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REMEDYING DISPLACEMENT IN CYPRUS: A GUIDANCE FOR "NON-TRANSITIONAL" SOCIETIES(*)

Dr. **Meliz ERDEM**(**)

Abstract: Cyprus presents a complex case for any attempt to deliver transitional justice. Efforts of the United Nations in resolving the enduring conflict in Cyprus have borne little fruit. Yet, one of the most innovative developments has been the establishment of the Immovable Property Commission (IPC) in the north to address claims relating to property abandoned in 1974 by Greek Cypriots. This article takes the IPC into centre stage to address the impact such institutions might have on the perceptions of societies. In a broader framework, this contribution will serve as a guidance for contexts which cannot readily be classified as "post-conflict" lacking a formal commitment to transitional justice as well as those "frozen conflicts" in Europe or elsewhere.

Keywords: Transitional Justice, Reparatory Justice, Reconciliation, Cyprus, ECHR.

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(**) Lecturer at Bahçeşehir Cyprus University, Faculty of Law (ORCID 0000-0001-7923-8430; *meliz.erdem@baucyprus.edu.tr, melizerdem@yahoo.com*). The author has been a lawyer at the Immovable Property Commission at the time of this research. Ethical approval for this empirical part was confirmed by the University of Bristol Law School Research Ethics Committee on 4 May 2017. Participants had agreed to inclusion of data they provided in any research reports, journal articles and/or other publications.

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KIBRIS'TA YERİNDEN EDİLMEYE ÇARE BULMAK: "GEÇİŞ DÖNEMİ İÇERİSİNDE BULUNMAYAN TOPLUMLAR" İÇİN REHBER

Öz: Kıbrıs, geçiş dönemi adaletine dair herhangi bir girişimin yerine getirilmesinde kompleks bir vaka olarak yeralmaktadır. BM'nin Kıbrıs'ta süregelen uyuşmazlığın çözümlenmesinde yürütmüş olduğu çabalar da bugüne değin meyvesini verememiştir. Buna karşın Taşınmaz Mal Komisyonu (TMK)'nun 1974'te Kıbrıslı Rumlar tarafından kuzeyde bırakılan mallarla ilgili taleplerine cevap vermek amacı ile kurulmuş olması yenilikçi bir gelişme olarak karşımıza çıkmaktadır. Bu makale TMK'yı merkeze alarak bu gibi kurumların toplumların algılama biçimleri üzerinde yaratabileceği etkileri ele almayı amaçlamaktadır. Daha genel bir çereçeveden bakıldığında ise bu çalışmanın, hem Avrupa veya başka yerlerde "donmuş çatışmalar" olarak nitelendirilebilecek durumlar için, hem de geçiş dönemi adaletinin resmi olarak kabul edimediği ve "çatışma sonrası" durumlar arasında sınıflandırılamayacak vakalar için bir rehber görevi görmesi hedeflenmiştir.

Anahtar Kelimeler: Geçiş Dönemi Adaleti, Onarıcı Adalet, Uzlaşma, Kıbrıs, AİHS.

I. INTRODUCTION

The restoration of property rights of displaced persons is critical to restore peace.[1] Nevertheless, the transitional justice paradigm has so far struggled to pay adequate attention to questions of property and displacement. In situations where transitional justice has not been accepted as a formal policy, the issue is even more problematic. This is also the case for Cyprus.

Approximately 210,000 Greek and Turkish Cypriots, one-third of the population when the island was partitioned, had to leave their property behind and uproot themselves.[2] The personal, cultural, and political signifi-

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1 VAN HOUTTE Hans, "Mass property claim resolution in a post-war society: The Commission for Real Property Claims in Bosnia and Herzegovina", **International and Comparative Law Quraterly**, V. 48, No. 3, 1999, p. 625.

2 SERT Deniz Ş, "Cyprus: Peace, Return and Property", **Journal of Refugee Studies**, V. 23, No. 2, 2010, pp. 238-9; see also GÜREL Ayla/ ÖZERSAY Kudret, "The Politics of Property in Cyprus, Conflicting Appeals to 'Bizonality' and 'Human Rights' by the Two Cypriot Communities", Prio Cyprus Centre, Nicosia, 3/2006, p. 4; for phases of displacement in Cyprus see GÜREL Ayla/ HATAY Mete/ YAKINTHOU Chrystalla, "Displacement in Cyprus: Consequences of Civil and Military Strife Report 5'", Prio Cyprus Centre, Nicosia 2012.

cance of displacement cannot be underestimated[3] and the island remains divided as the Turkish Cypriot north and Greek Cypriot south since the 1974 Turkish military intervention.[4] The absence of a comprehensive peace agreement, the absence of a formal policy of transitional justice and the absence of various components of reparations have been problematic for Cyprus, as well as for similar contexts in different parts of the world.

The starting point of this paper has been the Immovable Property Commission (IPC) established in north Cyprus by pressure from the European Court of Human Rights (ECtHR) as a result of the leading cases of *Loizidou v. Turkey, Xenides- Arestis v. Turkey and Demopoulos and others v. Turkey*.[5]

It should be added that the Greek Cypriot policy for Turkish Cypriot properties has been significantly different from that of the Turkish Cypriots'. Turkish Cypriots are considered in south as legal owners of their properties (i.e., they remain to hold title to properties) but were placed under the administration of the Minister of the Interior as "the Custodian" under Law No 139/1991. The Custodian has all the rights and obligations which a Turkish Cypriot owner would have. Turkish Cypriot claims over these properties are dependent on strict conditions set forth in the Law. The Law was challenged various times before the ECtHR by Turkish Cypriots, the leading one being *Niazi Kazalı and Hakan Kazalı*.[6] The difficulties with respect to the procedure to be followed in south are outlined in this decision. However, the case was declared inadmissible for non-exhaustion of domestic remedies. The difficulties with regard to procedures to be followed by Turkish Cypriots in the south are not examined in this article since, first of all, a mechanism similar to that of the IPC is not available there. In addition, the objective of this article is to address mechanisms such as the IPC in conflict situations similar to Cyprus. Since the Cyprus problem itself has wider implications,

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3 MATSON Laura, "Competing Land Rights, Legal Redress, and Political Settlement in Cyprus", **Law & Inequality**, V. 31, No. 1, 2012-2013, p. 200.

