

“Social Justice and the role of the Independent Institutions”

UCLan honorary doctorate speech on 30th March 2022 by Costas L. Clerides

By his letter dated 13th August 2020, the honourable Vice - Chancellor of UCLan UK professor Graham Baldwin was asking me whether I would honour the University's society by accepting the award of Honorary Doctorate. My answer to this proposal was simply that the honour was all mine and that I would be obliged if he could convey to the decision making body my acceptance together with my gratitude for the award.

Today, almost two years later, due to the pandemic, I would like to also warmly thank the University of Central Lancashire Cyprus, the Chair of the Council Mr. Floros Voniatis, the Rector prof. Panikos Poutziouris and especially prof. Stephanie Laulhe Shaelou for organizing today's event regarding this precious award for which, I must admit I feel genuinely privileged.

I would also like to thank all and each one of you for being present today.

In fact, as I listened to the presentation by Stephanie, I must say that this has reminded me of the words of Martin Luther King who started his famous speech in Memphis in 1968, by saying that having heard the eloquent and very generous introduction to himself, he wondered who the introducer was talking about.

I am looking again and again at this fancy robe of an academic of law and I am thinking that this is the third different professional robe, or gown I have the

honour of wearing in a lifetime, having started with the black barrister's gown back in the 70s and swapping it later on in the 80s with the very heavy indeed, judge's robe.

The Right Honourable Sir Lindsay Hoyle, MP and Speaker of the House of Commons who has recently visited Cyprus, was as I understand, the last person to have received the Honorary Fellowship from UCLan as recently as on last December. He had this to say during the award ceremony, inter alia:

“UCLan is a place where challenge is welcomed, opportunity is fostered and diversity celebrated. When I looked at the other recipients of this award, it once again reinforces this message. Lancashire truly has a diverse mix of people with a wide range of talents that have contributed to developments not just in Lancashire but further afield.”

I must say that I fully endorse his words.

It is true that during my term of office as Attorney General of the Cyprus Republic, I had had the opportunity of creating a close relationship with many members of the local academic staff of UCLan Cyprus and I also had the rewarding experience of participating in some of the University's important activities. The contribution of UCLan Cyprus towards the promotion of learning and understanding the law, the concept of the rule of law and the legal order, is very significant indeed. I will be very happy and eager to continue contributing in any productive way in promoting the aims and objectives of the University and to participate in its future events.

Special reference must be made in this respect, to the launching by UCLan Cyprus of the very promising indeed Centre for the Rule of Law and European Values which is a new Jean Monnet Centre of Excellence, funded by the European Union under the Erasmus + programme 2021 – 2027 and is directed by Stephanie. This project will contribute to a significant degree to the aim of safeguarding the rule of law and European values and I feel honored to be able to contribute by participating in the Advisory Scientific Board.

As recently as on the 20nd of February, the world has celebrated the Social Justice Day, as it invariably does every year. Social justice is an ideal situation of nondiscriminatory and unbiased relations between an individual and the society, in which every member of a society and every citizen of this world is dealt with fairly, without discrimination dependent on race, gender, nationality, color, wealth and so forth.

The Cyprus Constitution enshrines equality in the following words:

“Article 28

1. All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.

2. Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth,

colour, wealth, social class, or on any ground whatsoever, unless there is express provision to the contrary in this Constitution.”

These are really big words. Unfortunately however, in practice they remain on many occasions nothing more than words and their implementation is considered as a wishful thinking. Nobody can deny of course that much progress has been achieved since the establishment of the Republic in 1960 in promoting equality and general social justice. Progress, both in the sphere of enacting good laws promoting equality and the absence of discrimination in many sectors of life, as well as progress in reaching a better understanding of the problems and in cultivating a proper mentality, which is always a necessary prerequisite in achieving the goal. The prevailing situation is still, however far from being satisfactory. Inequality of pay, sex discrimination, racism, favoritism and so many other discriminatory behaviors are still present in our lives.

My experience as a judge for 25 years, tells me this:

It is always good and absolutely necessary to have comprehensive and detailed pieces of legislation which aim at hindering and prohibiting every kind of discrimination, maladministration and inequality of opportunities. All these obligatory provisions operate as hurdles in the way of social injustice. Unfortunately, however, these measures do not suffice. We must always have in mind that all these good laws are not only made by people, but they are also put into force by people. They are put into force by people in key positions who are appointed or elected in their posts. And the elevation to these posts is not always

based on merit and qualifications but on other, extraneous criteria which seem to prevail sometimes in the minds of the decision makers or of the voters.

My judicial experience says that they were not rare at all the situations which formed the subject matter of citizens' recourses to the Supreme Court (now to the Administrative Court) by means of which the applicants were successfully raising questions of discriminatory situations and instances of unequal treatment or of failing to employ the established principles and legal criteria which must be used as prescribed by the law and by the jurisprudence, in reaching administrative decisions. As judges of this Republic, we tried to rectify these unacceptable situations through judgments by which the offensive decisions were quashed and in some extreme cases by including in the judgment text strong words reproaching the wrong doers. But again, that did not exactly rectify things, as merely to quash a bad decision, does not always deter the decision maker from repetition and it cannot guarantee the restoration of justice anyway.

