COALITION FOR THE INTERNATIONAL CRIMINAL COURT

QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS

Conscious of the restrictions placed upon of ICC judges in making extra-curial comments which might affect the independence referred to in Article 40 of the Rome Statute and Rule 34 of the Rules of Procedure and Evidence, we invite judicial candidates to please reply to the following questions as comprehensively or concisely as possible.

Name: Dr. George A. Serghides.

Nationality: Cypriot.

Nominating State: Republic of Cyprus.

List: (tick one by clicking twice on a box and selecting “Checked”)
A  
B  

Background:

1. Why do you wish to be elected a judge of the ICC?

I believe that the struggle for human rights is a struggle for a better world, which is an ultimate global yearning.

I have always had a strong interest in humanitarian law, criminal law and human rights and I am very honoured to have been nominated by the Republic of Cyprus as its candidate for the post of a Judge of the ICC.

As Mr. Georghios M. Pikis, former President of the Appeals Chamber of the ICC, rightly said: “[t]he establishment of the International Criminal Court by the Rome Statute constitutes a milestone in the history of man. For the first time a court was established with jurisdiction over individuals across the world, responsible for crimes afflicting the core of humanity irrespective of race, nationality, residence and position”. (Vide G. M. Pikis, The Rome Statute for the International Criminal Court, Analysis of the Statute, the Rules of Procedure and Evidence, the Regulations of the Court and Supplementary Instruments, Leiden-Boston, 2010, p. 1, § 1). It appears from the preamble to Rome Statute that the foremost objective of the Statute is the wish to institutionalise justice on the world plane in the interest of humanity.
The objectives of the ICC are to maintain peace and stability and to guarantee international justice by putting an end to the culture of impunity.

Aspired, *inter alia*, by the principles enunciated in the Rome statute, and based on my practical experience and academic knowledge as a Lawyer, Judge and Academic, I believe that if I had the honour to be elected a judge of ICC, I would be able to exercise my task and duties before the Court, by contributing to the administration of justice with integrity, care and diligence, honourably, freely, courageously, independently, impartially, conscientiously, expeditiously, fairly and efficiently.

Since I have offered my services in a specialized Court in my country, the Family Court, for almost twenty two years, it would be a noble challenge for me to offer my services to the ICC and to contribute, together with other ICC Judges, to the advancement of human rights and peace through the medium of international criminal justice.

If elected, I would be delighted to work and cooperate with other fellow Judges who have different cultural and legal backgrounds. I envisage with this international team, a sharing of knowledge which must lead to a greater understanding, helpful to the common judicial task and the administration of international justice.

2. *What do you think would be the biggest challenges you would face if you were elected as an ICC judge?*

With all respect, I do not believe that there are big and small challenges that a Judge would face, since the Judge has only one role, which is simply to perform his duty as a Judge and administer the law as he finds it, according to his judicial oath, and to do justice between the parties before him. As Mr. Pikis aptly said, “[d]oing justice to man is what the judicial mission is about”. (*op. cit.*, p. 92, § 222). The duty of a Judge of ICC is to apply the provisions of the Rome Statute in each particular case before him, impartially, fairly and efficiently. Faithful to his judicial oath and guided solely by the Statute, the case law and the evidence, the Judge will perform his noble challenge, his judicial duty, courageously dealing with any difficulty he may face. As Lord Hardwick remarked in *St. James Evenings Post Case*, (1972) 2 Atk. P. 469, "nothing is of greater significance than the keeping of the stream of justice unpolluted". The Right Hon. Sir Wilfrid Greene, Master of the Rolls, in his Presidential Address with the subject “The Judicial Office”, delivered at the Annual Dinner of the Holdsworth Club of the Students of the Faculty of Law in the University of Birmingham on May 13th, 1938, rightly said that, “[l]earning, accuracy, knowledge of previous decisions, experience – all these are valuable and indeed indispensable. But they cannot make up for a lack of the sense of justice, and without it they may even be dangerous and confusing. The sense of justice is in truth an attitude of mind which informs and qualifies
the more purely intellectual equipment of the judge, it enables him to understand the precedents and see the true limits of their application, it helps him to thread his way through the confusing jungle of fact, it guides him in the conduct of the case and the treatment of the advocate and witnesses.” (pamphlet published by the Holdsworth Club of the University of Birmingham, 1938, p. 6) Later on, in his Address (pp. 9-20), Sir Wilfrid Greene emphasizes the need for the Judge to ascertain the facts of the case before him, to appreciate what is and what is not material, to properly interpret the law and the precedent and apply it to the case before it, giving a well reasoned judgment.