4 See BRYANT Rebecca, "Living with Liminality: De Facto States of the Threshold of the Global", **Brown Journal of World Affairs,** V. 20, No. 2, 2014.

5 *Loizidou v. Turkey* App No 15318/89 Merits, 18 December 1996; *Xenides-Arestis v. Turkey* App No 46347/99 Merits, 22 December 2005; *Xenides-Arestis v. Turkey* App No 46347/99 Just Satisfaction, 7 December 2006; *Demopoulos and others v. Turkey* Apps Nos 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04, Admissibility, 1 March 2010.

6 *Niazi Kazalı and Hakan Kazalı v. Cyprus* Apps 49247/08 1545/07 1760/05 30792/05 3240/05 34776/06 38902/05 4080/06 49307/08, Admissibility, 6 March 2012.

the questions of what the IPC is supposed to do, how it functions, whether it fulfils its mandate, whether it is autonomous to the political conflict and whether it could be improved need to be addressed beyond a human rights framework. To sum up, this article takes the IPC into centre stage to illustrate what role such a mechanism could play on the relationship between conflict-affected communities. This is not to deny the implications of absence of such a mechanism in the south, but to illustrate the impact of an existing mechanism such as that of the IPC.

For this, semi-structured interviews were carried out with political parties in the north and the south (providing a sample representing a significant percentage of the electoral vote) of the island to observe their understanding of the IPC. These interviews were carried out between November 2017 and July 2018 with representatives of the political parties present at "the General Assembly of the Turkish Republic of Northern Cyprus (TRNC)" and "the House of Representatives of the Republic of Cyprus (RoC)".

The objective is therefore to make a positive contribution to the debate on the future direction of transitional justice, discussions, and policy initiatives. In a broader framework, this might prove useful for other contexts where an official policy of transitional justice is absent, as well as those "frozen conflicts" such as Nagorno-Karabakh, Abkhazia, South Ossetia or Transnistria as Hadjigeorgiou suggests.[7]

II. BACKGROUND

Following partition of Cyprus in 1974, numerous cases have come before the European Commission of Human Rights and the ECtHR in Strasbourg. The *Loizidou v Turkey* judgment opened the door to many other similar claims by Greek Cypriots. But it was *Xenides Arestis v Turkey* case which led to the establishment of the IPC as it currently is in force today with the Law No. 67/2005.[8] There are scholarly works explaining in detail the case-law of the ECtHR on Greek Cypriot property claims.[9] The goal here

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7 See HADJIGEORGIOU Nasia, "Remedying Displacement in Frozen Conflicts: Lessons from the Case of Cyprus", **Cambridge Yearbook of European Legal Studies**, V. 18, 2016.

8 Law No 67/2005 "Law for the Compensation, Exchange and Restitution of Immovable Properties which are within the Scope of Sub-Paragraph (b) of Paragraph 1 of Article 159 of the Constitution".

9 PROUKAKI Elena K, "The Right of Displaced Persons to Property and to Return Home after Demopoulos", **Human Rights Law Review**, V. 14, No. 4, 2014, p. 701; ÖZERSAY Kud-

is instead to focus on the context in which the IPC finds itself. The case-law in this regard therefore is not examined in detail.

Having said this, it was not surprising that the IPC Law No. 67/2005 provides for remedies merely in the form of individual material redress. This is in line with the ECtHR judgments as expressed above. However, this paper attempts to address the issue from a transitional justice perspective. For this, the three principal background elements concern transitional justice in non-transitions, reparations and reconciliation. These will be addressed in turn below.

1. Cyprus in "Non-transition"

An institutionalised approach to dealing with massive human rights violations can be found in a range of societies where we cannot speak of "transition" at least not in its usual meaning in the form of "a fundamental regime change".[10] This does not mean that a variety of transitional justice mechanisms to deal with systematic human rights abuses cannot be put in place in the absence of a fundamental political transition.[11]

Non-transitional societies can sometimes be characterized by the eruption of violence between two or more groups, followed by an absence of armed clashes but, where the conflict has not permanently been resolved the disagreement between the conflicting parties. In other words, although the situation seems stable, the conflict remains unresolved, and the status quo maintained.[12] Thus, in cases where there is no fundamental change in the status quo, the question of potential success of any transitional justice initiatives in dealing with the past violations remains complex.[13] Referring to such cases as "frozen conflicts", Hadjigeorgiou observes that:

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ret/GÜREL Ayla, 'The Cyprus Problem at the European Court of Human Rights' in DIEZ Thomas and TOCCI Nathalie (eds.), **Cyprus: A Conflict at the Crossroads**, Manchester University Press, 2009, p. 273; TZEVELEKOS Vassilis P, "Reparation of the Rights to Property and Home of Displaced Persons Arising from Armed Conflict under the European Convention of Human Rights" in PROUKAKI Elena K (ed.), **Armed Conflict and Forcible Displacement, Individual Rights under International Law**, Routledge, London, 2018, p. 102.

[10] HANSEN Thomas O, "Transitional Justice: Toward a Differentiated Theory", **Oregon Review of International Law,** V. 13, 2011, p. 22.

[11] Ibid., p. 22.

[12] HADJIGEORGIOU, 2016, p. 153.

[13] HANSEN, p. 22.

