# The Cyprus Legal System in turmoil

***Professor Christos Clerides****

## 1. The 2019 Crisis

It took one month for the system to come down to its knees. Confidence of the public in the Cyprus legal system has been shaken.

It all started mid December 2018, when the brother of the Attorney General[1A], an experienced advocate, wrote a sharp comment in the Facebook, in reply to adverse criticism of his brother, the Attorney General. A national newspaper known for its sharp criticism of the Attorney General, picked it up and made it known to the public at large[1]. The comment attributed inter alia convolutedness between advocates' offices and Judges of the Supreme Court. The Attorney General had come under criticism from certain circles, as having allegedly failed to secure convictions of leading accused involved in the 2013 banking crisis, which brought the Cyprus economy to a near collapse. In one of the cases a top bank manager was convicted and sentenced to prison by the Nicosia Assize Court, later to be acquitted nevertheless on appeal by the Supreme Court in its appellate jurisdiction[2]. Previously, other accused, top managers of the same bank, were left unscathed by the Supreme Court which quashed the charge sheet through an order of Certiorari. An appeal against this decision filed by the Attorney General was dismissed by the plenary of the Court which ruled that due to the acquittal of the accused coupled with the fact that no appeal was filed had caused the Appeal to be left without any substance[3]. Be that as it may, it was subsequently disclosed at large that one of the senior advocates involved in the defence of the accused, and appearing in the latter certiorari Appeal, engaged advocates in his office closely related to two

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[1A] The brother of the Attorney General Costas L. Clerides is Nicos L. Clerides. The writer of the present is a first cousin to both. He also acted as the advocate of a leading person involved in one of the cases referred to in the present article.

[1] Politis Online 15.12.18 "Nikos Clerides defends his brother", 16.12.18, 20.12.18, (Greek)

[2] XXX v. Eliades and Bank of Cyprus Public Company Ltd (2018), Cr. Appeals 2, 3/2018, 12.9.18

[3] Re Bank of Cyprus and others Appeal 423/2017, 3.4.2018

members of the Appeal bench[4]. A third member of the five-member bench, was the husband of an advocate working in the office of another advocate, also acting in the appeal. Although disclosed at the trial the procedure laid down in the Nicholas case, infra, was not followed. It was further revealed at the same time, that the sister and daughter of the President of the Supreme Court sitting in the former case[5] leading to the acquittal of the accused, who was the CEO of the same Bank, had previously settled favourably claims in two civil cases brought against the accused Bank.

It was argued that the impression that might have been left objectively was that the President of the Court might have "paid back" the Bank and its senior manager for the settlement of the claims of his sister and daughter, an allegation of course never substantiated or even made directly and which was in any event strongly denied. The decision of the Appeal Court was by a majority of two to one in favour of acquittal the President making the majority. It was argued that justice must not only be done but seen to be done and that the President should have avoided sitting in the appeal in the circumstances. The Cyprus judiciary came under severe attack as "corrupt". It was challenged by the Attorney General, himself a former member of the Supreme Court until appointed in 2013 to the post of the Attorney General[6]. His challenge was based on the well-known principle that justice must not only be done but seen to be done as above stated.

The European Court of Human Rights had earlier in January 2018 decided in the Nicholas case that the Republic of Cyprus violated article 6 of the European Convention guaranteeing fair trial by an independent and impartial tribunal when it was discovered post Cyprus judgment that one of the Supreme Court Judges who tried the case on appeal was the father- in-law of the daughter of the same as in the bankers above case, advocate. The Court ruled[6A]:

> *"It cannot be overlooked that Cyprus is a small country, with smaller firms and a smaller number of judges than larger jurisdictions; therefore, this situation is likely to arise more often (see, mutandis mutandis, Biagioli v. San Marino (dec.), no. 8162/13 § 80, 8 July 2014, and Micallef, cited above, § 102; compare Ramljak, cited above, § 39). The Court has observed in its case-law that complaints alleging bias should not be capable of paralysing a defendant State's legal system and that in small jurisdictions, excessively strict standards in respect of such motions could unduly hamper the administration of justice (A.K. v. Liechtenstein, no. 38191/12 § 82, 9 July 2015).*

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[4] In Re Bank of Cyprus (supra)
[5] XXX v. Eliades, supra
[6] See Philelefθeros 15.1.2019 online (Greek) "Sharp against the President of the Supreme Court the A-G" «Αιχμηρός κατά' του Προέδρου του Ανωτάτου ο Γενικός Εισαγγελέας», see also Cyprus Mail 16.1.19 online (English) "Our view: Cyprus Judges Labour under the illusion they are untouchable"
[6A] Pars 63, 64, infra

*Given the importance of appearances, however, when such a situation (which can give rise to a suggestion or appearance of bias), arises, that situation should be disclosed at the outset of the proceedings and an assessment should be made, taking into account the various factors involved in order to determine whether disqualification is actually necessitated in the case. This is an important procedural safeguard which is necessary in order to provide adequate guarantees in respect of both objective and subjective impartiality."* [7]

As a result, the Supreme Court hesitantly[7A] adopted a practice direction which provided for the procedure to be followed in similar cases of close family relations between Advocates or their associates and Judges, providing for disclosure of the interest at the outset and possible recusal upon objection. [8]

As it transpired from events to follow in the same year, this was not enough. In the public debate that ensued, it was revealed that close family relations between advocates or members of law firms and Judges existed and trials did take place without objection despite this being well known[9] on many occasions. Advocates and the Bar Council avoided confrontation and everybody seemed uneasily happy until the crisis of 2019. Announcements by the Supreme Court[10] and its President[11] did not save the day. Political parties[12], the Government[13], the President[14], civil society, the media, social media and the public at large got involved in a ferocious debate[15] which at the end left the Cyprus legal system at a time when it was already under heavy criticism for its inefficiencies and delays, badly bruised in a manner never seen before in the history of the young Republic since 1960 and the colonial days prior to that since 1878[16].

