youth unemployment

54 For example, see *The Economist*, 'Malta and Cyprus face growing pressure over money-laundering', (2019, January 26), available at https://www.economist.com/europe/2019/01/26/malta-and-cyprus-face-growing-pressure-over-money-laundering.

55 See International Monetary Fund (IMF), 'Options for Short-Term Expenditure Rationalization' (2013, March), 22-28, available at https://info.publicintelligence.net/IMF-CyprusExpenditureRationalization.pdf.

rates in the EU. This is a clear indication that a new paradigm is required. It is also essential to understand the causes and the nature of structural unemployment in the EU and Cyprus.

The Need for New Engines of Growth

Recovery and growth in Cyprus have not been the outcome of new engines of growth which can sustain development over time. New engines of growth are required so that the economy will generate multiple jobs in order to absorb the idle labour force. Cyprus must reassess its expectations in relation to quick energy exploitation, without abandoning its energy program and vision; there are serious political complications which may create additional delays and security risks.

The potential of Cyprus as a higher education and medical centre can and must be enhanced. In this context, enhanced cooperation between public and private sector is necessary. Moreover, the state should adopt a strategic role in this domain and remove obstacles which treat private higher institutions as second to public institutions. Within this framework it is essential that Cyprus offers higher quality education with relatively lower fees. This may be achieved with the reallocation of the state budget for higher education. At the same time it is important not to ignore the potential contribution of vocational training.[56]

The role of Cyprus as a centre for humanitarian, relief and disaster management operations across the Middle East and North Africa must be developed as a new engine of growth. For this purpose Cyprus must utilize its geographical location and establish strong synergies with other EU member-states.

Revisiting the Cyprus Problem

Last but not least, Cypriot policymakers should seriously study the socioeconomic and political implications of a solution to the Cyprus Problem. It is misleading to assume that:

(a) more or less the impact is the same from any solution; and
(b) that any solution will generate positive socioeconomic and political outcomes

It may be more realistic to consider the possibility of an evolutionary process for the solution of the Cyprus Problem.[57] Such an approach will also engage Turkey and also include energy issues in the overall discussion. Although there is no guarantee for a fruitful outcome out of this process it is more promising that what has been pursued for so many years.

56 Theophanous, *The importance of turning Cyprus into a regional academic and research centre*.

57 A. Theophanous, 'Revisiting the Cyprus Question and the Way Forward', *Turkish Policy Quarterly*, Vol. 15, No. 4 (2017 Winter), available at http://turkishpolicy.com/article/841/revisiting-the-cyprus-question-and-the-way-forward.

Epilogue

Having lived through turbulent decades in the 1960s and the 1970s, having survived the Turkish invasion of 1974 and despite the *de facto* partition, the Republic of Cyprus managed to build a prosperous economy and enjoyed over thirty years of economic growth, peace and political stability. Indeed, it reached such a level of development that earned its membership in the EU. This has been a remarkable success.

Unfortunately, by 2013 Cyprus had fallen victim to its own success. Many years of uninterrupted economic growth bred complacency, irresponsibility and a culture of invincibility at most levels of society. Without downplaying external factors, it is vital to assess the internal responsibilities for the failure, which left the Cypriot economy with high private and public debts and other serious problems.

These are difficult times as there are profound changes, unrest and widespread security challenges in the broader Middle East and across the planet. Undoubtedly, we are witnessing a transition to a new paradigm whose shape and nature have not yet been fully formed and understood. A major threat of historical transition periods, like the one we have entered, is that more often than not they may seriously affect those nation-states which fail to stand the test of time. They may also revive old bitter memories and uncover old wounds. The current crisis that we are witnessing in Cyprus and beyond is multidimensional: economic, political and social. It also revolves around the lack of a credible value system. Indeed, we have entered a new period where everything, from individual life to social norms and institutions, undergo serious changes.

In this new reality the Republic of Cyprus finds itself at the crossroads of potentially cascading crises. Cyprus is located in the Eastern Mediterranean and near the broader Middle East. It has a predominantly hellenic identity and special relations with Greece. About 37% of its territory is occupied by Turkey, one of the most powerful states in the region. In addition to the British bases on the island, Cyprus shares deep social and economic ties with the United Kingdom despite a bitter historical past. At the same time, it has a strong economic, political and cultural relationship with Russia. Furthermore, in the last few years the Republic of Cyprus advanced tripartite agreements with Israel, Greece and Egypt. In addition, Cyprus has been trying to enhance and advance its regional policy and presence.

Such a precarious geopolitical position coupled with the need to adopt a new economic model requires high-caliber strategic thinking and policy implementation. Furthermore, the policy which has been followed in relation to the Cyprus Problem in the last years will have to be revisited. New realities demand new approaches. Cyprus should encourage initiatives to create a new open environment for a societal dialogue on the most pressing matters and risks it faces as a state. Moreover, Cyprus should

aspire to make a modest contribution to broader pressing issues in the region and the EU. It must also work and position itself in ways that will enable Cyprus to be an asset for the EU and the international community.