> *The parties might refuse to acknowledge each other or conversely, they might participate in perpetual, yet ineffective, negotiations; in both cases however, the zero-sum nature of their disagreement makes them unable to reach a settlement for their common future*.[14]

Hadjigeorgiou points out Cyprus, Nagorno-Karabakh, Abkhazia, South Ossetia, and Transnistria as examples of frozen conflicts in Europe.[15] The concepts of "negative peace", where the conditions which caused violent conflict remain, and a "positive peace", where the causes of violence are eradicated, are also relevant here.[16] For the latter, broad social issues should be taken into account and the demands of reconciliatory measures should be addressed while taking steps in dealing with the past.[17]

Cyprus can be characterized by the eruption of violence between two or more groups, followed by an absence of armed clashes. Cypriots "live in a prolonged ceasefire", a suspension of war.[18] In other words, the conflict has not permanently been resolved and cannot be situated in a "post-conflict" framework. In this respect, there is no positive peace in Cyprus, but rather relapsing into conflict is averted and negative peace is in place.[19] In other words, although the situation seems stable, the *status quo* remains and can be referred to as a "frozen conflict".[20]

The controversy over property ownership because of the displacement has been one of the most contentious aspects of the Cyprus problem for the UN-backed inter-communal negotiations to solve. It was also one of the core factors in the rejection of the comprehensive settlement agreement, namely the Annan Plan, by Greek Cypriots. While Greek Cypriots generally tend to emphasize on the right to return home, Turkish Cypriots defended the post-1974 realities and demographic changes in the northern part of the island.[21] Currently, the two communities are separately governed. On one side, there

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14 HADJIGEORGIOU, 2016, pp. 153-4.

15 Ibid.

16 See GALTUNG Johan, "Violence, peace, and peace research", **Journal of Peace Research**, V. 6, No. 3, 1969: 167-191; see also ERÇAKICA Mustafa, **Silahli Çatışma ve İç Karışıklık Sonrası Dönemlerde İnsan Haklarının Korunmasında Birleşmiş Milletler'in Rolü**, Oniki Levha Yayıncılık, İstanbul, 2020.

17 See GALTUNG, p. 167.

18 BRYANT, p. 683.

19 See GALTUNG; ERÇAKICA.

20 HADJIGEROGIOU, 2016, p. 153.

21 PSALTIS Charis/ LOIZIDES Neophytos/LAPIERRE Alicia/ STEFANOVIC Djordje, "Transitional Justice and Acceptance of Cohabitation in Cyprus", **Ethnic and Racial Studies**, V. 42, No. 11, 2019, p.2.

is the "TRNC" and on the other, the "RoC" which have been running under their respective Constitutions. The Turkish Cypriots, as one of the constituent communities of the "RoC", are absent from its institutions and each side has different perspectives on how the situation has evolved.[22]

Despite this, several mechanisms having at least the potential for dealing with the past are already in place such as the IPC for property rights violations of the displaced.[23] However, the question of potential success of any transitional justice initiatives in dealing with the past violations remains complex as there has been no particular regime change (differing from those of "transitions to democracy" or "conflict to peace").

With these in mind, cases in which there has been no regime change (or where the form of transition differs from those of "transitions to democracy" or "conflict to peace") remain problematic. The question is whether and how such a limited conception of "transition" might impact processes in dealing with the past. This situation cannot be absolved from the question of "how the interests of different actors intertwine in shaping judicial responses to serious human rights violations".[24] This is not to reject piecemeal approaches in the absence of a comprehensive settlement agreement for the solution of the Cyprus problem, but to acknowledge the complexities inherent in such a situation.[25]

2. Reparations and Reconciliation

"The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" call for "adequate, effective and prompt reparation for harm suffered" and access to equal and effective justice and information.[26] Reparations encompass various

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22 HOFFMEISTER Frank, **Legal Aspects of the Cyprus Problem, Annan Plan and EU Accession**, Martinus Nijhoff Publishers, Leiden-Boston, 2006, p. 31.

23 See BOZKURT Umut /YAKINTHOU Chrystalla, "Legacies of Violence and Overcoming Conflict in Cyprus, The Transitional Justice Landscape", Prio Cyprus Center, Nicosia, 2/12.

24 HANSEN, p. 33.

25 TZIMITRAS Harry/ HATAY Mete, "The Need for realism: Solving the Cyprus Problem Through Linkage Politics", The Center on the United States and Europe at Brookings-Turkey Project Policy Paper, Washington, 2016.

26 "UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law", A/RES/60/147, 21 March 2005.

measures to repair the damage suffered by victims of human rights violations, i.e., restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[27] Ideally, these should define who is responsible from violations, illustrate a form of commitment to respond to harms and pave the way for acknowledgment of wrongs which is referred to by victims as being one of the most important elements.[28] In addition, participation of individuals and communities has the potential to build constructive cooperation between parties involved.[29] For this, reparations should be approached comprehensively to facilitate their transformative potential. and pave the way for reconciliation.[30] It is also generally accepted by many scholars that reparations are considered essential for reconciliation in contexts affected by war and conflict.[31]

Although the term reconciliation is defined differently by scholars, for the purposes of this paper, it is taken to mean that "people learn to live with one another and deterrence means that they continue to do so in the future".[32] However, as Govier and Verwoerd rightly states, a "realistic goal in contexts of reconciliation is not in total harmony; nor is it a state of blissfully enduring unity".[33] Hadjigeorgiou explains that, most of the time, the lack of com-

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27 MANI Rama, "Rebuilding an inclusive political community after war", **Security Dialogue**, V. 36, No. 4, 2005, p. 524.

28 Ibid.; see also ARBOUR Louis, "Economic and Social Justice for Societies in Transition", **New York University Journal of International Law and Politics**, V. 40, 2007, p.17; MILLER Zinaida, "Effects of Invisibility: In Search of the "Economic" in Transitional Justice", **International Journal of Transitional Justice**, V. 2, No. 3, 2008, 284; GREADY Paul/ ROBINS Simon, "From Transitional to Transformative Justice: A new agenda for practice" **International Journal of Transitional Justice,** V. 8, No. 3, 2014.

