



Essential but Unworkable? A Look at Transitional Justice Mechanisms via the Cyprus Example

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In the first two weeks of December 2023, the Jean Monnet Centre of Excellence for the Rule of Law and European Values CRoLEV at the School of Law of UCLan Cyprus successfully hosted a four-part online course on “Frozen Conflicts in Europe and Transitional Justice”, which formed part of the CRoLEV Intensive Course Series on “The Rule of Law and European Values in the modern ages”. I had the pleasure to attend the final two webinars of the course, zeroed in on ‘Transitional Justice Mechanisms in Cyprus’, highlighting both the importance and difficulties of taking interim measures in States where the conflict remains unresolved. The last session was enriched by the invaluable input of guest speaker and human rights lawyer Mr Achilleas Demetriades.

Dr Nasia Hadjigeorgiou, Assistant Professor in Human Rights and Transitional Justice at UCLan Cyprus, started off the discussion with her focus on the Immovable Property Commission (‘IPC’ or ‘Commission’), the Custodian, and the Committee on Missing Persons (‘CMP’ or ‘Committee’). In the absence of a resolution of the Cyprus conflict, and thus with no one exclusively exercising effective control over the whole of the island, Dr Hadjigeorgiou first delved into the issue of remedies regarding property of displaced persons. The European Court of Human Rights (‘ECtHR’ or the ‘Court’) in [Loizidou v Turkey](#) made an exception for displaced Greek Cypriots regarding the rule of exhausting all domestic remedies before submitting an application to the Court, in view of the ineffective enforcement of remedies available, hence creating an undesirable influx of

cases. The establishment of the IPC by Turkey, through the internationally unrecognised 'Turkish Republic of Northern Cyprus' ('TRNC'), in 2006 changed this state of affairs. According to the Strasbourg Court in [Demopoulos and others v Turkey](#), the IPC constituted an effective remedy, which prospective applicants had to exhaust before turning to the Court. Other arguments against the Commission, like its preference for compensation rather than restitution, no requirement to compensate the market value of the property, and that utilizing the body potentially legitimised a non-internationally recognised State, were rejected by the Court.

The Republic of Cyprus ('RoC') correspondingly set up the Custodianship regime to deal with Turkish Cypriot properties in its controlled territory. Theoretically, there existed a substantial difference between the two approaches, with Turkey claiming ownership of all properties of displaced persons, while the RoC suggested they still belonged to Turkish Cypriots. In practice, however, actually using the property in any way was not possible in either case. The perpetuated management of the properties performed by the Custodian became problematic once the crossings between the two sides of the island were opened. The ECtHR eventually did not find the Custodianship regime to be in violation in [Kazali and others v Cyprus](#), but the RoC recognised the issue, exacerbated by its refusal to compensate for loss of use of the property, and thus amended Law 139/1991 by creating certain conditions pursuant to which property access would be granted. Nevertheless, the strict conditions of the improved regime excluded the vast majority of Turkish Cypriot applicants and changed little in practice.

Another issue arising from the different approaches occurred when the applicants chose the remedy of exchanging a property they occupy on one side, for the property they were displaced from. This consequently created circumstances where two people can legitimately claim to be owners of the same property at the same time on the basis of how each side viewed this transfer.

These arrangements appeared to undermine the idea of transitional justice remedies in states where issues remain unresolved, but some hope for such mechanisms still exists in other ways. One such example in Cyprus is the bicommunally-constituted [CMP](#), as both sides recognised that dealing with missing people was a salient issue that could not await a resolution of the conflict. The Committee, tasked with recovering and identifying remains of those gone missing between 1963, when violence first began, up until the period of the invasion in 1974, was generally successful. It uncovered remains for half of those missing and gave them to the waiting families, thus relieving them psychologically and allowing the proper exercise of religious funeral and burial traditions. However, the delay in the commencement of the Committee's operation meant many crucial witnesses as well as relatives passed away, thus valuable information was lost or many died without fully understanding the circumstances of their loved one's death. Additionally, merely factual truth was often anticlimactic as it revealed technical aspects of the killings but not