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[7] Case of Nicholas v Cyprus, Application no. 63246/10, 9.1.2018

[7A] Judge Nathanael expressed his disagreement with the Judgement of the ECHR on several occasion in open Court

[8] Judicial practice 8.3.2018 as amended later as a result of the crisis 28.1.19 Official Gazette: 1.2.2019: The Court also adopted a Judicial code of Conduct at the same time on 30.1.19 adopting the Bangalore Principles of Judicial Conduct, 2002.

[9] see Cyprus Mail online 27.1.19 (English) "Our View: Time for politicians to declare conflict of interest too" and "In the battle for the turmoil in justice Ch. Clerides" Kathimerini online 11.1.19 (Greek)

[10] Sigmalive, 15.1.19, Filelefthеros 15.1.19 both online in Greek

[11] Filelefthеros 14.1.19, Kathimerini 15.1.19 both online in Greek

[12] Position of DISY and AKEL, Filelefthеros 15.1.19 both online in Greek

[13] Position of the Minister of Justice, Filelefthеros 15.1.19 online in Greek

[14] Cyprus Mail online, 27.1.19. Our View: Time for politicians to declare conflict of interest too" (English)

[15] See in General A.P. News 8.2.19 "Official: More transparency needed for Cyprus Judiciary" by Menelaos Hadjicostis online English

[16] In an opinion poll Sigmalive/Simerini by the Nicosia University January 2019 – 500 sample by telephone, 63% answered that they don't trust the judiciary at all (26%) or to a small extent only (37%)

## 2. GRECO extraordinary visit

A member of the House of Representatives invited Greco[17] to consider the situation. Greco responded positively and high-ranking officials paid a visit to Cyprus and attended a series of meetings with a Committee of the House of Representatives, the Supreme Court, the Attorney General and the Government[18]. It gave a press conference before its departure. It was apparently not pleased with the situation and further recommendations are expected. In particular it did not seem satisfied with the view expressed in public in judicial circles that its reports are only of an advisory nature and the fact that the Supreme Court had already taken some measures to rectify the situation[19].

The Supreme Court in an attempt to respond to criticism adopted a new practice direction and stated that it would follow the Bangalore Principles as to judicial Conduct[20].

The Greco representatives made it clear that its recommendations are binding on its members and that the measures adopted were not good enough[21]. What is needed is not a judicial conduct guideline but strict rules regulating the matter which are enforceable. It reminded of the contents of its latest report relating to measures to combat corruption in Cyprus. In its fourth compliance report on Cyprus in June 2018, prior to the 2019 crisis, it summed up its recommendations as follows[22]:

> *"**Recommendation ix**.*
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> *49. GRECO recommended that the composition of the Supreme Council of Judicature[22A] be subject to a reflection process considering its representation within the judiciary as a means of preventing potential or perceived situations of conflicts of interest within the Council.*

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[17] Mrs Ir. Charalambides of AKEL letter to Greco 12.1.19

[18] Kathimerini online (Greek) 7.2.19 "The decisions of Greco are binding in all member states in Greek and AP News 8.2.19 supra

[19] See Practice Directions the Official Gazette 17.3.88, 21.7.89, 18.9.2003, 30.11.2006, 4.10.2011, 8.3.2018 and 28.1.19

[20] Judicial Practice Gazette 1219, supra The Banglore Principles of Judicial Conduct 2002, Peace Palace the Hague November 25-26, 2002

[21] AP News 8/2/2019 "Official: More transparency needed for Cyprus Judiciary" by Menelaos Hadjicostis, online English, Philelefttheros 8.2.2019 "GRECO only 2 of the 16 recommendations adopted by Cyprus online Greek, Sigmalive 8.2.2019 "Greco: What is needed is a detailed and enforceable code of conduct", Kathimerini 8.2.2019 "Greco rejected the code of Judicial Conduct of the Supreme Court" online all in Greek.

[22] Le Groupe d'États contre la corruption (GRECO) Fourth Evaluation Round Compliance Report, Cyprus Greco RC4(2018)9

[22A] See Article 157 of the Constitution

***Recommendation x.***

*56. GRECO recommended that the integrity requirement of appointment as a judge be guided by precise and objective criteria which are to be checked before appointment/promotion, and that such criteria be made available to the public.*

***Recommendation xi.***

*62. GRECO recommended that a code of ethics/conduct be elaborated on the basis of broad involvement of various members of the judiciary, in order to manifest and develop standards that are commonly agreed aimed at the particular functions of judges, offering guidance in respect of areas such as conflicts of interest and other integrity related matters (e.g. gifts, side activities, recusal, third party contacts, handling of confidential information).*

***Recommendation xii***

*67. GRECO recommended that dedicated training of judges in respect of judicial ethics, conflicts of interest and corruption be introduced as a well-defined part of the induction training of newly recruited judges and provided at regular intervals in the form of dedicated in-service training of judges, based on existing provisions and practice as well as yet to be established ethical guidelines and European standards."*

Meanwhile, in order to avoid practical problems that arose , the Supreme Court made it clear that its practise direction had no retrospective effect[23]. This provoked new criticism especially from the Attorney General[24]. The final views of Greco are now expected with great interest. The Greco recommendations have yet to be adopted in full.

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[23] Philelefttheros 15.2.2019 "Supreme Court: New Judicial Conduct published official online in Greek and see Gazette 15. 2.2019, No 4120

[24] Philelefttheros 28.2.2019 "New Criticism of Attorney General for the Supreme Court", online in Greek.