29 "Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence", A/69/518, 14 October 2014.

30 MAGARRELL Lisa, "Reparations in Theory and Practice", International Centre for Transitional Justice, New York, 2007, pp. 3-12.

31 See NORVAL Aletta J, "No Reconciliation Without Redress: Articulating Political Demands in Post-transitional South Africa" **Critical Discourse Studies**, V. 4, 2009, p. 316; CARDENAS Manuel/RIME Bernard/ARNOSO Maitane, "How Transitional Justice Processes and Official Apologies Influence Reconciliation: The Case of the Chilean 'Truth and Reconciliation' and 'Political Imprisonment and Torture' Commissions", **Journal of Community & Applied Social Psychology**, V. 26, 2015, p. 517.

32 DALY Erin, "Transformative justice: Charting a path to reconciliation", **International Legal Perspectives**, V. 12, 2001, p. 84; see also HADJIGEORGIOU Nasia, "Promoting reconciliation and protecting human rights: An underexplored relationship", 2017, unpublished <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2886503> (Date of access 12 January 2021).

33 GOVIER Trudy and VERWOERD Wilhelm, "Trust and the Problem of National Reconciliation", **Philosophy of the Social Sciences**, V. 32, No. 2, 2002, p. 185.

patibility of the groups' needs and interests characterize divided societies.[34] Needless to say, the society would have not become divided had such compatibility existed, but, at the same time, achieving reconciliation does not require a full compatibility between these needs and interests.[35]

These debates around challenges in finding ways to reconciling previously warring groups in ethnically divided societies to achieve positive peace are not new. It is argued that reconciliation can only be achieved when members of different ethnic groups 'start trusting each other'.[36] Hadjigeorgiou examines the relationship between reconciliation and human rights. She notes that, on one hand, human rights are indeed positively connected to reconciliation, while, on the other, the two can also be at odds where human rights protection might undermine reconciliation.[37] Human rights might pave the way in inducing legal and institutional changes, but the situation remains bleak when it comes to social and psychological changes which requires to put in place broader conceptual means.[38] This problem is more significant in cases of ongoing ethnic conflicts where peacebuilders or other actors have a role to play.[39] In this respect, while the relationship between reparations and reconciliation remains bleak, a deep participation of individuals, groups and communities and bottom-up initiatives can build constructive cooperation between parties involved and this comprehensiveness could facilitate transformative potential of reparations as noted above. However, in practice, reparations come into play for massive harms and violations, and the idea, most of the time, is "corrective justice" to restore victims to their prior state (*status quo ante*).[40]

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34 HADJIGEORGIOU, 2017, p. 4.

35 See Ibid.

36 Ibid., p. 1.

37 Ibid.

38 Ibid.

39 See also DUDAI Ron/ COHEN Hillel, "Dealing with the Past when the Conflict is Still Present: Civil Society Truth- Seeking Initiatives in the Israeli- Palestinian Conflict" in ROSALIND Shaw/LARS Waldorf/PIERRE Hazan (eds.), **Localizing Transitional Justice: Interventions and Priorities after Mas Violence,** Stanford University Press, Redwood, 2010.

40 WALKER Margaret U, "Transformative Reparations? A Critical Look at a Current Trend in Thinking about Gender-Just Reparations" **International Journal of Transitional Justice,** V. 10, 2016, p. 109.

While "the standard legal formula" about the modalities for "restoring the *status quo ante*" is restitution or compensation, this is both in contravention with the participatory understanding and reconciliatory impact of reparations as addressing solely correcting wrongs with a backward-looking approach instead of focusing on their future outcome.[41] There is no single dimension for providing victims with justice.[42] In this respect, reparations could be expected and/or should have the potential to change the existing culture that permeates society.[43] In fact, this underscores the necessity of holistic remedies such as for the livelihoods of victims as well as the affected communities.[44] In this sense, reparations should not be empty promises or temporary measures[45] but should endorse victims' status as bearers of rights and demonstrate them that the wrongs are acknowledged to have the sense of justice satisfied. Otherwise, remedies proposed on paper could give rise to disappointing results.[46]

Although these debates circle around "post-conflict" societies, cases which cannot readily be considered as such and are amongst non-transitional societies are worthy of consideration such as the case of Cyprus and the IPC.

III. THE IMMOVABLE PROPERTY COMMISSION IN CYPRUS

How the IPC was established and how it operates have been addressed in detail elsewhere in literature.[47] It is unlikely that the IPC would ever have been established had it not been for a series of applications from Greek Cypriots claiming violation of the ECHR.[48] However, since it was established by

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41 Ibid., p. 117.

42 Ibid.

43 DALY, p. 80; As Pham and Vinck stated different mechanisms have been implemented to date in South Africa, the Former Yugoslavia, East Timor, Iraq and Rwanda among others (PHAM Phuong and VINCK Patrick, "Empirical Research and the Development and Assessment of Transitional Justice Mechanisms", **International Journal of Transitional Justice**, V. 1, 2007, pp. 231-2.

44 See MANI Rama, **Beyond Retribution: Seeking Justice in the Shadows of War**, Polity Press, Cambridge, 2007, p. 174.

45 MAGARRELL, p. 1.

46 See WALKER, p. 123.

47 ERDEM Meliz/GREER Steven, "Human Rights, the Cyprus Problem and the Immovable Property Commission", **International and Comparative Law Quarterly** V. 67, 2018, 721-738; HADJIGEORGIOU Nasia, "Joannou v. Turkey: An Important Legal Development and a Missed Opportunity", **European Human Rights Law Review,** V. 2, 2018.

48 See Ibid.

pressure on Turkey, the process to its establishment illustrates how the interests of different actors intertwine in shaping judicial responses to human rights violations outside a transitional justice paradigm. This fact reflects the complexity of what this institution can achieve and, of understanding what is at stake in cases such as those of Cyprus.