Finally, it is imperative that Cyprus will have at last a comprehensive narrative. A major part of it should address the Cyprus Problem. In addition, it is essential that any negative allegations about Cyprus as a business centre are addressed accordingly. Moreover, the narrative would explain the multidimensional role of Cyprus in the EU, the Eastern Mediterranean and beyond.

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BOOK REVIEWS

The Doctrine of Necessity in Constitutional Law

Constantios Kombos
Sakkoulas Publications (Athens-Thessaloniki, 2015), 257 pp.
ISBN 978-960-568-283-5

In his monograph, *The doctrine of necessity in Constitutional Law*, Constantinos Kombos approaches a classic issue in Cypriot law. There is no doubt that the doctrine of necessity represents the most characteristic aspect of the idiosyncrasy of constitutional law in the Cypriot legal order. The deep concern to safeguard constitutional law under the specific historic circumstances in Cyprus had led to a judicial commitment on interpreting the constitutional provisions so as to ensure the functional continuity of the State. In other words, the self-preservation and continuation of the State, as well as the pressing need to find solutions for situations which had not been taken into consideration or foreseen by those who had drafted the constitutional text, led the legal praxis to develop the doctrine of necessity.

Since 16 August 1960, the Republic of Cyprus was established as an independent and sovereign state and obtained a constitution which was a result of major compromises, not really reflecting the free will of people living on the island.[1] Although the constitutional provisions were supposed to form a sovereign state, in fact, this was not exact: the United Kingdom, Greece and Turkey disposed remarkable authority of intervention in Cyprus. As a result of the violent disturbances between the Greek and Turkish communities in 1963 – armed conflicts, extensive damage to property, victims on both sides and rebellion against the established government – the two highest tribunals of the Republic, the Supreme Constitutional Court and the High Court, had become inoperative: the President of the Supreme Court resigned and the Turkish judges vacated their offices. In view of the aforementioned situation the dilemma was existential: 'to follow the letter of the Constitution or to resort to the only constitutional alternative that would enable the functioning of the State until a political compromise was reached'.[2] Under this pressure for the survival of the Republic, the

1 As Professor A.C. Emilianides underlines: 'undoubtedly one of the most rigid and detailed constitutions of the world', cf in 'Accession of the Republic of Cyprus to the EU, the Constitution and the Cypriot doctrine of necessity', http://www.academia.edu/4050764/Accession_of_the_Republic_of_Cyprus_to_the_EU_the_Constitution_and_the_Cypriot_Doctrine_of_Necessity.

2 C. Kombos, *Report on Cypriot constitutional law*, (2016), available at http://www.iconnectblog.com/2017/12/developments-in-cypriot-constitutional-law-the-year-2016-in-review.

House of Representatives proceeded, in the absence of Turkish Cypriot members, to adopt Law 33/64 on the *Administration of Justice (Miscellaneous Provisions)*. According to this law, the Supreme Constitutional Court and the High Court, provided in the Constitution as appellate courts, were merged into a new court: the Supreme Court.

The constitutionality of this law had been examined in the landmark judgment *Mustafa Ibrahim*. The legal doctrine of necessity was invoked to justify the compatibility of the law in question with the constitutional order as follows: 'The legal doctrine of necessity is in reality the acceptance of necessity as a source of authority for acting in a manner not regulated by law but required, in prevailing circumstances, by supreme public interest, for the salvation of the State and its people'.[3]

According to the Court, the crucial prerequisites for the application of the doctrine of necessity are the following: (a) an imperative and unavoidable need or exceptional threat against the existence of the State; (b) no other alternative or remedy; (c) the proportionality of the action adopted as to the exceptional situation; and, (d) the temporary character of the measure and its duration strictly for no longer than the emergency exists.

As Kombos points out, 'the *Ibrahim* judgment is an example of solid and thoughtful legal argumentation that can be regarded as the leading and most important contribution of the Cypriot legal system to legal science in general'.[4] In essence, the *Ibrahim* judgement emphasizes that a state could not pathetically 'sign' its self-destruction by admitting the insufficiency of its constitution. Moreover, it has been alleged that 'the doctrine of necessity is […] neither an extraconstitutional, nor a supraconstitutional principle; it is rather a constitutional principle per se, which indirectly forms a part of article 179 of the Constitution of the Republic of Cyprus. Thus, the doctrine of necessity should be considered to be an indispensable part of the constitutional order and the ultimate rule of recognition of the Republic of Cyprus'.[5]

In this context, the author of the present monograph, having the Cypriot paradigm of the doctrine of necessity at the epicenter of his study, seeks to establish a dialogue with the scientific community on the Cypriot experience. That is to say that Kombos insists on the comparative and outward looking approach of the national specificity and focuses on the substantial added value of such a theoretical framework. It is obvious that the Cypriot experience on the issue provides remarkable cases which are of great interest not only for the scholars but also for all those who are involved in the

3 *The Attorney General of the Republic v. Mustafa Ibrahim*, 1964, CLR 195.