## 3. Warnings not heeded

The Cyprus Bar Council and others had voiced complaints from time to time relating to delays. The public at large was sceptical to critical. So were judges themselves. A former Judge of the European Court of Human Rights[24A] well known for his boldness and vociferous criticism of Cyprus Justice had earlier voiced concerns about corruption in the judiciary and the quality of judgments at all levels. He was referred by the Supreme Court [25] to the disciplinary committee for unbefitting conduct. The writer of the present in his recent book on Advocacy in Cyprus[26] also voiced concerns about the lack of sensitivity of Judges and amongst other exercised criticism against the handling of cases were a potential conflict of interest situation might arise. Justice must not only be done but seen to be done[27]. The writer recalls objecting to a Judge, the President of the District Court of Nicosia, sitting in a case in which the writer was acting as Advocate for the defendants when two advocates for the other side on behalf of the Plaintiffs were also advocates for this Judge, on another matter involving his claim before the Supreme Court dealing with cuts of Judges salaries as a result of the financial crisis. A certiorari leave application was turned down. A Judge of the Supreme Court had this to say[28] in dismissing the application for leave to file a certiorari:

> "*The test is objective: It is the reaction of a reasonable law abiding informed citizen on the facts and not the personal sensitivity of the Judge which without just cause…, should not lead to his recusal … a reasonable law abiding citizen would not be expected to attribute bias, or think that it is possible that the Judge would show favour.. just because the advocates of the plaintiffs acted for the judge in a recourse alleging unconstitutionality of the law, a matter concerning all judges… Further when the recusal was sought, he had withdrawn the recourse*."

Needless to say, that in the meantime the Judge dealt with a number of preliminary issues and rendered various crucial rulings at a time when the recourse of the Judge was pending and handled by the Judge's, above mentioned advocates.

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[24A] Judge Loucis Loucaides former Deputy Attorney General.

[25] See i.eidisi online 30.11.16, Cyprus News Agency: Former Cyprus Judge of the European Court of Human Rights in Greek

[26] Advocacy in Cyprus, 2017 Nomiki Bibliothiki, Athens page 189 et seq. See also Professor Clerides: "The Cyprus Legal System" 2017, Nomiki Bibliothiki, Athens, pages 547 et seq.

[27] The King v. Sussex Justices. Ex Parte McCarthy [1923] EWHC KB1 per Lord Hewart C.J.

[28] In re Rea Andronicou (2013) 1 ΑΑΔ 1118

In my concluding remarks in the chapter relating to Advocates and Judges the following was suggested[28A]:

> "*It should be an unbreakable rule in the future that a Judge has to show greater sensitivity in these matters and declare his interest or bias in the matter at the outset.*"

In small countries the smallness of the society makes it more frequent than not that potential conflicts of interest situations will arise. In such cases the rules must be stricter and not relaxed as the European Court of Human Rights judgment in the *Nicholas** case seems to suggest, if confidence in the judicial system is to be regained and maintained.

## 4. The Revision Process

The crisis of 2019 coincided with a revision process of the justice system.

The road to revision was one of inaction, sit back, see it happening and do nothing. Two previous reports considered versions of the Civil procedure rules and the Justice system[29]. Their recommendations were not implemented. Despite the increase of Court cases and the inability of an archaic system to cope with it, the Ministry of Justice, the Supreme Court, the Bar Council, the Office of the Attorney-General, were all characterised by an immense tardiness to act. First, the scapegoat was the law of Evidence and the ancient rules of hearsay. It was thought that Strict Victorian rules excluding important evidence delayed the process. The law of Evidence embodied in the colonial legislation Cap 9 was amended in 2004 by Law 32(1)2004[30] as a result.

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[28A] Advocacy in Cyprus, supra p.193

[29] Pikis Report (1989), Kramvis Report (2012). Pikis J. was the ex-President of the Supreme Court. Kramvis J. was a Judge of the Supreme Court involved in the Nicholas case, supra.

[30] See Dr Christos Clerides: The Cyprus Law of Evidence 2018, Nomiki Bibliothiki, Athens, Chapter 3

Hearsay was abolished across the board and examination in chief is now conducted by way of written statements. Copies of documents are admissible with ease[31]. But this apparently did not do the trick. Then, it was the turn of the civil procedure rules to take the blame for the delays. Everything was thrown on the mid-fifties colonial civil procedure rules based on the 1954 White Book of England.

Patchwork amendments in the process did nothing to alleviate the situation. For example, Order 64 was amended to abolish the distinction between void and irregular proceedings so as to save proceedings in default of the procedure rules.

Alas, the Supreme Court through a series of rulings[32] managed to revive the distinction in cases it considered that the breach was fundamental. Summary judgment rules were interpreted very liberally[33] to allow the dismissal of such applications, small claims procedure was abolished[34] instead of being strengthened and excessive formalism by the Supreme Court encouraged litigants to make use of delaying tactics[35]. The ease for obtaining adjournments as well as the unwillingness and or inability to introduce and enforce a day in day out hearing system resulted in piecemeal trials with the result that some cases which could and should have been concluded in two to three weeks or a couple of months were completed in two to three years or more. The Supreme Court's jurisprudence and attitudes of the District Courts and inferior Courts in general did not help at all. Yet it was the Civil Procedure rules that everybody blamed now as the main guilty party in the process for the unjustified delays.

Sporadic reaction, involved amongst others dismissal of appeals on the ground that the reasoning was not sufficient[35A] and later that appeals are only allowed from final judgments. This caused the reaction of the House of Representatives, dominated by advocates resulting in an amendment allowing specifically appeals from interlocutory rulings/judgments only to be reamended recently to restrict again the same[36].