In criminal cases, the experience of a judge is in many instances traumatic. In his judicial capacity, he is called upon to apply human justice. Retribution and deterrence are in some cases, the factors to be taken into consideration in passing a sentence for serious crimes, without of course leaving aside the need for individualization according to the special circumstances pertaining to the accused and to the nature of the offence. The accused is most certainly going to have a fair trial and a fair treatment without passion, hatred or prejudice. The problem however, lies elsewhere. Did the society provide to the accused through his life, all the necessary prerequisites and equal opportunities which would allow him to be brought up and behave as a law abiding member of the society? That

same society which is now calling for severe punishment through the judge acting on its behalf? Or maybe this same society was shutting its eyes and turning its back to problems like poverty, lack of care and attention, domestic violence and so many other negative factors? How is the judge handling situations of young offenders, who, unlike the judge himself and his own children they had no real opportunities and no proper environment during their tender years of life? To strike a balance between the need on the one hand to impose a deterrent sentence and to give another chance on the other hand to the accused who was so unjustly treated by the society, is not always an easy task.

And being on the subject of equality of opportunities, one must remember that the existence of this element as the corner stone of social justice is not sufficient on its own. As Ha-Joon Chang, a South Korean institutional economist has rightly observed:

“Equality of opportunity is not enough. Unless we create an environment where everyone is guaranteed some minimum capabilities through some guarantee of minimum income, education, and healthcare, we cannot say that we have fair competition. When some people have to run a 100 metre race with sandbags on their legs, the fact that no one is allowed to have a head start does not make the race fair. Equality of opportunity is absolutely necessary but not sufficient in building a genuinely fair and efficient society.”

In any event, everyone agrees that justice and the rule of law are the last resort and shelter of every citizen who is suffering from the results of any form of social injustice.

The proper administration of justice, however, must have three main characteristics:

1. It must be applied by courts which are fully independent.
2. It must be sufficiently effective.
3. It must not be delayed.

So far as the independence and the integrity of the judiciary in our country are concerned, these cannot be disputed in general terms. There are, however problems which sometimes arise, relating to situations of absence of the element of objective and not subjective impartiality. The well known dictum of Lord Hewart that "*Justice must not only be done, but must also be seemed to be done*" is not always strictly observed, due to practical problems arising mainly out of the small size of the country and its population, a factor which makes it difficult to avoid situations of relations between judges, lawyers and litigants.

Another negative factor is often quoted as being the power given to the President of the Republic by the Constitution, to appoint all the judges of the Supreme Court without any restriction other than possessing the specified qualifications. In theory, this gives an enormous power and a free hand to the head of the Executive to effect political appointments of lawyers to the highest posts of an otherwise independent judiciary. Fortunately, however, by what it can be

described as a convention, or a custom, which is strictly kept uninterruptedly since 1960, with only one exception, Supreme Court judges and Presidents of the Court, are invariably appointed by the Presidents of the Republic amongst the ranks of existing judges of the District courts, whose first appointment is effected by the Supreme Court. This flaw in the whole system of appointing judges to the highest judicial posts will hopefully be improved by the changes provided for in the reform bills which are at present pending before the House of Representatives.

The main and most apparent problem of the administration of justice in our country is definitely the long delays in trying cases by the courts, both at first as well as at second instance. William Gladstone was quoted to have said back in 1868 that *"Justice delayed, is justice denied"* a comment which since then has become a maxim of law put forward in all cases where there has been a violation of the cardinal principle that cases must be tried within a reasonable time, avoiding undue delays. All efforts undertaken in the past, aiming at resolving, or at least alleviating this problem of undue delays had no positive result whatsoever. In fact, the problem becomes worse year by year. The most ambitious new effort which is now in process lies in the 3 bills aiming at effecting radical reforms in the administration of justice in Cyprus. One of the more radical reforms which are proposed to be enforced is the splitting up of what is now operating as the Supreme Court, into two highest courts namely the Supreme Constitutional Court and the High Court and also the creation of a separate Court of Appeal. The creation of a separate 16 member Court of Appeal is expected to speed up the proceedings for the determination of appeals. All these reforms however will not afford much assistance to the ever existing problems of long

delays in the lower District Courts. The only remaining hope in this field, is the implementation of the revised Civil Procedure Rules, provided always that these will be strictly enforced in practice both by the judges as well as by the practicing members of the Bar.

Furthermore, the issue of independence of the Judiciary due to the mode of appointment of judges to the highest judicial posts will be greatly improved. The existing situation according to which all judges of the Supreme Court are appointed by the President of the Republic, remains undisturbed by the reform bills, albeit the qualification that the President will be appointing judges to the highest judicial posts from a panel of proposed candidates which will be prepared by a Consultative Judicial Council consisting of the judges of the Supreme Constitutional Court, the Attorney General of the Republic and the Chairman of the Bar Council. This is definitely a great improvement, but in my opinion, it does not reach the ideal situation of having a fully independent body which will undertake to effect judicial appointments and promotions.

Talking about the need for independence of high constitutional institutions, I cannot but refer to my term of office as the Attorney General of the Republic. During this term which lasted from 2013 – 2020, the situations in which I had to stand up and fight in order to defend, preserve and upgrade the independence of this office, were unfortunately not rare. Apart from repelling any instances of attempted extraneous interventions, we tried to give the message that the functions of the Law Office of the Republic are carried out away from any party or other political considerations. We even prepared and submitted to the Executive a complete and fully comprehensive bill which for the first time was designed to

give legal effect to the real independence of the Law Office and its members, dealing, inter alia, with the mode of their appointments and promotions which has to disengage from the mechanisms of the Civil Service.

Unfortunately though, this bill was not approached with a positive eye by the Executive and was not put forward for approval by the Council of Ministers or for further consultations. I do hope that another attempt to push this important bill for approval will be undertaken in the near future.

With these few words, I would like to express once again my gratitude to UCLan University for this great honour and also to express my sincere appreciation to all of you who attended this lovely ceremony today.

C. L. Clerides