4 Kombos, 6.

5 Emilianides, 'Accession of the Republic of Cyprus to the EU, the Constitution and the Cypriot doctrine of necessity'.

legal praxis (lawyers, judges, administration, etc.).

The book is divided into six chapters. In the first one, the author lines out the purpose of his study, as well as the methodological tools by which he intends to carry out his research. The second chapter treats the theoretical foundations of the doctrine of necessity, while the next one is devoted to the comparative approach of the question. In the fourth part, Kombos examines the historical constitutional circumstances which led to the tension and warlike situation between the two communities and finally to the collapse of the system. Then, a detailed analysis of all the aspects of the emblematic judgement *Ibrahim* is included in the fifth chapter. The next chapter 'scrutinises the subsequent application of *Ibrahim* to administrative acts that autonomously rely on the doctrine of necessity, to legislative enactments enabling the reformation of Organs of the State, to the application of the doctrine to fundamental rights and to the special case of constitutional amendments'.[6]

It would be useful to underline three undeniable merits of the present academic study:

(a) The author examines the evolution of the doctrine of necessity through its application by the courts. To this purpose, numerous decisions of the Supreme Court are identified in Kombo's analysis. The guiding authority of the judgement *Ibrahim* – not only on the level of national courts, but also, its impact on the international jurisprudence – proves the importance and the authenticity of the inspired solution as provided by this significant and well balanced decision. Although the international concept of law of necessity seems to be much more limited than the Cypriot case, the detailed analysis of the doctrine of necessity in Cypriot jurisprudence is still of great usefulness in general constitutional theory.

(b) Kombos tries to distinguish the doctrine of necessity from the doctrine of effectiveness. He clarifies that there is no doubt that both doctrines 'are placed on the verge of constitutional spectrum and this is a substantive realization that anyone must keep in mind when discussing their application. […] However, the real justification for the doctrine of effectiveness and the doctrine of necessity is to be found in pragmatism'.[7] Apart from this basic similarity, it must be taken into consideration that even if the doctrine of necessity could be regarded as part of the wider constitutional arsenal, it is not exactly the same for the doctrine of effectiveness. In other words, concerning the doctrine of effectiveness, it seems less certain that it could be also regarded as part of the same constitutional spectrum.

(c) As the doctrine of necessity is linked to exceptional circumstances and

6 In the author's words, cf. Kombos, 5.

7 Kombos, 240.

institutional abnormalities or political discontinuity, it is evident that an efficient system of checks and balances should be meticulously applied. To this purpose, the judicial review offers a reliable solution. That is to say, that through the power of the courts to examine the consistency of legislative or administrative acts with the constitution and the constitutional principles, the courts have always considerable discretion in appreciating the factual emergency of each case. In these terms, the intensity of judicial scrutiny seems to provide functional guarantees as far as the limits of the doctrine of necessity are concerned. On the other hand, it also keeps away the danger of abusive use of the doctrine of necessity which is crucial for such an exceptional legal concept.

Another remarkable contribution of the present monograph has to do with the author's critical approach as to the limits of the doctrine of necessity. More specifically, the doctrine of necessity, based on the old Roman law principle according to which *'salvus reipublicae suprema lex esto*', must be considered as an exceptional possibility for the state to protect itself from unforeseeable circumstances threatening its existence, or as a means of self-defense prevailing under boundary conditions. As a result of this, it is certain that the whole concept of necessity must be approached by the legal order with extreme caution and continual vigilance. To this purpose, it is mainly the judicial review that offers the most reliable guarantees. The power of the courts to examine whether administrative acts are consistent with the doctrine of necessity, or to examine whether the adoption of an act under the law of necessity is adequately reasoned, provides a safety net as far as the respect of the constitutional order is concerned. The intense judicial scrutiny responds to fears of abusive invocation of exceptional circumstances, justifying the application of the doctrine of necessity, and guarantees the courts' systematic control of the criteria related to the legal sense of 'necessity'.

However, Kombos does not hesitate to avoid that 'the required intensity of review was not present in an alarming and growing number of cases. The criteria of *Ibrahim* were often applied in an overlapping manner, while often there was considerable ease in attributing factual emergency to situations of mere expediency. This has been the most significant problem, since it creates a source for uncertainty and ambivalence as to the limits of the doctrine of necessity'.[8]

In this way, the author underlines the importance of strict, increased and methodical judicial control of the administrative decisions invoking the doctrine of necessity as an operative event of their adoption. Only such an approach can provide balanced solutions and prevent from exaggerations and superficial invocation of the concept of necessity.