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[31] Sections 34(i) of Cap 9 as amended, see in general Christos Clerides, Cyprus Law of Evidence, supra p. 23
[32] Christos Clerides "The Cyprus Legal System", supra, pages 351-353
[33] Ibid, pages 383-384
[34] Order 65 abolished 2.2.1996
[35] Ibid, page 352
[35A] Maik tymvios v. Dimitris Liveras (1991) 1 CLR page 615
[36] Oneworld Ltd v. OJSC Bank of Moscow Civil Appeal E50/2018, 19.12.18 and contrast with the conflicting judgment of Kotsonis v. Municipality of Geri 254/13, 31.10.19 and Comment of Professor A. Emilianides in Justice, internet journal "Contradictory jurisprudence as to the appealable of interim rulings 1.11.2019 and my comment Ibid 12.11.19: as to the disappointing quality of judgments and of the Supreme Court.

In the meantime, cases were piling up. The two years at first instance trial period and one to two for appeal of the 80s was gradually extended to four years at first instance and another six years for the appeal. In a well-known case for the first time, *Mavronichis v. Cyprus*[37], the European Commission for the Protection of Human Rights[37] found Cyprus "guilty" of violating article 6 ensuring fair trial within a reasonable time. Many followed thereafter until Cyprus legislated to provide for a Cyprus law trying cases of allegations for delay internally[38]. The complaints were dealt with in an unsatisfactory[38A] manner but the delays were not dealt with.

## 5. Experts reports and recommendations

It was not until 2016[39] that the Supreme Court issued a report of a committee of three of its Judges on the problems and made recommendations under the weight of European Statistics[40] and public outcry, that saw the system entirely inefficient.

Complaints about the quality of judgments at all levels were brushed under the carpet through inter alia negative reaction of the Supreme Court which would not take criticism[41] lightly and called on complaining advocates to "*justify the charges*" or face disciplinary action. It was revealed at the same time that almost one in two appeals were successful[40A]. It maybe that one in two of the unsuccessful appeals might have been successful also had there been a three-tier appeals system instead of the two-tier in force today since the colonial days.

Pressure on Judges overwhelmed by huge backlog meant that dissenting judgments are not frequent. Not even concurring separate judgments. Judgments are generally rather short without always an in-depth analysis. At the District Court level, a mixture of efficient/inefficient judges, wise and not so wise, knowledgeable or not bedevilled the situation.

Judges are appointed by the Supreme Court Council of Judicature composed of all thirteen Supreme Court judges[42]. They decide on appointment, promotion and make recommendations to the President of the Republic for appointments to the Supreme Court.

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[37] 24.4.1958/47/1997/831/1037. The case was presented by the writer of the present article. It was the first case presented against the Republic on an individual recourse basis. See also Interview of the writer in the Financial Mirror online, 17.11.19 "Cyprus: Government determined to introduce radical justice reform" (English)

[38] Law 1/2010 and see Application 2/2018, 20 May 2019, Demetriou v. The Republic, and M.D. Cyprus Soya Ltd v. Γ.Ε. 25.2.2019 Action No. 1/2018

[38A] A claim for damages for delays takes another 10-11 years to be heard at both levels, first instance and appeal

[39] Report June 2016. Report of the Supreme Court for the Functional Needs of the Courts and other related matters (to be found in the Supreme Court of Cyprus site).

[40] The 2016 EU Justice Scoreboard

[40A] Study by Associate Professor C. Kombos presented in a Public Lecture before the Supreme Court, October 2016

[41] See Loucaides, supra footnote 25

[42] See now infra suggestions for amendment and the Greco Report June 2018, supra.

Appointments to the Supreme Court are made by the President of the Republic under the Constitution[42A].

Practice nevertheless led to a promotion system across the board. Judges at the starting level have to have only six-years practice[42B] and pass an oral interview before Judges of the Supreme Court sitting as the Supreme Court Council of Judicature. There is no Judges School for training of would be judges, or thereafter nor a written examination. A combined system might have been the best but even today this is not on the table.

Nor are the best from the profession always, with some exceptions, attracted or chosen, mainly due to the conditions of service that successful lawyers are not willing to put up with, given also the prevailing culture that judges are first appointed at the lowerst level dealing with traffic and small claims. In practice senior positions are reserved for promotion of existing Judges exclusively. In the Supreme Court the majority of judges have no postgraduate studies[43] apparently not the norm in their student days and by and large are holders of a law degree from a Greek University, where they were taught and trained in continental Greek law. No common law or equity or the practice of the English Bar is taught. They aspire to learn it in the process, sitting on the Bench, some with good results. Inevitably all the above practises as well as the heavy load of cases would have reflected in the quality of judgments.

The three Judges of the Supreme Court in their 2016 report, acknowledged the problem relating to delays and the need to improve the situation[44]. It was like a death inquest. Better late than never as they say. It was acknowledged that appeal cases took six years[45] to be heard and at the District Court level long delays were noted[46]. The blame was put mainly on the Government for failing to provide sufficient funds for the improvement of "justice"[47].

It was suggested that a new appeals Court[48] should be set up to deal with the backlog of appeals and that the Supreme Court should deal only with a limited number of appeals on legal points after leave. Leave to appeal in all cases was recommended to reduce their numbers. It was also suggested by many at the same time to divide the existing Supreme Court to a Constitutional and an Appeals Court[49],

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42A See Articles 133, 153 as adapted by the Law of Necessity and the Administration of Justice (Miscellaneous Provisions) Law 1964
42B See Courts of Justice Law 14/60 as amended section 6. Usually Junior Advocates will acquire very limited experience working as employees in large Advocates Offices. Full hearings experience is almost non-existent.
[43] See profile of judges of the Supreme Court, in the site of the Supreme Court of Cyprus
[44] Supra note 39
[45] See ibid pages 24-25, 26
[46] Ibid page 31
[47] Ibid page 16
[48] Ibid page 57
[49] Ibid page 26-27

a division enshrined in the Constitution of 1960, before its 1964 amendment as a result of the law of necessity[49A]. It was obvious that the system needed a more substantial overhaul and as a result the European Union was invited to offer its expertise on the matter. As we shall see further below, three important processes in parallel were set in motion after the report of the three-member committee of the Supreme Court, June 2016.