its culprits or surrounding circumstances, and the language used by officials was rarely as peace-inducing as would have been appropriate for a bicomunal organisation to prevent the continuation of animosity between the two communities. Moreover, a lack of transparency or updates left relatives feeling helpless and did not promote the CMP well enough to encourage more information to be brought in. Hence, despite the CMP being an overall more beneficial arrangement than the one for property, the frozen conflict severely inhibits further development, leaving much doubt around whether truly effective transitional justice remedies are possible without resolving a conflict.

Achilleas Demetriades, an advocate with expert knowledge and experience of human rights in Cyprus, currently a foundational member of the NGO 'TRUTH NOW' and until recently President of the Human Rights Committee of the Cyprus Bar Association, joined Dr Hadjigeorgiou for the final webinar of the course, titled 'The human rights and rule of law implications of the transitional justice mechanisms in Cyprus'. He contributed significantly to the topic, highlighting the aforementioned flaws of the CMP and its decreasing returns, as well as the urgency in Cyprus to disclose the full truth to both relatives and society at large, thus proposing the establishment of a Truth Commission for the Missing. The new bicomunal Commission would include heightened remorse, more transparency regarding information surrounding the deaths, and an upgrade of the *de facto* immunity afforded to those confessing information to a *de jure* one through the amendment of the evidence law.

Though questions arose during the discussion about whether publicising information could incite hate or affording such immunity was ethical at all, Mr Demetriades emphasised the urgency of the circumstances and the prevailing significance of increasing results and finally sharing the truth. Despite the perpetuity of the ongoing issue, raising awareness about the situation regarding the missing in Cyprus constitutes a key goal, as many remain unaware of the true magnitude and tragedy of the ensuing problem. He also underlined the lack of acknowledgement on behalf of the RoC of their responsibility in the substantial missteps in the process concerning missing persons over the years, which would have to change. The suggested arrangement will provide a more appropriate institution, capable of providing a more adequate and appreciated outcome for the individuals and communities. Thus, establishing a Truth Commission structured in this manner and capable of satisfactorily and more transparently addressing the consequences of the many human rights violations, is essential for upholding the rule of law through transitional justice.

Mr Demetriades' recommended next steps included amending the Terms of Reference of the CMP, the 1981 UN General Assembly Resolution that established the CMP, as well as the Evidence Law, and setting up internal regulations. Moreover, the proposal was suggested as a much-needed effective remedy for the decisions of the ECtHR, as demonstrated by the 4th Interstate Case [Cyprus v Turkey](#) where just satisfaction was

ordered despite the evolved and operational CMP, and a variation of this proposal could apply in other conflict regions.

Even though bicomunal collaboration for such a commission appears difficult to implement, considering the persevering animosity between some members of the two communities, it is far from an unattainable fantasy. As Dr Hadjigeorgiou added, such cooperation appears practically feasible in light of the Bicomunal Technical Committees that have been functioning since 2008, which have made great strides in integrating the two sides in some sectors and resolving everyday issues. The Cultural Heritage Committee has accomplished incredible work concerning the preservation and restoration of heritage sites across the island, even receiving the European Heritage Europa Nostra Award in 2021, while the Technical Committee on Economic and Commercial Matters, for instance, managed to successfully integrate the electricity grids of the two sides which has allowed cooperation and exchange of electricity in times of need. Undoubtedly, political intransigence has impaired the advancement of other initiatives like the Technical Committee on Education's 'Imagine' project that had brought together students and teachers from both sides until October 2022. Despite some unfruitful examples, the more successful contributions show the very real possibility of effective bicomunal cooperation when there is a political will to make such integration work.

It is only appropriate to summarise and end this blogpost with Mr Demetriades' simple yet on-point statement: *'If we do not do anything, nothing will happen. If we do something, something may happen.'*