



The Main Characteristics of the Cypriot Constitution

Christos Papastylianos*

Department of Law, School of Law - University of Nicosia, Cyprus

*Corresponding author. E-mail: papastylianos.c@unic.ac.cy

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INTRODUCTION

The case of the Cypriot constitution is a typical example of constitutional design involving deeply divided societies. Deeply divided societies are those in which ethnic, religious, or linguistic identities dominate political identity, with the result that political conflict is determined not by political divisions between political subjects but by the subjects' integration in a group with ethnic, linguistic, or religious characteristics. The existence of different ethnic, religious, or linguistic identities does not automatically make a political entity a divided society. A typical example is the United States of America. For a state to be considered divided, such identities must be the determining factor in the political mobilization and identity formation of the politically active agents (political parties, trade unions, political associations).

The establishment of a constitution in a divided society serves a dual function. The constitution creates institutions and procedures that allow or prevent decision-making by the organs of the state like any other constitution (regulatory function). However, in the constitutions of deeply divided society this dimension serves a different logic than in the constitutions of entities that are not considered as divided. While in the Constitutions of non-divided societies the permissive and deterrent rules of decision-making are intended to prevent excesses/abuses of the organs of one power by organs of the other, in the constitutions of divided societies the purpose of the corresponding rules is to prevent excesses/abuses of the state organs controlled by one community at the expense of the organs controlled by the other communities. Namely, the purpose is to prevent the majority community from exploiting its demographically dominant position to dominate the other communities politically. At the same time, the constitution of a divided society must also perform a constitutive function. It creates the conditions for the development of a political identity which,

by surpassing individual ethnic, linguistic or religious identities, makes the constitutional order that has been created to operate smoothly. The constitution of these states must contribute both to the legitimacy and the stability of the constitutional order. Usually the constitutions of deeply divided societies are the result of negotiations after war or civil conflict and aim to promote the stability and durability of state institutions by negotiating for the distribution of power between the formerly belligerent communities. The negotiations that are made and reflected in the constitution are intended to prevent an abusive use of majority rule that would make the minority communities "hostage" to the disposition of the demographically dominant community. In these states there is a lack of trust between the communities, which makes ineffective the conflict resolution mechanisms that are charged with the duty to create conditions of trust towards the institutions and perform this role in non-divided states with relative success as to achieving conditions of stability, such as the courts. Nor is the enshrinement of a list of rights through the constitution sufficient to create conditions for overcoming partiality and creating a framework for resolving conflicts by reference to claims of a universal nature. In deeply divided societies individual self-determination is synonymous with collective self-determination of the group to which one belongs. Without achievement of collective self-determination and its accompanying guarantees (arrangements for the distribution of political power), the achievement of individual self-determination is impossible. The collective dimension of self-determination is a concept which attributes to communities an intrinsic value separate from the individuals who make them up and therefore considers communities as actors with a distinct status, which requires the protection not only of their members but of communities themselves as a whole, from the arbitrary acts of political power framework for resolving conflicts by reference to claims.