(1) The Ministry of Justice in collaboration with the Supreme Court is working for the introduction of electronic justice and the setting up of a Commercial Court to deal with commercial cases of large claims[50]. A new Administrative Court of International Protection[51] is now in operation. Also, a new Administrative Court has been operating since January 2016[52]. The construction of new Courts especially the new Nicosia District Court long overdue and the restoration of the old Supreme Court to house the new Administrative Courts is in the process of implementation. Modern buildings with all the necessary facilities will contribute towards better justice.

(2) The Lord Dyson committee was set up[53] to work along with a Cyprus Civil Proceedure Rules Committee.

(3) A Committee of experts[54] mainly from Ireland the UK and the European Commission was also set up to deal with structural issues.

In this article we shall deal with the latter two processes.

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[49A] About the Law of Necessity and the case Law see Clerides "The Cyprus Legal System", Athens 2017, supra.
[50] Commercial Court: Bill before the House of Representatives expected to be approved soon. See Clerides "Cyprus Legal System", supra p. 120-121
[51] Law 73(I)2018
[52] Law 131(I)2015
[53] See Progress Report June 2018. It has been said that the new rules await for the approval of the Supreme Court.
[54] Functional Review of the Court system of Cyprus Report, March 2018 by IPA and SRSS.

## 6. The Lord Dyson Committee

The Structural Reform Support Services (SRSS) of the European Commission with the technical assistance of the Institute of Public Administration of Ireland released its Progress Report June 2018 on a review of the Rules of Civil Proceedure, known as the Dyson Report.

The Committee made a number of recommendations for en bloc [55] amendments based on the English model and pre-action protocols intended to lead to mediation or arbitration with costs penalties. Amongst the various proposals it is recommended to reduce the use of affidavits to be now sworn before practicing lawyers, instead of the Court Registrars, to introduce case management conferences, and small claims under €3000 procedures, as well as fast track proceedures for intermediate claims of €3000 to €25.000. It also recommended to extend summary judgment to defendants, to control the use of expert evidence, narrow discovery, offers to pay than payment into Court, leave to appeal for the new Supreme Court at third level, pay as you go costs for interim hearings and applications, delegation of more functions to Registrars and service abroad of judicial process to be on the basis of the EU regulations applied uniformly. The amended provisions are intended to give more powers to the Court to manage a case and impose costs disincentives on parties not following the rules. Already for the past few years since January 1960 the Supreme Court had amended the Civil Proceedure rules by introducing a revised Order 30 summons for directions and a new Order 25 on amendment of pleadings[56]. The Court has been given wide management powers to put the case on track for trials. It is doubtful whether this has contributed so far to a reduction of the overall time for disposing a case. Common knowledge has it between advocates that the procedure has become more cumbersome, expensive and unwieldy.

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[55] See Ibid, pages 160-191 of the Progress Report, June 2018.

[56] New Order 30 summons for Directions was brought into force from 1.1.2015. It does not apply retrospectively A Practice Direction was issued 28.7.17. A new Order 25 for amendment of pleadings was introduced applicable as from 1.1.16.

Indeed, a criticism directed in the attempt to introduce the English system in Cyprus. It is questionable whether in England the reforms[57] contributed to expediting trials or reducing the cost. One of the problems that has bedevilled trial process in Cyprus has been the excessive formalism of Judges and lawyers in applying the rules, as seen above. Inter alia and foremost, what is needed is a change in Courts and advocates attitude and culture if the rules are to be applied successfully. In a paper submitted by the writer of the present to the Committee examining the amendments in collaboration with Lord Dyson the following were suggested:[58]

> *"**12. Culture***
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> *I am afraid that excessive formalism at times (for excessive formalism See Henrioud v France 2144/11 GCHR 5.11.15 and Cyprus Legal System, ibid p.409) has been a cause of delay. The Cyprus Law Reports 1960-1989 (in English) and 1989 part to date (in Greek) are abundant with judgments relating to matters of civil procedure. Excessive formalism has at times denied a litigant justice. I can quote an example. Two claimants for the same subject matter relating to the purchase of a flat in the same building. The one failed on grounds that his case was not properly pleaded having being denied an amendment, Τσαγκάρης v Μακεδονία Γαβριηλίδου (2002) 1 ΑΑΔ156 and the other on the same facts on a proper pleading amended was successful. St Georges Car Hire Ltd and others v Μακεδονία Γαβριηλίδου κ.ά. (2006) 1ΑΑΔ 47 Excessive formalism is not only judicial but I am afraid advocates abuse the Civil Proceedure rules to gain advantages knowing that Judges will adhere to excessive formalism most of the time."*

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[57] The Woolf Reforms 1996 see Christos Clerides "The Cyprus Legal System", Pages 419-421. See Charles Harris QC Senior Circuit Judge 20.9.2019 The Times online "Woolf Civil Justice reforms have failed says former Judge"
[58] July 2018

## 7. The European Commission and Institute of Public Administration (IPA), Ireland on the Cyprus Courts System

In March 2018 the IPA with the SRSS[58A] published their Functional Review of the Courts System of Cyprus. The report was critical of the Supreme Court of Cyprus administration to date. In page 4 it had this to say:

> *"Based on the analysis undertaken for this functional review, there are currently major deficiencies in all of these areas. The weaknesses in the management and leadership of the courts system are reflected in such areas as a lack of forward planning, inefficient management of resources, inadequate staff management, and weak internal management processes. However, these problems are inextricably linked with the current dependence on inadequate and outmoded structures, whereby the Supreme Court, in addition to its critical legal roles and responsibilities as the highest court in the land, also has overall responsibility for the effective and efficient management and operations of the courts. The current system fails to provide an adequate infrastructure for the efficient and effective administration of justice. The system is also characterised by inefficient procedures and processes, e.g. the lack of active management of cases through the courts system, and by an almost complete lack of supporting ICT systems. The lack of procedural innovation to address these inefficiencies can turn be explained by the absence of structured professional leadership and management and the absence of the formalised structures and processes required to support ongoing change and reform.*
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> *The problem of backlogs, and the consequent serious delays in cases coming to court, is getting worse. Some civil cases can potentially take as long as 9.5 years from initiation at a court of first instance to conclusion of appeal in the Supreme Court. Actions of judiciary and staff are currently conditioned by the*

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[58A] Structural Reform Support Services of the European Commission, EU.

