

Project: CRoLEV—Centre for the Rule of Law and European Values

Jean Monnet Centre of Excellence



‘Citizen empowerment: Sustainable Rule of Law and European Values in Europe’ Series, Training and Focus Group

In partnership with the Interdisciplinary Centre for Law Alternative and Innovative Methods (ICLAIM) <https://www.iclaimcentre.org/>



Work Package 2- Report for E2.13

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INTRODUCTION

This report presents the work and findings of the first edition of the ‘*Citizen empowerment: Sustainable Rule of Law and European Values in Europe*’ training and focus group, which took place at the University of Central Lancashire – Cyprus (UCLan Cyprus) on 2 and 3 December 2022. The training is a collaboration between the School of Law, UCLan Cyprus since February 2022, and the Interdisciplinary Centre for Law, Alternative and Innovative Methods (ICLAIM) under the Jean Monnet Centre of Excellence for the Rule of Law and European Values (CRoLEV). ICLAIM is tasked with ‘citizen-centred’ activities to be scaled over 2022, 2023 and 2024.

The training and focus group form part of a three-year-long workshop series under CRoLEV, getting inspiration from and building upon the successful implementation of Social Mediation projects by UCLan Cyprus, ICLAIM and other occasional partners since the project’s first edition in spring 2018.¹ Conceptualised as an inter-communal project for civil society and professional of various backgrounds in Cyprus, the Social Mediation project aims at facilitating the promotion of Social Mediation as a conflict resolution tool, through peer-to-peer accessible, free of charge, and open-to-the-public trainings on how to implement social mediation interventions in one’s community.

From the first weeks within its launch, the project attracted the interest of a diverse group of Cyprus-based individuals of varying backgrounds, whereas during the COVID19 lockdowns, the hybrid and online-only events held attracted participants from three continents. In 2020 participants of the earliest *Social Mediation in Practice* training series, joined a newly-established Social Mediators’ Network,² and in the same year the project received the 2020 European Citizen Prize from the European Parliament; a symbolic annual award given annually to initiatives across the European Union, in recognition of their capacity to promote cross-border cooperation, mutual understanding and European values. Since then, the project has expanded with the thematically-focused projects on *Social Mediation for Social Transitions* and *Identity, Culture & Social Mediation for Cyprus*, which led to two thematically-specialised Manuals on *Social Transitions*³ and *Divided Societies*,⁴ respectively. Furthermore, in 2021 and 2022, the project scaled up globally with support by the United Nations Sustainable Development Solutions Network (SDSN) and the German Agency for International Cooperation (GIZ). In this context the project was selected globally to participate at the 2022 Global Solution Forum in Dubai, part of the UN Sustainable Week and the 2022 10th World Forum for

¹ For more information on the project see: <https://social-mediation.org/>; The project is based on the *Handbook on Social Mediation in the Community* (ICLAIM, 2018) accessible here: <https://social-mediation.org/handbook/>

² *Social Mediation Conference and Social Mediation Network Launch* (ICLAIM 2020), available to download here: <https://social-mediation.org/resources/>

³ *Manual on Social mediation for Social Transitions* (ICLAIM, 2021), available to download here: <https://social-mediation.org/resources/>

⁴ *Social Mediation Manual on Culture in Divided Societies* (ICLAIM, 2022), available to download here: <https://social-mediation.org/resources/>

Democracy of the Council of Europe, in Strasbourg, France. To date, the workshops have trained some 100 social mediators, from across three continents over a total of 7 training workshops (online, in-person and hybrid events). One workshop also took place in the context of the Fundamental Rights Forum 2021 of the EU Fundamental Rights Agency (FRA)

In this context, the project is closely aligned to CRoLEV's objectives to evaluate the mechanisms available at European Union (EU) level to secure European values and Rule of Law protections, in the course of exploring the state of the rule of law within the EU and its neighbouring countries through empirical research, and investigate the deterioration of the rule of law and EU values in times of crisis. Thus, using previous ICLAIM experience and CRoLEV research, the workshop presented here aimed at bringing together practising lawyers, civil society professionals and members of the public to discuss how Social Mediation can be used as a citizen empowerment tool in defending the Rule of Law in the European Union and beyond. The remaining two trainings are scheduled for December 2023 and 2024. Each future activity will be enriched with research findings from the previous year and feedback received from participants.