Criminal law is anthropocentric and consequently most of its principles are based on natural law. Some of the fundamental principles are the following:

(a) Nullum crimen, nulla poena, sine lege (Without law, there is no crime and no punishment).
(b) Ei incumbit probatio qui dicit, non qui negat (The burden of proof rests on who asserts and not on who denies). This maxim is used to refer to the principle of presumption of innocence).
(c) Audi alternam partem. (Hear the other side – the principle of fair trial).
(d) Nemo inauditus nec summonit condemnari debet (No one should be condemned unheard and unsummoned).
(e) Nemo debet bis punire pro uno delicto (No man should be punished twice for the same offence).
(f) Nemo sibi esse judex, vel suis jus dicere debet (No man ought to be his own judge, or to administer justice in cases in which he is interested).
(g) Nemo potest esse simul actor et judex (No one can be at the same time suitor and judge).
(h) Nemo tenetur seipsum accusare (No one is bound to accuse himself).
(i) Frustra legis auxilium quaeerit qui in legem committit (He who offends against the law seeks in vain the help of the law).
(j) Actus non facit reum, nisi mens sit rea (An act does not render one guilty, unless the mind is guilty).
(k) Cogitationis poenan nemo patitur (No one suffers punishment for mere intent).
(I) *Nemo punitur pro aleno delicto* (No one is punished for the crime of another).

(m) *Peccata contra naturam sunt gravissiva* (Crimes against nature are the most heinous).

Undoubtedly, natural rights are the best defense for liberty (Clarence Thomas, “The Higher Law Clause of the Fourteenth Amendment” (1989) 12 *Harvard Journal of Law and Public Policy* 63, 63-64). The most fundamental of all human rights is the right to life, from which all other human rights stem. The ICC guarantees the right of life. The right of life is a natural, indefensible and inalienable right. Only through it, can a human being enjoy other rights. The enjoyment of the right to life is a necessary condition of the enjoyment of all other human rights, for a person who is deprived of his right to life is automatically also deprived of all other human rights. On the contrary, the person can be deprived of other human rights, but yet still enjoy his right to life. This character and the nature of the right of life and the right of human dignity inspired and urged me to work on my 4th Ph.D., thesis entitled: “*The Right of Life under Article 2 of ECHR and the Respective Constitutional Provisions in Cyprus and Greece, With Particular Reference to the National Legislations.*”

In the last analysis, the noblest challenge of an ICC Judge is to administer justice and to ensure that the right of life of everyone is sacred.

3. **What do you believe are some of the major challenges currently facing the Court? What do you believe will be some of the major challenges in the coming years?**

ICC, as a credible global judicial institution with jurisdiction to deal with the most serious crimes of concern to the international community, must always strive to advance the proclaimed objectives and the philosophy of the preamble to the Rome Statute.

One cannot really know or be sure what are the problems that the ICC is currently facing or will be facing in the future, unless one has first served for some years as an ICC Judge.

However, as regards to the function of ICC, some important aspects which always need particular consideration and improvement, I believe, are the following:

(a) Electing the most qualified candidates for the post of a judicial officer of the Court, through a fair, merit-based and transparent process, so that the elected ICC Judges are able to reflect on how justice is dispensed. With all respect, however, I do not think that it is appropriate or even necessary for a person who is already a Judge in his own country to participate in public debates for his election to the post of a Judge of ICC. As pertinently observed by Lord Denning, “Judges do not speak, as do actors, to please. They do not speak, as do advocates, to persuade. They do not speak, as do historians, to recount the past. They speak to give judgment.” (*Vide* Lord Denning, *the Family Story*,...

(b) International cooperation and judicial assistance. Adequate cooperation with the States Parties and other international organizations, including UN bodies, in order to obtain their full support, as regards the effective investigation of the crimes, the enforcement and executions of judgements and arrest of warrants, and other related matters. The cooperation of the States parties is fundamental to the functionality of the ICC. Article 86 of the Statute binds State parties to fully cooperate with the Court authorities in the investigation and prosecution of crimes within the jurisdiction of the Court. State members must be requested to pass necessary legislation to give effect to the provisions of the Rome Statute. There is also a need to study the main systems of the criminal law both from the substantive and the procedural point of view. (Vide, José Luis de la Cuesta and Reynald Ottenhof, “Introductory Note: The Association Internationale de Droit Pénal and the Establishment of the International Criminal Court” in: Revue International de Droit Pénal, vol. 81(1-2), 2000, “Revue of the ICC Statute, Best Practices and Future Challenges”, 13, p. 14, available also on www.penal.org).