The IPC Law provides for the procedure and conditions for persons claiming to have rights over abandoned movable and immovable properties, and remedies which can be claimed for by applicants. It not only refers to principles envisaged by the fifty-year-old UN negotiation process, but also to a possible future comprehensive settlement agreement for the solution of the Cyprus problem. Persons claiming to have rights in this respect can well await a political solution or, instead, apply to the IPC. Since property rights of the displaced have still been the subject of ongoing negotiations under the auspices of the UN, the IPC process is a form of interference with respect to the matter. In other words, the IPC, in fact, deals with issues where traditional legal mechanisms prove difficult or undesirable politically.

The limited remedies the Law provides for are compensation, restitution and exchange of properties. Compensation is the most favoured and most straightforward remedy provided. While, a total of £314,420,662 has been awarded by February 2021, this amount has stood as £333,059,657 by March 2022.[49] However, the alleged unfairness regarding the amounts of compensation awarded without interest remains a problem.[50] Since the IPC law is intended to respect the principle of bizonality - a UN parameter for negotiations about the Cyprus problem - restitution can be effective only if the limited conditions envisaged in the Law are in place. Exchange of a property in the south for one of equal value to that which the applicant claims in the north. So far, the IPC has ruled in favour of exchange in only two cases.[51]

While the ECtHR has found the IPC proceedings to be fair until now,[52] in a more recent *Joannou v Turkey* case, the ECtHR held that Article 1 of Protocol No 1 had been violated because the manner in which the IPC had

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[49] The IPC, List of Finalized Applications 2021 <http://www.tamk.gov.ct.tr/dokuman/ Bitenler.pdf> (Date of access 20 February 2021).

[50] See ERDEM/GREER.

[51] See List of Finalized Applications of the IPC.

[52] *Eleni Meleagrou and others v. Turkey* App No 14434/09, Admissibility, 2 April 2013.

proceeded lacked "coherence, diligence and appropriate expedition" as this provision requires.[53] There have also been problems, particularly, with their transparency and with the execution of judgments awarding compensation. Lengthy delays in execution of judgments awarding compensation further show the importance of long-term planning of and holistic approaches to financial resources.

The fact that the IPC Law provides for limited remedies and the process before the IPC may also have implications on the relationship between the communities of Cyprus. As explored in previous section, this is both linked to the concept of reparations (which, in an ideal scenario, should include acknowledgment of wrongs), and the complex relations between the mutual impact between international courts (in this case the ECtHR) and other developments (political or social). These complexities are coupled with the question of how political parties' perceptions influence legal institutions. This is addressed in the following section. As an introductory note to the next section, it can be stated that, while parties in the south does not consider the IPC as legitimate, the majority of the parties in the north do not address "acknowledgement of wrongs". Turkey's influence on north Cyprus and the fact that it is a "party" to this conflict makes issues even more inextricable.

IV. TRANSITIONAL JUSTICE AND THE IMMOVABLE PROPERTY COMMISSION

1. Challenges

The semi-structured interviews have taken the IPC into centre stage as a piecemeal mechanism in place in Cyprus. Each interview took about an hour to an hour and a half with either the President of the Party or another person to whom I was referred. Eight political parties were represented in "the RoC House of Representatives" in the south at the time of the research; Democratic Rally (DISY) (centre-right) having eighteen seats, Progressive Party of Working People (AKEL) (left-wing) having sixteen seats, Movement for Social Democracy (EDEK) (centre-left) having three seats, Citizens' Alli-

[53] *Joannou v. Turkey* App No 43240/2014, Merits, 12 December 2017. There have been other claims pending before the ECtHR with respect to the delays and ineffectiveness of proceedings before the IPC - *K.V. Mediterranean Tours Limited v. Turkey* App No 41120/17, Communicated Case, lodged on 25 May 2017; *Theodora Panagi and Evdoxia Shiartou v. Turkey* App No 6178/18, Communicated case, lodged on 19 January 2018.

ance (centre-right to centre-left) having three seats, and Green Party (centre left) having two seats.[54] On the other hand, Democratic Party (DIKO) (centre-right) with nine seats, National People's Front (ELAM) (far-right) with two seats, and Solidarity Movement (centre-right) with two seats did not participate in the research.[55]

Six parties were represented in "the TRNC General Assembly" in the north at the time of the research; National Unity Party (Ulusal Birlik Partisi, UBP) (centre-right) having twenty-one seats, Republican Turkish Party (Cumhuriyetçi Türk Partisi, CTP) (centre-left) having twelve seats, People's Party (Halkın Partisi, HP) (centre) having nine seats, Democratic Party (Demokrat Parti, DP) (centre-right) having three seats, Communal Democracy Party (Toplumcu Demokrasi Partisi, TDP) (centre-left) having three seats, and Rebirth Party (Yeniden Doğuş Partisi, YDP) (centre-right) having two seats.[56]

All interviewees were informed that their participation in the study was voluntary. Each participant was provided with and asked to sign a consent form requiring the interviewee to confirm they had been provided with details of the study, given the opportunity to ask questions and discuss the research, and that they had received sufficient information to make a decision regarding participation. Participants were informed that it was not possible to guarantee anonymity for the purposes of this work. For this, all were able to see, read and approve what data and/or quotes which might be used.

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[54] Cyprus Green Party, Interview with Nicos Pavlides, the International Secretary of the Party, Nicosia, 18 January 2018; Movement for Social Democracy (EDEK), Interview with Marinos Sizoupoulos, the Leader of the Party, Nicosia, 22 December 2017; The Progressive Party of the Working People (AKEL), Interview with Stephanos Stephanou, the Spokesperson of the Party, Nicosia, 22 December 2017; The Democratic Rally (DISY), Written answers to interview questions by Charalambos Stavrides, the Secretary for Political Planning of the Party, 20 March 2018; Citizens' Alliance, Interview with Yiorgos Lillikas, the President of the Party, Nicosia, 21 June 2018.