FOCUS GROUP AND FINDINGS

The notion of the Rule of Law principle is the element which distinguishes this one from previous editions of the Social Mediation workshops. As such, whereas the training did not deviate from the theoretical framework and the hands-on empirical exercises included in previous workshops,⁵ this training and focus group contained an extensive Rule of Law component introduced to participants during the first day. In line with CROLEV, the training was open for participation to practicing lawyers registered as Advocates under the Cyprus Bar Association, accredited for Continued Professional Development, as well as the general public, as per usual practice. We received 76 applications in total, among whom 46 were Advocates. Among the rest, there were students and recent university graduates, educators and researchers, and law enforcement officers. The event was held in a hybrid format allowing for overseas participants, primarily from Ukraine and India, including from the Social Mediators' and CROLEV networks.

DAY ONE

Day 1 started off with the introduction of CROLEV, ICLAIM and the concept of Social Mediation as a dispute resolution tool in a social context. Then, participants were introduced to the most relevant CROLEV findings to date, with an emphasis on philosophical origins of the Rule of Law as a concept, and its theoretical and conceptual framework within the EU. This was complemented with further information on European values more broadly, such as 'respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to

⁵ These derived from the 2018 Handbook for Professionals (n 1)

minorities'.⁶ Based on existing materials developed by CROLEV,⁷ participants were introduced to the 'thin' and 'thick' conceptions of Rule of Law, its formal, procedural and substantive requirements needed for its satisfactory implementation by EU member state authorities, and research on the democratic 'backsliding' observed in the EU from 2008 financial crisis onwards, along the themes of corruption, accountability, judicial review/ administrative recourse, and freedom of speech.

The discussion among participants then turned towards the abovementioned issues, with regard to Cyprus and its region of the world, with an emphasis on how Social Mediation can facilitate dialogue and communication in society, allowing for constructive dialogue and reflection on the decision-making power of institutions responsible for the perseverance of the Rule of Law, with participants agreeing that knowledge of the Rule of Law principle is fundamental in assessing the quality of procedures and new legislation. Social Mediation was seen as a method standing in between the Rule of Law and the formal procedures of the State, and developments in society as a whole. Further, formal procedures are appreciated for their certainty and coherence in terms of what the public expects out of them, recognising that the lack of formal procedures can essentially disturb cohesion within society. One participant raised the question of whether there should be formal frameworks within which informal procedures – like Social Mediation – should take place, since even in informal setting consistency and certainty are necessary. Knowing the limits to informal procedure and being able to assess their fairness are legitimate expectations of due process, in addition to transparency and accountability, which are all intrinsically connected to the Rule of Law principle, as well, regardless of the approach [thin or thick] one takes regarding the Rule of Law. These are points that most people can agree.

Despite the general agreement on the above issues, it remains challenging to assess at which point 'the informal gives way to [the] formal'. One suggestion was that informal mechanisms can be used in the beginning of resolving an issue, but at the point which formal measures exist, then the latter may take precedence in resolving the issue at hand. In other cases, the utility of the informal process may be eclipsed, and that point too, it is fundamental as there are formal safeguards, procedures or mechanism towards which one can turn. Conversely, another suggestion was that Social Mediation could be used in cases where all formal remedies are exhausted, whereas one of the participants – with a background in psychology – alerted all present of the importance of how public perception of formal and informal procedures can impact their behaviour, affected also by question of trust in 'the system'; public administration and formal procedures. In that regard, the timing of new initiatives can be fundamental for their success or failure.