(c) Improving interaction and cooperation between and within the Organs of the Court as a multifaceted institution (consisting of 4 Organs, the Judiciary [Pre-Trial Division, Trial Division and Appeals Division], the Office of the Prosecutor, the Presidency and the Registry). Promoting organizational good governance of the ICC as an international body, both internally and in its relation with the ASP.

(d) Strengthening ICC’s international public appeal and achieving the universality of the ICC by encouraging greater membership, especially in the under-represented Asian region. (As of 22 June 2011, 116 countries are States Parties to the Rome Statute). Non-members States and skeptics must be convinced that ICC is important and necessary for them and the world community and that the Court serves the cause for which it was established.

(e) Good trial management and smooth functioning of the Court resulting to a speedy trial, while at the same time strictly ensuring justice to the parties, the accused and the public.

(f) Administering justice impartially and effectively at all stages of trial ensuring both equality of arms and a fair trial. A fair and impartial administration of justice, nationally and internationally, is the key dynamic in the preservation of a peaceful and secure global order.

(g) Always taking “appropriate protective measures and make security arrangements” for victims and witnesses, as provided by Article 68.1 of the Rome Statute. As said in appeal case Prosecutor v. Bemba Gombo, (16/12/2008, ICC-01/05-01/08-323) by the ICC, the
gravity of the crimes of genocide, crimes against humanity and war crimes is such that the protection of victims and witnesses is a paramount consideration.

(h) Ensuring the fundamental right to representation, and providing legal aid, if needed.

(i) Fiscal and administrative efficiency of the Court. Securing the resources, both human and material, that will be necessary for the accomplishment of the ICC task.

(j) Uniformity of decisions, by ensuring uniformity in the interpretation and application of the Statute of Rome.

(k) Amendment of the Statute of Rome to include new crimes and to established flexibility in the proceedings that have excessive length.

(l) Facing the enormity and complexity of the cases that will come in the future before the Court.

(m) Meeting the expectations of thousands of victims through the implementation of the victim-participation scheme under the Statute of Rome. The Court’s duty must be to determine the eligibility of victims for participation, the modalities of participation, and maintaining the balance between their rights on the one hand and the interest of the accused and the public at large to a fair, impartial, and efficient trial, on the other.

(n) Continuous education and training of ICC Judges.

Nomination Process:

4. **What are the qualifications required in the State of which you are a national for appointment to the highest judicial offices? Please explain how you meet these qualifications.**

According to article 153(5) of the Cyprus Constitution read in conjunction with section 5(1) of the Administration of Justice (Miscellaneous Provisions) Law of 1964 (Law 33 of 1964), the qualifications required in Cyprus for the appointment to the highest judicial offices is 12 years practice as a judge or lawyer or both, showing the highest morality and greatest professional standard. I meet these qualifications because I have practiced law as a lawyer and as judge for almost 27 years with morality and professionalism. According to article 111.2A(a) of the Cyprus Constitution as amended by Law 95/1989 and according to section 5 of the Family Court (Establishment) Law of 1990, Law 23?1990, Judges of the Family Court must be learned lawyers of the highest professional and moral standard.

5. **Article 36 of the Rome Statute provides for two possible nomination procedures. Please describe in detail the procedure under which you were nominated. Please also provide any relevant information such as the national law governing the procedure for the nomination of candidates to the highest judicial office in the nominating state (an Article 36(4)(a)(i) nomination) or the nominating letter from the Permanent Court of Arbitration national group (an Article 36(4)(a)(ii) nomination).**
I was nominated on the 10th of August, 2011, as the Cyprus candidate for ICC, by the competent Committee which was established by a decision of the Cyprus Council of Ministers dated 31/5/1995 (number of decision 42.656A). This Committee is responsible for the nomination of Cyprus candidates for posts in International Legal Bodies or the appointment of Cypriot members to such Bodies. According to the decision of the Council of Ministers, the said Committee consists of the Minister of Foreign Affairs, the Minister of Justice and Public Order, the Attorney General of Cyprus and the President of the Supreme Court. The Committee is presided by the Minister of Foreign Affairs. The names of the Members of the Committee who nominated me, are the following: Her Excellency Dr. Erato Kozakou-Markoullis, Cyprus Minister of Foreign Affairs and President of the Committee, His Excellency Loukas Louka, Cyprus Minister of Justice and Public Order, The Honourable Petros Clerides, Attorney-General of Cyprus and The Right Honourable Petros Artemis, President of the Supreme Court of Cyprus and Cyprus Chief Justice.

Parenthetically, since 28 of March, 2011, the Minister of Foreign Affairs has made known the ICC judicial vacancies, inter alia, by informing, in writing, the Attorney General, the Minister of Justice and Public Order and the President of the Supreme Court. The President of the Supreme Court, by his turn, informed, in writing, all the Presidents of Courts, including myself, about the vacancies with the request to inform all the fellow Judges of our Courts.