[55] Despite contact via e-mail and/or phone, DIKO, ELAM and Solidarity Movement did not give a positive response to my request for interviews.

[56] Written answers to interview questions by Emine Çolak, a member of the Republican Turkish Party (CTP), Nicosia, 19 March 2018; National Unity Party (UBP), Interview with Oğuzhan Hasipoğlu, the Foreign Affairs Representative of the Party, Nicosia, 21 February 2018; Democrat Party (DP), Interview with Afet Özcafer, Secretary General to the Party, Nicosia, 5 December 2017; Peoples' Party (HP), Interview with Kudret Özersay, the President of the Party, Nicosia, 15 February 2018; Rebirth Party (YDP), Interview with Erhan Arıklı, the President of the Party, Nicosia, 28 February 2018; Communal Democracy Party (TDP), Interview with Cemal Özyiğit, the President of the Party, Nicosia, 26 February 2018.

The interviews included questions on whether the parties think the IPC can contribute to reconciliation between the Greek and Turkish Cypriots, whether the IPC has a role to play in acknowledging the suffering of victims of displacement and whether they consider this role is more or less important compared with the material remedies the IPC awards.

None of the participants from the RoC recognise the legitimacy of the IPC. Although this fact has so far been subject of public debates, no clear answers had been found in this regard in press news.[57] While some parties tend to discourage people from applying to it,[58] others just inform them of its character and consider that people are free to resort to it or not.[59]

DISY Secretary for Political Planning particularly notes:

> *There is no logic in having the victim applying to the offender for justice. We do know, that, the IPC claims that it examines impartially the applications of Greek Cypriot refugees for restitution, compensation or exchange of their property in the occupied areas, but in reality, the procedure is very slow, it almost never includes restitution as a measure of therapy and calculates the value of the Greek Cypriot properties in humiliatingly low prices.*

This extract summarizes the issues addressed by other political parties of the south to a great extent. Some also argue that applicants should have the right to claim for loss of use only, instead of compensation for the value of their property, which, in essence leads to relinquishing their rights over them.[60] However, accepting this would have meant that applicants can come to the IPC periodically and indefinitely to claim loss of use until a political solution to the Cyprus problem is achieved, which is not in line with the essence of the system established by the IPC.[61] They also observe that a vast majority of applicants do not want to be dispossessed of their land,[62] yet they resort to the IPC for economic reasons.[63] For example, the International Sec-

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57 At least not in English or Turkish languages, despite claims put forth in some Turkish newspapers.

58 Interviews with Greens, DISY and EDEK.

59 Interviews with AKEL and Citizens' Alliance.

60 Interviews with Green Party and Citizens' Alliance.

61 This is also addressed by the ECtHR in *Demopoulos and others v. Turkey.*

62 Interviews with Green Party and Citizens Alliance.

63 Interviews with Green Party and AKEL.

retary of the Green Party notes that they do not denounce people as "traitors" for applying to the IPC, but consider them as "people in dire economic necessity". Or, for example, the Spokesperson of AKEL states that his party does not believe that the IPC is effective, and that the property issue can only be solved with the solution of the Cyprus problem itself. They neither consider people resorting there as "traitors", nor publish 'name and shame lists' in the press.

None of the parties is of the opinion that the IPC can have a role in building trust and understanding between the two major communities in Cyprus. The President of Citizens' Alliance observes that the IPC cannot be deemed as "acknowledgment" of the suffering of Greek Cypriot displaced persons. He states that Turkey had to establish the IPC, otherwise "the ECtHR would continue to take decisions against [it]."

DISY also claims that the IPC enhances hostile feelings between the two communities for imposing humiliatingly low level of compensation on displaced persons facing financial difficulties, and for "legitimizing the illegal occupation of their properties". The Secretary for Political Planning of DISY, also states that this has resulted in a dramatic drop in the number of applications to the IPC by Greek Cypriots during the last few years. He suggests that the property issue can only be dealt with in the context of a comprehensive settlement of the Cyprus Problem.

EDEK also regards the IPC as an outcome of "the Turkish invasion and the continued occupation", noting that it would be "a paradox" if it had a role in acknowledging the suffering of victims of displacement. Indicating that the RoC governments to date have not sufficiently supported displaced Greek Cypriots,[64] the party backs the establishment of a "support fund" to provide compensation for "loss of use, harassment or exploitation of land", which would eventually discourage anyone from resorting to "the illegal committee" to "sell" their property.

Citizen's Alliance observes that the RoC governments did the most they could for the displaced, yet notes that mistakes were made at later stages when a special tax was introduced as a contribution, but used for other purposes. They that if this had been managed wisely, the position of the displaced would have been much better today.

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[64] Cyprus Green Party shares the same opinion.

AKEL is of the opinion that the RoC governments have sufficiently supported the displaced, yet the party notes that there is always room for improvement. DISY also shares the same view.

All parties from the north addressed the financial difficulties arising from payment of compensation and lengthy delays before the IPC. This also resulted from the fact that Turkey has, to a great extent, cut its contribution in payment of compensation awarded by the IPC. Despite political parties' expressions of the desire for the effectiveness of the IPC, there have been no changes in the financial difficulties up to the date this paper has been written.

All respondents considered that a special form of tax would burden current users of Greek Cypriot properties but noted that this kind of a legal arrangement needs careful consideration. It is said that this could contribute to awards by the IPC. YDP claims that the IPC's problems are, to a great extent, the result of the unwillingness of TRNC governments to establish a concrete position in resolving payment of compensation awarded by the IPC.