8 Kombos, 247.

An additional contribution of Kombo's monograph consists in the emphatic way that the author approaches the role of constitutional principles in the interpretation and the durability of the constitution. There is no doubt that constitutional principles, as a substantial element of the legal structure, play a decisive role in the comprehension and the application of the constitutional rules. Their elasticity and adaptability usually lead to effective ways of safeguarding citizens' fundamental rights against dogmatic impasses and institutional embarrassments. From this point of view, Kombos elucidates the '"hidden" contribution of *Ibrahim* that is frequently ignored' as follows: '*Ibrahim* must be credited with the introduction of the principle of proportionality and with its unquestionable constitutionalisation."[9]

Finally, far from adopting an unrealistically optimistic stance, the monograph soberly examines and evaluates the impact of the doctrine of necessity in the history of institutions in the Cypriot law. For this reason and because '*Ibrahim* was the finest hour of the Cypriot judiciary despite the peripheral problems of the judgement',[10] Kombo's analysis is apparently of particular interest for those who insist on the merits of comparative law as *sine qua non* of any scientific legal approach.

Catherine Papanikolaou

9 Kombos, 243.
10 Ibid., 13.

Contemporary Social and Political Aspects of the Cyprus Problem

(eds) Jonathan Warner, David W. Lovell, Michalis Kontos
Cambridge Scholars Publishing (Newcastle-upon-Tyne, 2016), 332 pp.
ISBN: 978-1-4438-8819-6

This book was born after a workshop in the context of the 2012 conference of the International Society for the Study of European Ideas in Cyprus. It brings together 12 papers, which the editors have divided into four 'Parts', each revolving around a unifying theme (identity and perceptions, contemporary political issues, comparisons with other countries, and new approaches towards resolving the Cyprus Problem). As a consequence of its origins, the units do not systematically and comprehensively cover the major important social and political aspects of the Cyprus Problem; for instance, Part I on 'Identity and Perceptions' does not adequately deal with the way ethno-national identities in the two communities have been changing in recent decades; in Part II there are good analyses of the political economy of the north, its dependence on Turkey and the impact these changes have on Turkish Cypriot politics – but no similar treatment is offered of the political economy of the south, the financial crash and the consequent, significant impact on Greek Cypriot politics. Similarly, Part III on 'Comparisons', juxtaposing Cyprus to Belize and Sri Lanka, seems quite random, and one could imagine much more interesting comparisons (with other deeply divided societies, other European states hosting minority nations, other countries which have recently introduced federal elements in their political systems, and so on). Despite such limitations, the book contains interesting and well written articles.

Part I starts with a paper by D. Lovell, who tries to contextualize the Cyprus Problem by pointing out that 'protracted social conflicts' seem to be 'difficult to resolve because they tend to involve matters of identity' and trust. He rightly underlines that building this trust needs patience and time, and the forging of a common sense of peoplehood. Yet he seems to get it wrong when he proposes that 'the fundamental problem in Cyprus is that it has not been allowed – it was not given a chance – to build a Cypriot nation after its independence […] in 1960'. But who didn't allow the Cypriots to build their own nation? They are the ones who strongly opposed that, believing themselves to already be parts of two other nations; indeed, the 1960 Constitution recognizes this, spelling out that the Republic of Cyprus is inhabited by Greeks and Turks of Cyprus – and not by Cypriots! The issue in Cyprus is not how to create a new nation, but rather how two ethno-national communities can co-habit in a multi-national state or federation. The issue is how two

national communities can form one people.

The next paper of this section, by Michalis Kontos, provides an illustration of the importance of local beliefs in how developments are received; it looks at 'foreign interventions'(namely USA ones) and how these are viewed with suspicion by the local communities (in this case the Greek Cypriots), who tend to interpret current political moves on the basis of 'pre-existing beliefs' and what they assume to be the given geopolitical realities. That is why foreign interventions, even if well meant, may be unsuccessful and 'counterproductive' to the cause of the solution of the Cyprus Problem.

Part II hosts two articles on the issue of Cyprus hydrocarbons and the politics around these; another two papers deal with the evolving relationship between the Turkish Cypriot community and Turkey; and one more article (which is really a misfit) deals with changing modes of peacekeeping in Cyprus by UNFICYP.