*need to just keep the system running. The demands on all staff and on the judiciary are excessive, and without any prospect or early resolution. In such a scenario, the challenge of maintaining orderly management and procedure is overwhelming, the possibilities for ongoing reform or innovation are extremely limited, and there is little or no opportunity for long-term planning."*

Based on the figures provided in the report at the end of 2016 there was a backlog of 4318 Appeals before the Supreme Court[59], 56,114 criminal cases[60] and 48.809 civil cases before the District Courts[61] and some 3.581 in the Family Court[62]. An increasing percentage of backlog was noted at all levels[63]. It was obvious that something had to be done. The first patchwork reaction was to turn down by law appeals against interlocutory rulings.

A new amendment was introduced of the Courts of Justice Law 14/60 disallowing appeals against interlocutory rulings[64] except in cases where irretrievable damage was caused to the rights of the aggrieved party. At the first instance level it is said that the number of cases filed was less that in the past years. Obviously, this was not enough to deal with the crisis. The Supreme Court with the Ministry of Justice expedited as a result of the January 2019 crisis inter alia urgent[65] legislation for the creation of an Appeals Court and for two Third Tier Courts. The appointment of 35 new Judges intended to help with the backlog was initiated.[66] The last move was suspended when it was realised that new criteria for the appointment of Judges insisted upon by Greco were still not in place. It has now been reactivated following the recent adoption of such criteria[67*].

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[59] page 37
[60] page 54
[61] page 54
[62] page 55
[63] pages 49 and 71 conclusions
[64] 21.7.2017, Law 109(1)2017. It has been decided that the law has retrospective effect
[65] 28 May 2019 for the 11th Amendment of the Constitution, the Courts of Justice Law and the Administration of Justice Law 2019
[66] Announcement of the Supreme 9.7.2019, 23 District Court Judges, 5 for Senior District Court Judges and 7 for Presidents
[67] 2.10.2019 on the site of the Supreme Court and see "Justice" commentary by Christofi Ch. 9.10.19. The criteria maybe contrary to the Law and in particular the provisions of the Courts of Justice Law 14/60 Section 6 which clearly state that Judicial appointments are first entry or first entry and promotion. To the extent that the criteria refer only to promotion they ran contrary to the Law.

Be that as it may, the report made numerous recommendations[68] which seem to be partly if not whole heartedly accepted by the Supreme Court and the Bar Council. It is the conviction of the writer that what is needed as above explained is a fresh culture of the legal profession, the Judiciary and the Government as well as the House of Representatives. What is needed is a common will and determination to work together to solve the problems. Further specialised Divisions of the District Courts should be introduced to achieve specialisation of judges and appearing advocates to expedite proceedings. The Committee recommended[69] the setting up of a Task Force to deal with backlogs, a review group to examine the introduction of the new Appeals Court, the establishment of a Courts Service for the management administration and support of the Courts, assignment of case management to judges in each district, day in day out Court hearings, E-Justice, three judges instead of the five in administrative law appeals, an expanded role of registrars, interview boards of the Supreme Court for appointment, access to ICT hardware and software for Judges, DAR of Court proceedings (Digital Audio Recording), Alternative Dispute Resolution (ADR) in consumer and injuries cases, active encouragement of mediation, modification of the current two year rotation system of Judges, training of Judges, mentoring arrangement for Judges who need it and fee collection through the use of electronic means.

All recommendations are welcome as a way forward. It may be that they do not tackle all the problems or sufficiently. But Cyprus has no option. Already a year has elapsed and progress has been slow. It seems to be the rule of the day unfortunately. Unless immediately implemented the system will collapse.

## 8. The Courts Reform

The Minister of Justice just before his departure from the Ministry as a result of his sudden resignation[70] put before the House of Representatives three Bills[71] approved by the Council of Ministry in May 2018, to amend the relevant provisions of the law[72] setting up two new Courts to succeed the Supreme Court of Cyprus of 1964 set up in the aftermath of the communal division culminating in the withdrawal of Turkish Cypriots from the constitutional organs of the Republic[73].

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[68] Pages 166-189 Functional Review of the Court System of Cyprus, March 2018
[69] Page 166
[70] His resignation was announced 2 May 2019
[71] See above note 65
[72] Administration of Justice (Miscellaneous Provisions) Law 1964, Law 33/1964
[73] See in general Clerides," The Cyprus Legal System", supra pages 36 et seq.

The 1964 law created a unified Supreme Court with combined jurisdiction of the Constitutional Court and the Higher Court, the former vested with Public Law jurisdiction and the latter with civil and criminal appellate jurisdiction and first instance in the field of Prerogative Writs, Admiralty and Charities amongst other.[74]. Now with the new proposed bill it is intended to revert to the old constitutional structure of a Supreme Constitutional Court and a Higher Court described as the Supreme Court. The former will hear Public Law cases under the Constitutional Provisions at first instance and appeals with leave to appeal only in important cases. The latter criminal and civil appeals by leave only, from the new Appeals Court. The Appeals Court is a new institution which will handle the backlog of some 4000 appeals pending before the existing Supreme Court to be abolished.