One of the participants with a background in commercial law touched on issues of lack of trust in the legislative procedure as a whole, and how new inventions, like cryptocurrency, were used to essentially bypass dissatisfaction with formal procedures (here, in the banking sector) and were eventually

⁶ Treaty on the European Union (TEU), Art 2.

⁷ Andreas Marcou and Katerina Kalaitzaki, 'Rule of Law and European Values: Beyond the state-of-the-art analysis' (CROLEV 2022) available at: <https://crolev.eu/publications/>

formalised when their use spread among the public. Lobbying was mentioned as another example of such an informal-to-formalised process. This point raised questions on the role of civil society, considering that fact that lobbyists have managed to gain access to high-level institutions, that may not always be willing to engage in dialogue with grass-roots civil society organisations. At the same time, the lack of engagement with civil society organisations, was also recognised as a sign of weak democratic institutions.

In the last part of the discussion, issues of the length of formal procedures, the technical language, lack of knowledge and understanding by the general public, and high costs were also identified as issues indicating a need for parallel informal structures that can support dispute resolution, certainty and trust in society. Moreover, the increased use of alternative dispute resolution (ADR) in advance of formal civil proceedings in court, was identified as one way through which the relationship among formal, informal and formalised procedures could work over time. Even then, one is bound to ask whether one should seek for the ‘formalisation’ of informal procedures, or rather the formal recognition of the added value of such informal procedures in democratic society, as a means towards the strengthening of the Rule of Law. Comparative considerations between legal systems and legal cultures regarding one’s disposition to court proceedings could be another indicator of the success or not of informal dispute resolution systems.

Participants were then introduced to the Copenhagen School’s theory of Securitization, which suggests that existential threats can be effectively constructed when articulated by an authority figure – the securitizing agent – and address an audience that is directly impacted by that threat (Buzan *et al.*, 1998⁸). Buzan, Waever and de Wilde identify five sectors of existential threats that can be articulated through processes of securitization: military, political, economic, societal, and environmental. Securitization and socially constructed threats on a collective level have direct relevance to identity-related tension in society. Securitization is one of the themes that has persistently been discussed also in past editions of the workshops, essentially discussing how competition between different identities is often the cause of tension in interpersonal, group, or intergroup dynamics. Thus, in order to resolve a conflict, one needs to de-securitize the issues that lead to animosity and, subsequently, conflict. It is at time of high securitization that societies become most vulnerable to extremes, leading to populist politics and the weakening of democratic institutions. Social Mediation can help alleviate these tensions, by offering a framework which allows and empowers the parties to an existing or potential conflict (preventive Social Mediation) to explain their point of view and how they feel threatened by another. In the context of current affairs, from the ‘war on terror’ in the early 2000s to the financial crisis and, more recently, the armed conflict of Ukraine, participants discussed how these events contributed to identity securitization.

⁸ Buzan, B., Wæver, O., Wæver, O., & De Wilde, J. (1998). *Security: A new framework for analysis*. Lynne Rienner Publishers.

Following the above theoretical discussions, participants had the opportunity to apply their newly acquired knowledge to scenarios designed to practise Social Mediation in a preventive context; i.e. situations where social tensions arise without a social conflict arising yet, between groups or individuals. In addition to the usual approach taken in previous workshops, here participants were required to identify human rights issues arising from the scenarios, specifically, as well as formal legal and administrative framework that could be of relevance if such a scenario were to apply in real time. The instructions given were:

Steps that need to be taken, in the context of Preventive Social Mediation:

- i. Identify the problem
- ii. Assess the situation
- iii. Try to predict problems which may arise
- iv. Make a list of potential actions, using the Social Mediator's 'toolbox'
- v. Choose & design the most appropriate action

→ Are there formal elements we need to consider in each scenario?