The two papers on Cyprus hydrocarbons and the possible impact on the Cyprus Problem are superbly written and complement each other quite well. The first one, written by Turkish Cypriot Ayla Gürel, is more pessimistic, arguing that the discovery of natural gas has acted as an 'anticatalyst' in efforts for a settlement; the related politics 'has increased tensions, undermined mutual confidence between the parties and led to a hardening of stances'. Part of Gürel's pessimism stems from a realist analysis which demonstrates the merits of 'a Cyprus – Turkey pipeline' with which 'gas revenue could start flowing well before the end of the decade'. Yet she despairs at the realization that the political positions of the two sides will not allow this happy outcome. Greek Cypriot Melanie Antoniou, on the other hand, doesn't seem to be totally pessimistic. She proposes a shift away from a narrow realist-power analysis, towards a more liberal perspective, which advocates facilitating inter-state cooperation via the 'introduction of law enforcement agencies in international political life', and the inclusion of 'the Turkish Cypriots 'perspectives'. Antoniou reminds us that Cyprus and Turkey are both members of the Energy Charter (EC), 'while Palestine, Syria and Egypt are observers'; furthermore, the RoC is a member of the EU and Turkey is a candidate for membership. In this context, 'the RoC carries important understandings of new forms of consensual and co-operative relations', and as such could and should take the lead in using consensual norms to take steps towards regional inter-state co-operation.

Equally enlightening are the two papers on Turkey and the Turkish Cypriots. Nicos Moudouros analyses the efforts of Recep Tayyip Erdogan and the Justice and Development Party (AKP) to present Turkey as 'an archetype for the modernization of the Middle East and the Arab-Muslim world' – focusing on the implications of AKP policies on the Turkish-Cypriot community in Cyprus. One of the factors he emphasized relates to the 'further opening up of the Turkish Cypriot economy' to Turkish/Islamic capital, which is seen as 'the key element of modernization' – the consequent changes in the power structures within the Turkish Cypriot community, and the political reactions within the latter. Umut Bozkurt adds to this analysis by considering the economic features of the restructured 'TRNC' economy – which he dubs 'incomplete neoliberalism' (taking in to

consideration Turkey's push to roll back the state on which the economy heavily depends, in compliance with policies of fiscal responsibility via budgetary austerity). Bozkurt's analysis highlights 'significant similarities between the economic policies imposed by the Troika in the RoC and Turkey in the 'TRNC'.

The first paper of Part III, by Jonathan Warner, compares how Cyprus and Belize (in Central America) experienced British colonization, and how the local ethnic groups in each case developed their self-understanding. In the case of Belize, a common identity and national narrative facilitated peaceful co-existence, whereas in Cyprus the antagonistic ethnic identities and respective narratives 'led to violence and separation'. The second paper, by Zenonas Tziarras, compares Cyprus and Sri Lanka, and does similarly highlight the role of ethnicity in the respective conflicts. Where it departs is in pointing out that in both cases ethnicity changes over time and therefore its impact on the conflict changes; furthermore, it underlines the existence of other 'root causes' to the conflicts, such as political and economic ones, the role of elites and how they exploit identity issues, and so on.

The final section of the book, Part IV, considers 'new approaches' towards resolving the Cyprus Problem. Matteo Nicolini uses the 'Legal Geography' perspective to highlight the existence of two institutional mechanisms for keeping together deeply divided societies: territorial demarcation of the sub-units, and power sharing in governing the whole. Of course the problem in Cyprus was that territorial separation, rather than being a gradual, peaceful historical outcome, came about through violence and ethnic cleansing (1963 and 1974), and that is why legitimation of the status quo is difficult to establish, and similarly for power-sharing. The final chapter, by Bulent Kanal and Ilke Dagli, points out that official negotiations so far have not brought much result because they have largely ignored the role of civil society and its institutions – which are vital in 'building bridges' and tackling the 'ontological insecurity' of social actors (who cannot be expected to 'reconfigure the enemy as the new 'compatriot', and to accept the 'threatening other' as part of the 'self').

Overall, a balanced volume with notable contributions which do acknowledge the difficulties of this intractable problem, while allowing some room for optimism and a ray of hope for its eventual resolution.

Nicos Peristianis

Designing Peace: Cyprus and Institutional Innovations in Divided Societies

Neophytos Loizides
University of Pennsylvania Press (Philadelphia, 2015) 256 pp.
ISBN: 978-0-8122-4775-6

Neophytos Loizides' recent book, *Designing Peace: Cyprus and Institutional Innovation in Divided Societies*, is a timely and much needed reflection on the challenges and opportunities for creative institutional design in complex societies that have lost their trust in options beyond division.

Reading this book in the immediate wake of the Crans-Montana collapse, the author's core questions become particularly stark: How to convince negotiators that innovative institutional design can provide for win-win solutions? How to encourage people to put their trust in institutions that are able to moderate tension, when institutional failure lives in communal memories as a precursor to war, haunting efforts to (re)build? How can such arrangements, in promise or in practice, work in concert with victim-facing initiatives to help repair those tears to the social fabric that have held Cyprus in its state of a normalised five-decade state of emergency? And how can we learn from institutional innovations, both in Cyprus and globally, to stack the deck in favour of long-term peace?