A three-tier system is established for the first time in Cyprus. The new Appeals Court will consist of 16 judges[75] as opposed to the current 13 judges of the Supreme Court. The new final tier Courts as above will consist of 10 judges, five for the Supreme Constitutional Court and five for the Supreme Court (Higher Court)[75A]. Given that appeals are subject to leave for the first time their role in disposing appeal cases will be rather limited. In essence another three judges will be added to the existing two-tier system in the new Appeals Court. No leave to appeal shall be necessary from the lower Courts to the new Appeals Court which will be divided into specialized Divisions by rules. Probably 5 Divisions. It is hoped that the backlog and delays[76] will be cleared and avoided through the intended specialization and the creation of the new Supreme Constitutional Court to deal with Constitutional law matters thus leaving the Appeals Court to deal with the bulk of the appeals without having to spend time on hearing constitutional case law at first instance (original jurisdiction) now being heard by the existing Supreme Court. At the same time it is expected that most of the sixteen Appeal judges will be drawn from the existing experienced Presidents or senior judges of the lower Courts with some senior Advocates filling in.

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[74]See in general C. Clerides: "The Cyprus Legal System", 2017, Nomiki Bibliothiki, Athens, Chapter 2
[75] See Section 4 of the Bill 2019 Administration of Justice (Misc. Provisions) Law 2019
[75A] See Section 3 Ibid
[76] See C. Clerides: "Reform of the Courts System: The beginning" Politis online 22.9.19

At a result time the lower Courts will in many respects be deprived of experienced judges their positions to be filled in mostly by promotions despite the fact that the existing law[77] and the new bill[78] provide for first appointment posts. The system of judicial appointments for senior posts as seen above is based in practice though not in law on promotions rather than appointments, thus excluding senior advocates from the bar. This is one of the problems that has bedevilled the Cyprus judicial system to date in addition to the failure to create a culture making it attractive for successful advocates to accept judicial appointment.

The Greco Report made, as seen above, a number of recommendations[79] including the enlargement of the Supreme Council of Judicature[78A] responsible for Appointments, promotions and discipline[79] of Judges of all jurisdictions except judges of the Supreme Court[80]. At present it consists of all 13 Supreme Court judges. With the proposed amendment, under the new bill the Council will be enlarged to include the Attorney General, the most senior judge of the District Courts, the President of the new Appeals Court, the President of the Union of judges and the President of the Cyprus Bar as well as a senior Advocate of at least 25 years standing[81]. The remaining members will be the five members of the Supreme Court (Higher Court) exercising Civil and Criminal appellate jurisdiction. So, it will be a new body of 11 out of which eight are judges. It is thought that in this way the old practice of filling vacancies only through judicial promotion despite the fact the law provides for first entry appointments will be relaxed and that the judiciary will be enriched through the appointment of senior practicing advocates to judicial posts. This nevertheless is doubtful in view of the fact that the majority in the new Council is still judicial and attitudes do not seem to have changed. It is also very debateable whether the new provisions will go through unamended in view of possible objections to the inclusion in the Council of the Attorney General given the current state of affairs as above described and objections voiced in the House of Representatives relating to the Court reform Bills in general.

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[77] Courts of Justice Law 14/60 section 6
[78] Administration of Justice (Misc. Provisions) Bill 2019, section 4 and new section 3 A(6)
[78A] Article 157 of the Constitution
[79] Fourth Compliance Report, pars 49-54
[80] For Judges of the Supreme Court a Council of Judges of the Supreme Court is provided in Articles 138(8) and 153(8)of the Constitution and see Attorney-General v. Erotocritou Application No. 1/2015, 24.9.2015
[81] Ibid, Administration of Justice Bill 2019

As above argued despite the fact that appointments of Supreme Court judges are made by the President of the Republic under the Constitution[82] the practice so far has been for the President to consult with the Supreme Court and appoint in case of a vacancy the most senior in rank Administrative President of the District Court of Nicosia. The Presidential Power vested under the Constitution for appointing any senior Counsel from the Bar of high professional and moral standard[82A], has been surpassed by the above malpractice. In an attempt to mitigate the domination of the Supreme Court, in this field an Advisory Council to the President will be set up under the new law[83]. Nevertheless, the majority in this Council will still be judges of the Supreme Constitutional Court (5) and the new Supreme Court (Higher) (5) plus the Attorney General and President of the Bar Council.

It is doubtful whether the current malpractice will ease for al intends and purposes. So far, the judges of the Supreme Court decided on all judicial appointments and promotion of judges to reach the level of the Administrative President of the District Court of Nicosia and thereafter to the Supreme Court upon their recommendation to the President of the Republic. They always had their way with the President on "appointments" to the Supreme Court except in one case so far in the 59 years of the young Republic[84]. The judicial system deprived itself of the possibility of being enriched with the knowledge and experience of senior advocates through an unwillingness to act in accordance with the constitutional provisions.

As above stated, the reform process is slow. It was expedited as a result of the 2019 crisis as above described but things seem to have reverted to the old leisurely style of doing things in Cyprus. The experts report funded by the European Commission[85] is being partly and slowly implemented. Cherry picking seems to be practised despite the fact that the system is down to its knees. No sense of urgency seems to prevail. The introduction of the Commercial and Admiralty Court also seems to move slowly although now it is at its final stages of being approved by the House.

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[82] See Articles 133, 153 of the Constitution and footnote [42A]

[82A] Article 153(5), 133(5)

[83] Administration of Justice Bill Section 5

[84] President G. Clerides, Appointed Counsel of the Republic as a member of the Supreme Court in October 1997 R. Gavrielides J. The reaction of the Supreme Court was made public and was negative.