For instance, one of the scenarios concerned homophobia and bullying at a local school, for which participants had to consider whether in their capacity as social mediation in that school they would need to take into account any anti-bullying and/or LGBT+ policies and protocols introduced by the Ministry of Education, and/or the Director of the school. Another scenario on gender-based discrimination at the workplace, the discussion centred around the relevance of formal legislation concerning sexual harassment and discrimination based on gender. In both instances participants also identified and critically reflected on the delimitation between social mediation interventions (informal mechanism) and the enforcement of criminal law (formal mechanism), as well as the role and accountability of public administrative bodies (formal mechanism).

Like in other workshops, the principles of confidentiality and neutrality, both of which are mandatory for the social mediator, raised numerous questions among participants. It was generally agreed that in context where formal normative frameworks are in place, the social mediator needs to be well-aware of what formal mechanisms are already in place. Some legislations, for instance in criminal law, give clear instructions on the responsibility carried by different actors (eg responsibility of parents, guardians and teachers in a school context). The lack of information that exists, however, evidently causes unclarity and lack of confidence in one's judgement and mediatory skills. The scenarios –in consistency with previous workshops – reiterated the difficulty in drawing a satisfactory line between formal and informal procedures. The Rule of Law principle, and the criteria on how the Rule of Law can be

measured in a given context, served as a strong framework within which to guide the discussion. A framework that the trainers had not used in earlier workshops.

The regional and international measurements on Rule of Law compliance also entered the discussion, as guidance for Social Mediation interventions. In particular the indicators relating to social phenomena like domestic violence, harassment, and bullying, since such international standards can also offer broadly accepted definitions of key terms, thusly, reducing the arbitrariness in the social mediator's approach in their effort to resolve a potential conflicting situation.

Overall, the first day proved valuable in examining the scope of relevant issues that arise in any effort to delimitate the boundaries between formal and informal mechanisms, used for the strengthening of the Rule of Law. These can be used as guidance for further academic research under the CROLEV project, and for the upgrading of the existing activities under the Social Mediation trainings. Based on further research, it is hereby suggested that during the trainings of December 2024 and 2025 the preventive Social Mediation scenarios can be enriched with relevant information on available international, regional and Cyprus-based normative standards, as well as research and monitoring by international bodies and organisations. These will serve as suggestions towards pre-empting the challenges already identified this year, leading participants to test empirically whether the suggestions made this year would in fact be useful tools towards strengthening the ability of Social Mediation interventions to support and promote the Rule of Law.

DAY TWO

The training's focus group discussion took place on Day 2 of the training and developed around the topic of Social Mediation and the Rule of Law. The objective was to establish the connection between the two concepts, both in theory and in practice, and then use this correlation to inform the sustainability of the Rule of Law through citizen empowerment.

The focus group discussion kicked off with the question: "Where does informal intervention end and formal legislation begin"? To clarify the connection between Social Mediation and the Rule of Law, the trainers proceeded to introduce a second question: "How can Social Mediation strengthen the Rule of Law"?

The group engaged in a vibrant discussion and exchanged various perspectives and positions on the topic and the questions raised. Key remarks from the focus group discussion are listed below:

- There are layers of legislation and guidelines between formal and informal intervention: international law, conventions/non-binding charters, internal code of conduct for companies, these are all examples of what can be considered a grey area between formal and informal intervention.
- A culture of informal intervention should be cultivated at a young age to make it an effective tool that will support formal intervention. For example, training children in peer mediation can

be an effective step (education at an early age will act as an effective tool for preventing conflict)

- Informal intervention cannot hinder processes of criminal law or hide a criminal offence
- Social mediation can be used as a rehabilitative tool after a legal process has been completed. For example, a rapist has been found guilty, the victim and rapist can engage in social mediation and jointly consider a way forward.
- Informal intervention can be used for reporting and monitoring.
- Effectively applying informal intervention through peer training and peer engagement can take place through a network of active citizens engaged in informal intervention. An example of such a network is the Social Mediators' Network launched in Cyprus in September 2020.