Loizides goes about answering these questions by crafting a path both towards and away from the book's Cyprus focus. The reader begins with a recounting of the primary Greek and Turkish Cypriot narratives of what we know as the 'Cyprus Problem'. The chapter is a masterful dual historical journey. It performs the rare purpose of forcing multiperspectivity upon mainstream Cyprus-focused readers who may not be used to confronting both Turkish Cypriot and Greek Cypriot narratives in one space, while also bringing an international audience swiftly into the waters of Cypriot historical memory and its impact on the peace process. Its second chapter moves backwards and outwards, drilling into the legacy of the Ottoman Empire, and linking failed efforts at power-sharing in the region to this shared history. Bringing Cyprus's unhappy history with consociationalism together with broader post-Ottoman experiences, the author argues that 'a selective reading of the past and false analogies drawn from the Ottoman and western colonial legacies make the endorsement of power-sharing settlements difficult even in conditions that seem permissive' (p. 17). This is a foundational point, and one I'll come back to.

The next three chapters move away from post-Ottoman historical reasoning, and instead towards three case studies upon which he draws to highlight his book's purpose: good and innovative institutional design can help overcome electoral, structural, and societal stalemates.

As one of a number of alternatives to some of the Annan Plan's more cumbersome provisions, Loizides offers Northern Ireland's d'Hondt mechanism. D'Hondt sidesteps the need for political bargaining for the allocation of ministries between parties in a power-sharing system, by allocating seats in the executive or ministerial positions according to a stable mathematical formula. This is a valuable suggestion, particularly because it would provide most political parties with an incentive to endorse the system. Given the core role of marginal parties in blocking peace processes in Cyprus, providing them with an incentive to support resolution may help move them beyond their perception that they benefit primarily from division. He also canvasses a number of deadlock-breaking mechanisms that rely on Cypriot political elites, rather than international actors. All of these are aimed at a peace plan whose provisions are more quickly able to resolve difficulties, and which is more inclusive of parties across the board – addressing fears of both primary communities on the island.

In chapter four, he picks up Bosnia and Herzegovina's Dayton Agreement, focusing largely on human rights and refugee return and their role in building a conducive climate. In the chapter, Loizides argues that previous peace plans and their human rights derogations have embedded the perception among Greek Cypriots generally that federal solutions, and specifically the various versions of bicommunal, bizonal federation proposed for Cyprus, constrain human rights, specifically freedom of movement. In the chapter, therefore, the author sets about showing that one of the strengths of federalism is that it actually 'enhances the protection of vulnerable groups' (p. 103). In this chapter, he develops the idea of 'critical linkages', essentially using a sequence of concessions and incentives to encourage agreement across difficult areas such as refugee return or displacement of 'settlers'. These are important suggestions.

To come back to Bosnia, he uses the slow and painful process of return of the displaced to show what this can look like, and how it can be done. The area of return within Bosnia on which Loizides focuses is one of relative success, and his points about the importance of social networks, economic incentives, electoral provisions, and neutral arbitration mechanisms are all important lessons for Cyprus. Nowhere does he paint an unduly rosy picture of post-Dayton Bosnia; on the contrary, he is careful and guarded. But still, the chapter left me uneasy: within the same country, but in Serb-controlled areas rather than in Croat-controlled areas, the picture looks very different. Refugee return has been intensely contested. Returnees do not feel protected, their rights are not respected, schooling is problematic, nationalist symbols feed tension between groups, and harassment continues. While the relative success of regions like Drvar are important to learn from, failures not so far away are equally valuable to reflect on for the purposes of institutional design and trust-building more generally.

In chapter five, the South African early 'mandate' referendum is on the table, within a context of examining peace referendums and how they can be used more productively than they have been to-date in Cyprus. Chapters six and seven bring us back to Cyprus, respectively developing a 'stalemate theory' of how to make progress in unexpected

moments, and the value of alternative scenario planning to encourage more creativity and realism among interlocutors.

While the book itself is an effort to collate and share the author's multi-decade thinking on the topic, I believe its real contribution to both the broader field of institutional innovation in 'stuck' societies and Cyprus lie in these final two chapters. Stalemate theory challenges Zartman's elaboration of ripe moments, instead arguing 'for the effective use of dormant moments in peace negotiations'. To illustrate the value of making creative use of times when the stakes are not as high (as during negotiations), the author draws on the examples of the Committee on Missing Persons and the return of Kormakitis.

The Committee on Missing Persons' work over almost the last two decades is widely used as an example of how to delink a humanitarian situation (in this case, those still missing from a conflict whose remains are in unknown locations) from a politically fraught context (the idea that all parties have a stake, largely for reasons of complicity, in not talking about who killed whom and where those bodies might be). Since all sides received an unofficial amnesty,[1] and as a result of a number of factors including pressure from families of the missing and civil society, the CMP is held up as the most successful bicommunal initiative that has withstood derailment over time.