Respondents' views vary when it comes to the impact of the IPC on the relationship between the communities in Cyprus. CTP states that the IPC can have a positive impact on the process of reconciliation, helping on one hand for the Turkish Cypriots to understand that they have to respect rights of persons who lost their properties while on the other hand, for the Greek Cypriots to appreciate that there are other deserving parties, and to consider compensation as an alternative remedy. Both CTP and HP note that the IPC can also be considered as a mechanism to acknowledge the sufferings of the Greek Cypriots. While UBP implies that there is nothing wrong to be acknowledged, TDP considers that it is not an acknowledgement of a wrong, but the backdrop for acknowledging a bi-zonal - bi-communal solution. Referring to the years between 1963 and 1974, YDP blames Greek Cypriots, concluding that they should be responsible for payment of war damages, adding also that they do not deny Greek Cypriots' property rights. Indicating that they respect the individual right to property, DP notes that, the IPC is a one-sided mechanism, and there is no similar ne for securing or acknowledging property rights of Turkish Cypriots.

These interviews illustrate that political parties in the south do not recognise the IPC as a remedy. Despite being set up in line with the standards

envisaged by the ECtHR, they question its legitimacy and/or legality. Furthermore, they also do not prefer displaced persons to resort to the IPC while some even have a policy of discouraging them from doing so. Given these circumstances, it would be unrealistic to expect that the IPC could have, in the near future, been accepted as a legitimate remedy by many of the Greek Cypriots in the south.

On the other hand, despite having established the IPC, the political parties in the north do not have concrete plans nor have they taken any steps for the improvement of the IPC for challenges it has faced so far. Unless a solid position is defined, the current situation could further deteriorate perceptions in the south against the IPC, which could further erode trust and the relationship between the communities.

There is also research conducted by Psaltis et al. reflecting Turkish and Greek Cypriots' perceptions on cohabitation and investigating the potential impact of transitional interventions. The findings show that "a retributive sense of justice is expressed by wanting to inflict harm on perpetrators - making them beg for forgiveness, withholding amnesty, assigning harsh punishments or seeking compensation, not as a means to restore relations with Turkish Cypriots or Turkey but as another means of inflicting a cost on the main perpetrator (Turkey)" among those Greek Cypriots who experienced displacement in 1974.[65] The authors of this research note that the participants tend not to focus on a "more pragmatic, and restorative sense of justice expressed in forgiveness conditioned on giving testament in a truth and reconciliation committee".[66] The survey further shows that "the more [Greek Cypriot] participants adhere to notions of retributive justice, the less they are ready to live together with Turkish settlers [Migrants who came from Turkey following partition in 1974]".[67] This reflects one-sided victimization which sees Turkish migrants as the enemy (from Turkey).[68] It can be indicated that intergroup contact has an impact on the reduction of prejudice.[69]

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65 PSALTIS et al., p. 14.

66 Ibid.

67 Ibid.

68 Ibid., p. 15.

69 See PETTIGREW Thomas/TROPP Linda R, "A Meta Analytic Test of Intergroup Contact Theory", **Journal of Personality and Social Psychology**, V. 90, No. 5, 2006.

In the final analysis, while parties in the south do not consider the IPC as legitimate, the majority of the parties in the north do not address "acknowledgement of wrongs". Turkey's influence on north Cyprus and the fact that it is a "party" to this conflict makes issues even more inextricable. It is evident that further research specifically reflecting perceptions and the sense of justice on how the issue of property rights could be resolved is necessary. Nevertheless, the results illustrate that victimization holds centre stage in search of a solution for victims' sense of justice.

2. Constraints for Transitional Justice

It is sometimes said that "material benefits for victims" can be seen by beneficiaries "as the attempt on the part of the state to buy them".[70] This is also linked with concerns on lack of legitimacy of a programme as in the case of the IPC.

The IPC's complex position for the purposes of transitional justice and reparations is not only concerned with its potential to offer effective remedies, but also the fact that it is established by pressure from the ECtHR as an individual redress mechanism.

The interviews with political parties illustrate that the provision of individual remedies solely in the form of compensation, restitution and exchange have the potential to further deteriorate the relationship between the communities in Cyprus. It is observed that political parties make simple distinctions with respect to violations, perpetrators, and victims; elements which are not representative of what the essence of the problem is. This also relates to the idea that public awareness is important in informing people of legal decisions to promote what it might achieve in a reliable manner.[71]

In addition, survey carried out by Psaltis et al sheds light on the perceptions of Greek Cypriots entrenched by the idea of "one-sided victimization".[72] This is coupled by the impact of a non-inclusionary process, particularly for the displaced persons. Taking these analyses into account, it is considered that putting forth more comprehensive reparatory measures is impor-

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[70] See YEPES Rodrigo U, "Transformative Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice", **Netherlands Quarterly of Human Rights,** V. 27, No. 4, 2009, p. 643.

[71] See HADJIGEORGIOU, 2017.

[72] PSALTIS et el., p.15.

tant. Furthermore, the choice does not have to be between individual remedies and collective measures or benefits in cases such as that of the IPC (which is an institution centered on the understanding that the rights of individuals to be considered on a case-by-case basis). The issue of property rights of the displaced has been strained by the ongoing negotiations under the auspices of the UN to solve the overall Cyprus problem. In other words, the absence of a peace agreement in Cyprus has given rise to compelling limited routes in solving other aspects of and within the overall problem separately. The said circumstances beg for approaches that could have a potential to create some leeway for reconciliation through a multiform reparatory justice approach instead of solely putting material measures to the centre stage. As addressed in literature, material measures alone are generally insufficient, while failures of inclusion, acknowledgment, attention, and responsiveness can provoke outrage and cause further disappointment for victims.[73] This is not to deny the value of material contribution of these kind of measures, but to acknowledge that a comprehensive approach is needed for reconciliation between conflicted communities. While measures such as official apologies make "the reparative message verbally explicit", all other measures must be implemented accordingly to illustrate that victims are subjects of reparatory measures.[74]

Transformation of negative and hostile feelings should even have a more valuable dimension in cases such as that of Cyprus and the IPC. This results from the fact that there are limited means at hand in the absence of a comprehensive agreement. The circumstances in which Cyprus finds itself also shift the focus away from the need for acknowledgment of wrongs with respect to property rights, narrowing down the issue to material forms of remedies to redress violations. In other words, no transformative objectives were set, persons claiming rights were considered merely as symptoms. This is not to suggest or load the IPC with an agenda pointing at social-structural transformation that could make its work less viable[75] coupled by the disappointing process before it. The idea here is to consider all conceptual, practical, political, and moral circumstances surrounding the IPC to prevent further erosion of relationship between the communities of Cyprus. Participation of victims in

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[73] WALKER, p. 119.