6. Have you provided the statement required by article 36(4)(a) of the Rome Statute and by the nomination and election procedure adopted by the Assembly of States Parties? If not, please provide an explanation for this omission.

Yes, accompanied by my curriculum vitae.

Legal System and Language Abilities:

7. a) Which legal system does your country belong to?

Cyprus, as a former British colony, has a “mixed legal system”. On the one hand, the common law adversarial system of justice applies, with few exceptions, to criminal and civil proceedings. On the other hand, the continental inquisitorial system of justice applies in proceedings of judicial review of administrative action.

The Republic of Cyprus is a member of the Asian Group of States.

b) Do you have knowledge or experience working in other legal systems?

I have knowledge and experience in both common law and civil law legal systems, as I have studied Law both in Greece and the U.K. I have obtained an LL.B. and two Ph.D. degrees in Greece, a Ph.D. degree in the U.K., and I passed the Bar Exams, in Cyprus. I have practised
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law in Cyprus for 5 years, and I have served as a Judge for almost 22 years. I am also an academic teaching Law at the University of Cyprus.

c) What difficulties do you envision encountering working with judges from other legal systems? How would you resolve such difficulties?

None

8. The Rome Statute requires every candidate to have excellent knowledge of and be fluent in English or French.

a) What is your knowledge and fluency in English, if it is not your native language? Do you have experience working in English?

My mother tongue is Greek, however, I have an excellent knowledge of English being also fluent in it. I have obtained a Ph.D. degree in Law in the U.K. and I have written books and articles in English. I have experience working in English, as I have participated in many international seminars, committees of the European Council. I am also an International Hague Network Judge as well as the Judicial Liaison (Contact Point) for Cyprus, in the European Judicial Network on Civil and Commercial Matters.

b) What is your knowledge and fluency in French, if it is not your native language? Do you have experience working in French?

I do not have experience working in French, however, I was taught French when I was at secondary school and had private lessons subsequently. I am positive that with the assistance of an intensive course, I will be able to achieve a fair understanding of French.

List A or B Criteria:
Your response to this question will depend whether you were nominated as a List A candidate or a List B candidate. Since you may have the competence and experience to qualify for both lists please feel free to answer both parts of this question to give the reader a more complete view of your background and experience.

Although I believe that I hold the necessary requirements to be included in both list A and list B, I am nominated for the inclusion in list A for the purposes of paragraph 5 of Article 36 of the Rome Statute. However, I will answer both parts of the question, to give the reader a more complete view of my background and experience.
9. a) For List A candidates:

- How would you describe your competence in criminal law and procedure?

I have both extensive practical and academic experience in Criminal Law and Procedure.

I have a legal background and am aware of the Continental and Common Law Systems, including Criminal Law and Procedure. I have studied Greek Criminal Law, Criminal Procedure and Criminology at Athens University, receiving first class honours on these subjects, as well as obtaining my LL.B. and my two Greek doctorates with first class honours.

I passed the Cyprus Bar Exams, scoring the highest mark in all subjects, including Cyprus Criminal Law and Procedure. I attended courses on Anglo-Cypriot Legal Studies, covering the Cyprus and the English Criminal Law and Procedure, run by the Council of Legal Education (to which I was the Secretary) and the University of Leicester.

I taught English Criminal Law for four years at a Cyprus college (Philips College) as well as the English Legal System and English Company Law, while also being the Head of its Law Department. I taught Cyprus Family Law at the Cyprus Bar Council and at the Council of Legal Education and I am currently teaching Cyprus Family Law and Law of Succession at the University of Cyprus.

I am a multi Doctor of Juris, a holder of 3 Ph.D. (in Law) Degrees. I have served as a practicing Lawyer for 5 years appearing before all Cyprus Courts, including the Supreme Court, in all kinds of jurisdiction, civil, criminal and administrative. I have been a Judge for almost 22 years. I have served in Cyprus as a Judge of a Family Court for 8 ½ years and I have been a President of a Family Court for the last 13 years. I have been an International Hague Network Judge for more than 11 years and a Judicial Liaison for Cyprus in the European Judicial Network on Civil and Commercial Matters. I am also an Academic, currently teaching Law as well as being an Examiner at the University of Cyprus, and formerly at the Cyprus Bar Council and at a Cyprus college, to which I was the Head of its Law Department. I am an Author of law books and articles and the Editor of the series "Studia Juris Cyprii". I have been participating at the Working Committees of the Council of Europe on the enactment of European Regulations concerning Family Law and Succession Law.