Secondly, the Maronite Cypriots of the village of Kormakitis successfully lobbied Turkish Cypriot authorities, using various strategies over a number of years, to allow them to return to their village, which they did in 2006. These examples illustrate the value of taking advantage of periods between negotiations to tangibly build peace and trust. Both also required elite consent and intervention, but the success of neither has been driven by elites. Instead, they are citizen- or professional-level success stories, which elites essentially facilitated or have left alone.

Reading this book at the point while another Cypriot peace process has appeared to stumble, three particular points stand out to me.

The first is the significant value of Loizidies' work sketching out the ways that dormant moments can be developed into a theory of how to build trust in lower-stakes moments. This, together with his final chapter on alternative scenario planning (here he uses the challenges and opportunities around Europeanization and the hydrocarbon finds in the Eastern Mediterranean), could provide us with important linking principles, breathing life into institutional design.

This is important because without such linking principles, even the most innovative institutional design will not be able to convince large enough numbers of people to take what they will always perceive to be a risk away from the safety of what they know – even if what they know is not in reality safe at all.

This is because in Cyprus, as in other contexts, institutional breakdown is remembered as both a symptom and a cause of conflict. And in such remembered landscapes, it is the

1 For more on this, see C. Yakinthou, 'The Quiet Deflation of Den Xehno? Changes in the Greek Cypriot Communal Narrative on the Missing Persons in Cyprus', The Cyprus Review, Vol. 20, No. 1.

work done *between* negotiations that will help dislodge the false security of the status quo. This offering from the author is therefore tremendously important as a step towards that goal, and towards a new literature. It is a contribution we need to build on.

However, both the CMP and Kormakitis also point to the perversions of (post) conflict societies. Despite decades of activism, their successes have still not meaningfully shifted public perceptions on either side about the value of living together (even in a federal state). The CMP itself has a peculiar presence in the media and public eye. While everyone respects its work and understands its value, society in general still does not know how to address the individual or cumulative stories of violence that accompany the missing. We see daily stories in the press on both sides about funerals or discovery of gravesites – indeed, we drive past the CMP digging behind everyday venues, like cinemas and supermarkets. Yet we split the meaning from the event. The stories in the press are purposefully factual, brief, and silent on the detail.[2] In fact, society is largely silent on the issue, and so the missing, when they are unearthed and buried, tend to take the form of an absent presence. Present, because we acknowledge their existence now, as physical people whose lives have ended violently. Absent, because their stories – aside from the work of some key journalists and an NGO of families of the missing – are not heard. Indeed, they are not required by society. We simply do not want to know too much.[3] Beyond victims' loved ones and those working with the CMP, it would be difficult to gauge how much this genuinely important work has helped build trust between communities.

Similarly, while I was writing this review, the Turkish Cypriot authorities announced that they would be returning three more Maronite Cypriot villages to the Maronite community. In pro-peace circles, this was largely perceived as a small win for peace, and for the larger principle of refugee return. But the Greek Cypriot leadership responded to this news with fury, arguing that the decision was 'part of Turkey's plan to ensure that such villages are not placed under Greek Cypriot administration after a solution and will create discord among refugees'.[4]

In the same week as the Maronite return was announced, rumours began circulating

2 In part, this is done in order to prevent politicisation of the issue.

3 I do not agree with the author's point on p.169 that Cyprus 2015 polling showing that people support a truth and reconciliation commission-type body means that they support engaging more deeply with the island's past. The lens of reconciliation is problematic and politically loaded in Cyprus (as in other contexts) for a number of reasons. The moment looking at the past is framed through the lens of forgiveness and reconciliation, it is motivated by a desire for something particular – often to 'forgive and forget' – and therefore cannot be seen as evidence that society wants to engage more deeply with the past. Because the claim is conditional on reconciliation, it is also inclined to pre-select what is included and excluded as acceptable things from the past to engage with. For these reasons, public will towards such commissions or bodies does not necessarily indicate genuine willingness to engage with the past.

4 Evie Andreou, 'Government scathing over move to open up Maronite villages', *Cyprus Mail Online*, (2017, July 30), available at http://cyprus-mail.com/2017/07/27/government-scathing-move-open-maronite-villages/.

about a Turkish decision to allow those displaced from Varosha to return to their homes, under UN administration. To this, the Republic of Cyprus Attorney General began drafting a legal note in protest of the (unconfirmed) decision. Most Greek Cypriot refugees appear to have viewed the Maronite return suspiciously, as a form of divide and conquer by Turkey, and, at the extreme end, of treachery by the Maronite community. The possibility of return to Varosha was met with mixed responses.

What does this tell us?