[85] Functional Review of the Courts System of Cyprus, March 2018 by the IPA and European Commission

The Lord Dyson recommendations[86] seem to be at their final stage also. There is a fear amongst the Bar that the rules will be too bulky and difficult to implement. In England the introduction of the new CPR introduced in the 90s has not been an all-out success*.

Still the new proposed rules for Cyprus with amendments based on the same philosophy will be introduced in Cyprus with its players nevertheless not really trained or ready to deal with the new philosophy of the judge taking a more active role in the management of cases or the preaction protocols. Consultation with the members of the bar at large has not been very adequate so far. Problems are expected with the new rules on the way.

## 9. The Aftermath

The conflict between the Attorney-General and the President of the Supreme Court and inevitably the Supreme Court was a conflict that the Attorney General put squarely on the principle that justice must not only be done but seen to be done. It was not a personal conflict. Afterall the two were friends since their student days in London[86A]. It was spurred by the result of the two appeals above relating to the economic crisis of Cyprus of 2013. The legal world was unhappy with the situation of Judges children personally as well as law offices engaging them appearing before relative Judges. Yet nobody dared do anything about it.

The *Nicholas v. Cyprus (2018)*[86B] Judgment of the European Court of Human Rights brought the matter into light "officially". The situation developed since the early days of the Republic in the 60s. In many ways it was an unacceptable and unhappy state of affairs. It had to stop. It did, gradually and recently abruptly with losses. The events of 2019 resulted in a division in the Supreme Court itself on the issue. Some judges, sided with the Attorney-General, some with the President of the Supreme Court. But the majority it would appear left the President of the Supreme Court exposed to making his own announcement in a separate statement relating to the judgment concerning the Bank of Cyprus senior manager*. It looked as if the matter was a "personal" one involving the President and not the Supreme Court.

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[86] Progress Report, June 2018, IPA

[86A] Mr. Costas Clerides is a Gray's Inn Barrister at Law. At the same time in the 70s Mr Myron Nicolatos, President of the Supreme Court completed his studies at the L.S.E., University of London including LL.M and a Barrister-at-Law.

[86B] see footnote 7

[86Γ] See Announcement of the Supreme Court 14.1.2019, Sigmalive online and separate announcement of the President of the Supreme Court Philelefθeros online 14.1.2019. See also Judge D. Michaelides "We did not know about the personal case of Nicolatos" Kathimerini online 23.1.2019 all in Greek

On the other side of the fence, the Attorney General was left out from the process relating to important proposals for the reform of the Court Structure. He complained that the reforms were being carried through by the Ministry of Justice with the Supreme Court with him being confined to the final technical drafting of the Bills[87].

It maybe that the Minister of Justice wanted to secure the consent of the Supreme Court for the reforms an important player in the reform process, without the involvement of the Attorney General in view of the events of 2019. The whole affair undermined the confidence of the public further in the rule of law and independence of the Judiciary. The conflict was public through announcements made and the debate that ensued in the media. Front page news for more than a month[88]. In appearances before a Committee of the House of Representatives where the Attorney General and the President of the Court confronted each other to discuss the situation[89] the conflict was obvious and embarrassing. Calls for the resignation of the President of the Supreme Court were made[90]. The Attorney-General was also criticised for his inaction since his 2013 appointment. Both officers will retire next year at the constitutional age of 68[91].

The 2019 crisis coincided with the Court reform process. It certainly expedited the same but also contributed to the enhancement of distrust of the public in the Cyprus legal system in general. At the same time the Supreme Court was forced to introduce stricter rules of recusal, a healthy development.

The latest justice scoreboard 2019 of the European Commission relating to Cyprus continues to paint a bleak picture of the Cyprus justice system. The average period for a first instance hearing to judgment in Cyprus is 1200 days whereas the average in the EU is under 200 days[92].

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[87]See Phileleftheros online 22.1.2019 "Ionas on Active: I have spoken with the Attorney General for the Courts reform" and "Complaint of the Attorney General for non-participation of the Law Office in Court Reform" and Kathimerini 23.1.2019 "President Anastasiades. There was no intention to exclude the A-G for the Justice Reforms" all in Greek

[88] The writer has a collection of publications relating to the matter in 4 volumes of some 1200 pages.

[89] Philelefttheros 23.1.19 and Kathimerini online 23.1.19, all in Greek

[90] Philelefttheros online 24.1.19 "Mr. Nicolatos you ought to resign", Kathimerini online 27.1.19 "Pressure for the resignation of Nicolatos" all in Greek

[91]See Articles 133(7) and 153(7) 112(4) of the Constitution

[92] The 2019 EU Justice Scoreboard Figures, page 12

The total expenditure on justice is the worse in the European union namely 25 Euro per inhabitant or around 0.1 of the GDP whereas the higher in Europe is around 200 Euro and around 0.6 respectively[93]. Yet Cyprus has the largest number of lawyers in the European Union 450 per 100.000 inhabitants as opposed to around 50 in Sweeden[94]. In the perception of independence of Judges[95] 60% have a fairly good to very good perception and 30% fairly bad or very bad with 10% don't know. The figures may include part of 2019 but it is not known whether the interviews were completed before the 2019 crisis[96]. We shall see next year the results to be sure. What is certain is that the Cyprus legal system in turmoil will take many years to recover to reach its prestige of the past. The 2019 crisis brought into light the weaknesses of the system and expedited the reform processes for the better.

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[93] Ibid Figures 28, 29 page 30
[94] Ibid Figure 35 page 34, in 16 EU members average 100
[95] Ibid Figure 47, page 44, 11th in line. Cyprus opinion polls at the time of the crisis give a bleak picture. See footnote 16 Supra
[96] It was published 26.4.19. In all probability results relate to 2018.