A position accepted broadly by the participants following the rigorous exchange of ideas shared above was that Social Mediation is a tool that allows security threats to be re-evaluated and deconstructed, leading to more resilient societies and increased democratisation. Undoubtedly, Social Mediation is a tool that can only be effective through active citizenship, and therefore it has the capacity to reinforce citizen engagement in the societies it is applied.

Following the discussion on how Social Mediation and the Rule of Law are connected, the group proceeded to see in what ways Social Mediation can become a tool that helps strengthen the Rule of Law, particularly in times of crisis and transition. More specifically, the training participants enhanced their focus group discussion with the follow-up question: “What are some concrete steps and actions to be taken in order for Social Mediation to strengthen the Rule of Law”? This question was provided both verbally and in writing for the remote participants, and the trainers assumed a facilitative role for taking the discussion forward and recording the participants’ input.

One of the remote participants noted: “I think Social Mediation should result in the formulation of some draft proposals for various stakeholders in the forms of formal and informal rules to be adopted by the state institutions for effective changes for the larger community, likewise, implementing more public participatory norms for better changes”.

Other participants also saw concrete steps that could be taken to enable Social Mediation to strengthen the Rule of Law, with a recommendation shared by a few participants being the delivery of public consultations and institutional consultations on pressing social and political issues. Through this step, a country’s level of democratisation and the resilience of its Rule of Law would significantly strengthen, as it would have a strong citizen participatory element through the facilitative dialogue process these consultations would enable.

The focus group discussion was then further complemented by the input of Monique Janmaat, a guest speaker who presented on the concept of deep democracy and how this applies to the context of Cyprus. Janmaat introduced the initiative of “Cyprus Futures: A Transformative Scenarios Process” as another example of informal intervention. The initiative incorporates dialogue and idea exchange on the

possible futures of the partitioned island of Cyprus by asking the question “What if?”. The deep democracy model that this initiative is based on suggests going deep into feelings, values, assumptions, and behaviours, and identify both conscious and unconscious ones through neutrality. The guest speaker, trainers, and participants agreed that this model directly incorporates Social Mediation principles of neutrality and facilitative dialogue to identify underlying issues able to lead to conflict.

Overall, the discussion from Day Two evaluated the role of informal intervention for achieving sustainability in the Rule of Law – with Social Mediation examined as a prominent informal intervention tool – and concluded that tools and methods of informal intervention have a key role to play for ensuring the resilience of the Rule of Law in periods of crisis and transition, and thus ensuring its sustainability.

More specifically, Social Mediation was praised for its ability to strengthen the Rule of Law by assuming a variety of complementary roles in protecting the applicability and effectiveness of the Rule of Law. A tool that incorporates citizen engagement, Social Mediation can directly contribute to achieving greater civic participation in political processes and accordingly make the Rule of Law more effective and resilient. It is therefore a tool that can increase democratisation for transitional societies.

Conclusion

There is an evident link between Social Mediation, sustainable Rule of Law, and citizen empowerment. Social Mediation is a tool that encourages and enables citizen engagement and empowerment. When implemented in partnership with governmental and civil society institutions to provide a solid framework of informal intervention, it significantly strengthens a country’s democratization. As a result, the resilience and sustainability of its Rule of Law directly increases.

To achieve sustainable Rule of Law is of utmost significance for societies undergoing domestic or international crises, transition, and uncertainty, since a sustainable and resilient Rule of Law implies that citizens are able to adapt to external changes and overcome a crisis as a collective unit and without deviating to means outside of the Rule of Law framework. Social mediation can achieve this through public and institutional consultations, awareness initiatives and trainings, channels for monitoring and reporting, dialogue forums, as well as rehabilitative processes complementing criminal and other legal procedures.

Undoubtedly, the role of Social Mediation in strengthening the Rule of Law is a prominent and promising one, with potential to establish and expand it through stakeholder collaboration across sectors.