This leads me to my second reflection on the book, and on intractable but not murderous conflict. It tells us that, as Loizides points out in his work, there are more key elements to building support for federal power-sharing in Cyprus and beyond. It also tells us that public perception of hegemonic narratives about the past and the causes of violence are not easily dislodged. Aside from those already committed to peace, people are generally disengaged from the peace process, and where they are not, they are often suspicious of institutional suggestions for reform. This is something Loizides points out, but the problem becomes particularly acute when politicians show themselves to be zero-sum in their responses to unilateral efforts to create change, such as the two examples of refugee return.

Stefan Wolff has argued that diplomacy, leadership, and institutional design are the three most important aspects for transforming intractable conflicts. Of these three, institutional design is key for Loizides (p. 197). But the elephant in the room of even the most innovative institutional design is public buy-in. The public will need perhaps to endorse the institutions, but certainly it will need to live with them on a day-to-day basis. And this book hints throughout at the total public absence from the peace process. This presents us with a dilemma: the work of this book is to look at means of using innovative institutional design to encourage people (and elites) to put their trust in a different future. But institutional design cannot itself bridge trust gaps. Instead, it is the work of parallel fields like peacebuilding, conflict resolution, and transitional justice to propose ways of enabling publics to feel that they are willing to move forward. And despite the multi-decade dedication of civil society actors in Cyprus and beyond, the sad reality is that most people remain disengaged, and politicians continue to be resistant to the ideas proposed in this book and elsewhere about how to engage society to care more about peace, or to understand that what they live is not peaceful.

Chapter five outlines what is, for me, the core dilemma of 'moving to yes' in Cyprus. In a section called 'Options for (Non)Referendums', we read that: 'Luckily, the island does not face immediate violence or the possibility of renewed conflict; federalism and consociationalism have to win the hearts and minds of Cypriots on their own, not as an alternative to war and violent conflict' (p. 142). But there is a real tension both in the book and in reality: it will be difficult to win hearts and minds if society is disengaged.

This brings me to my final reflection. How do we burst the bubble? Loizides rightly points to the core role civil society has played over the years supporting peacebuilding in Cyprus. He reminds us through various international and Cypriot examples that civil

society, as grassroot actors, can be a powerful catalyst for change. But the sad reality is that Cyprus's peace community – on both sides, but particularly in the Greek Cypriot side – is isolated from broader society. This is reflected in comments, both serious and joking, of the need to create a 'third republic of bicommunal activists in the buffer zone'.[5] Civil society actors unable to fully engage with society is not a uniquely Cypriot phenomenon, it is common across post-conflict societies.[6]

The book *Designing Peace: Cyprus and Institutional Innovation in Divided Societies* is an important contribution to the literature on the Cyprus conflict and on intractable conflicts more generally. The innovations Loizides suggests would improve any power-sharing solution in Cyprus, making it highly workable. The suggestions he makes for getting there via alternative referendum options also provide food for thought, though more difficult for a number of reasons he also canvasses in the chapter.

Institutions ultimately are ways of ordering societies, and of ordering people and their relationships. The problem of overcoming the deadly pairing of inertia and historical myths about failed institutions of the past that are now deeply embedded in both societies means that we must also think, across fields of academic thought, about what needs to be done in parallel. By focusing on the importance of better institutional design, Loizides' work provides us with a powerful springboard from which to rethink our approach to overcoming inertia in fractured societies.

Christalla Yakinthou

5 Interview with peace activist in Cyprus, 23 June 2017, Nicosia.

6 For a broad background, see P. Arthur and C. Yakinthou, 'Introduction', in Transitional Justice, International Assistance, and Civil Society: Missed Connections, (Cambridge, Cambridge University Press, 2018).

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Call for Papers
The Cyprus Review (2019 issue)

The Cyprus Review invites submissions for a Special Section, which will be in Volume 31, Number 2, 2019 on **A Tribute to the Memory of Prof. Andreas C. Sophocleous**.

Prof. Andreas Sophocleous passed away in July 2018. He was a Professor in Communication and Mass Media at the University of Nicosia, former Dean of the School of Humanities, Social Sciences and Law of the University and former Director of the Mass Media and Communication Institute (IMME). He served as the Director of the Press and Information Office for many years. His research interests mainly revolved around the history of the Cypriot press, the history and geography of Cyprus, media and communications, journalism and Cypriot literature and bibliography.

We invite submissions on any topics pertinent to the research interests of the late Prof. Sophocleous and in particular Cypriot media and communications, as well as Cyprus history and geography for the special section. Any research work submitted should be pertinent to Cyprus.

Interested scholars should submit their papers online by the final submission deadline of 30 April 2019. *The Cyprus Review* is available at http://cyprusreview.org, and authors should consult the journal's guidelines for submission.

In addition to the Special Section, each issue of *The Cyprus Review* will also contain its standard features of Articles, Essays and Book Reviews, as well as a guest edited section. Submissions in the fields of interest of *The Cyprus Review* are always welcome.