[74] Ibid.

[75] Ibid., p. 123.

defining, designing, implementing, and monitoring reparations processes has also been absent from the IPC process which makes it difficult to positively impact relationship between the communities in Cyprus. Furthermore, a process such as that of the IPC prevents it from being seen as a public space in which the groundwork for reconciliation could be laid.[76]

From a material point of view, recompense for abandoned property is merely a matter of money. However, individuals and families may also have strong sentimental attachments specific places. An approach such as that offered by the IPC is incapable of addressing these issues. The patchwork and piecemeal nature of the solutions provided by the IPC could also shed light upon the weaknesses of such approaches if they are inadequately conceived and constructed. This may undermine the confidence and trust of affected communities in the ability of such institutions to deliver justice.[77] The IPC as an experiment indicates challenges in finding ways to reconciling previously warring groups to achieve positive peace. The involvement of the ECtHR (as noted above) is also a case in point in Cyprus. While human rights protection might pave the way in inducing legal and institutional changes, the situation remains bleak when it comes to social and psychological changes which require putting in place broader conceptual means. This problem is significant in the case of Cyprus as an ongoing ethnic conflict.[78]

In the final analysis, improvement of the process before the IPC at all stages and minimising alleged arbitrariness are important for building trust towards it and could set the background to improving the relationship between the communities. However, as observed through the interviews with political parties, those in the north neither have concrete plans, nor have they taken any steps for the improvement of the IPC so far. Thus, the future seems bleak. This is also where reconciliatory measures become important to establish conditions in the provision for a longer-term vision rather than a process solely linking the past and the future.[79] In Cyprus, the destination of

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[76] See GREADY/ ROBINS, 2014, pp. 344, 359; see also DALY, pp. 84-95.

[77] Amnesty International, "Northern Ireland: Time to Deal with the Past", EUR 45/004/2013, 2013.

[78] See HADJIGEROGIOU, 2017; see also DUDAI/COHEN.

[79] See LAMBOURNE Wendy, "Transitional Justice and Peacebuilding after Mass Violence" **International Journal of Transitional Justice,** V. 3, 2009, p. 30; see also BALASCO Lauren M, "Locating Transformative Justice: Prism or Schism in Transitional Justice?" Review Essay", **International Journal of Transitional Justice,** V. 12, 2018.

the transition will depend on whether partition is permanent or temporary. But, as long as the situation persists, it is important whether institutions, processes and developments affect it positively or negatively.

V. CONCLUSION

This article has sought to elaborate on the impact of institutions with limited remedies for property rights of the displaced in non-transitional societies. This was not surprising for an institution which came into effect as a result of a purely human rights approach through the judgments of the ECtHR. The key issues discussed illustrate the need to address inclusive processes to promote transitional justice measures and reparatory justice approaches for property rights at times of "negative peace" or in situations of "frozen conflicts". As a result, the need for an attention to changing contexts is evident instead of static small actions.

It has been argued that institutions conceived without genuine participation are far less likely to have legitimacy and be effective in redressing past violations. This is not to deny challenges inherent in the case of Cyprus; namely the continuing UN "peace process" and the parallel track at the ECtHR with evolving precedents on property rights. This duality also gave rise to complexities in terms of solutions to be followed. In this respect, the article attempted to illustrate that the IPC and the experience it provides for have much to offer for transitional justice strategies and conflict transformation in the long-term.

Reparations (having the potential to provide for corrective and distributive justice) have also been deemed important for the purposes of this article since the IPC was established to serve as "an effective remedy" for Greek Cypriot property rights violations. However, the IPC Law No. 67/2005 lacks holistic measures for redressing those violations having only compensation, restitution, and exchange at hand. In other words, it is currently not possible to afford them with more remedies than afforded by this Law. In addition, there is no parallel mechanism for Turkish Cypriots who had to abandon their properties in south. These facts illustrate the complex interactions that unfold between all of these elements.

Problems surrounding the process before the IPC have been affected by the circumstances on the ground. This was illustrated by the interviews with political parties, such as the lack of political will, the capacity of the relevant

authority (the TRNC) and the resources available to translate initiatives into policy. Furthermore, it was observed that political parties make plain distinctions amongst violations - perpetrators - victims that are not representative of what the essence of the problem is. This is also important in raising awareness to inform people of legal decisions and promote reconciliatory narratives, as well as the objective background information on the problems faced by the IPC. From this point onward, it can be argued that the IPC could have provided a platform for building trust between the communities despite many Greek Cypriots have not resorted to it in search of remedies. It is important to discuss the extent to which such institutions, processes and developments affect the situation and relationships positively, negatively, or not at all. Current practices specific to the IPC is an experiment illustrating this.

Even though processes for reconciliation cannot merely be carried out by institutions themselves, they can provide for room to initiate this process.[80] The importance of introducing holistic reparatory measures serving as the minimum standard to lay the groundwork for reconciliation, could pave the way for prevention of political manoeuvring and manipulation in Cyprus or elsewhere. Even if the reparative potential of reparations is unpredictable, they could, nevertheless, serve as means for minimizing tensions. Therefore, the impact of the absence of holistic reparatory measures within the competence of the remedying body in question should be carefully considered by policy makers and peacebuilders to eliminate or at least minimise deterioration of tensions.

[80] See DALY; GREADY/ROBINS, 2014.

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