As a practicing Lawyer for 5 years, I dealt with all sorts of cases including criminal cases. I was also a Prosecutor for the Municipality of Nicosia in private criminal cases.
As a Family Judge and a President of the Family Court, for almost 22 years, I have been dealing with a great number of applications for contempt of Court orders, such as orders for custody, right of access, exclusive use of matrimonial home, prohibition of sale or transfer or mortgage of property. These contempt cases are, by their nature, quasi criminal, since the penalty incurred may be a prison sentence or a fine, or both, and since the burden of proof required is the same as in criminal cases, thus, beyond reasonable doubt.

For 5 years as a practising Lawyer and more almost 22 years as a Judge, I have been dealing with issues of violence against children and women as well as child sexual abuse, to the extent that these matters relate to or affect custody cases and the use of the matrimonial home.

I am an International Hague Network Judge for Cyprus, dealing with cases of Abduction of Children as well as working as a Liaison Judge for the international protection of children under the Hague Convention of 1980. Most of the Hague Child Abduction cases involve violence.

I am also a member of the International Association of Family Judges.

In general, Family Law has this in common with Criminal Law: they are both anthropocentric, based on human passions and weaknesses. Lord Denning at the beginning of his judicial career has served as a divorce judge. (Vide Lord Denning, The Due Process of Law, London, 1980, p. 187 et seq. Lord Denning, The Family Story, London, 1981, pp. 134, 162, 169). We all know that Lord Denning later became a very successful criminal judge. I consider a specialized Judge in a field of Law may very easily apply himself and specialize in another field of Law, since he has been known to further deepen and enhance his areas of interest.

I was appointed by the Cyprus Law Commissioner to make Recommendations for the Amendment of the Chapter of the Cyprus Criminal Code Dealing with General Defenses to a Criminal Responsibility. My work on Recommendations, which also contained a comparative survey on the matter, was published by the Law Commissioner in an edition entitled: “The Revision of the Legislation of Cyprus 1987-1992”, Nicosia, 1992.

I am the Editor of the series "Studia Juris Cyprii", consisting at the moment of 9 volumes. I am the Author of 6 books and a joint Author of 3 books. I have made contributions in 3 other books and have many publications in legal periodicals in Cyprus and abroad, as well as in the Judges’ Newsletter. Two of my books are on Cross-Examination of Witnesses. I am a collector of old and new books and other works on the examination of witnesses in criminal and civil cases, advocacy, trial tactics, skills and courtroom psychology and I have a vast private library on these topics.
I am currently working on my 4th Ph.D. thesis entitled: “The Right of Life under Article 2 of European Court of Human Rights and the Respective Constitutional Provisions in Cyprus and Greece, with Particular Reference to the National Legislations”. My research covers topics such as the protection of embryos, suicide and euthanasia, abolition of death punishment, the crime of genocide, crimes against humanity, war crimes, positive obligations of the States to protect life against the acts of third parties, conspiracy, obligation of the States to conduct an effective investigation, environmental protection of life, missing persons, forced disappearances, protection of prisoners, ill persons, underage persons, etc.

I was a member of the Committee for the preparation of a Bill on the subject of Mediation, pursuant to the Council of Europe Recommendation No. R (98) 1. I was also a member of the Committee working on the Law to ratify, in Cyprus, the European Convention on the Exercise of Children’s Rights. I attended courses on Meditation in Cyprus and U.S.A. and I wrote a legal article on the topic as well as a chapter in one of my books.

- How would you describe your experience as judge, prosecutor, counsel, or in another similar capacity, in criminal proceedings?

Quite sufficient. Please kindly vide answer to previous question.

b) For List B candidates:

- How would you describe your competence in relevant areas of international law, such as international humanitarian law and international human rights law?

By way of introduction, I would like to emphasize how important I believe it is for a Judge of ICC to have competence in international human rights law, even if he was nominated as a List A candidate. As stated in the judgment of the Appeals Chamber of 14 December 2006 in Prosecutor v. Lubanga Dyilo, [Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19(2)(a) of the Statute of 3 October 2006 – ICC.01/04-01/06-722, para. 37]:

“Human rights underpin the Statute; every aspect of it, including the exercise of the jurisdiction of the Court. Its provisions must be interpreted and more importantly applied in accordance with internationally recognized human rights, first and foremost, in the context of the Statute.”

In the same decision, it is stressed that “[a] fair trial is the only means to do justice. If not fair trial can be held, the object of the judicial process is frustrated and the process must be stopped.”

Please send your completed questionnaire to judicial-elections@coalitionfortheicc.org; by fax to 1 212 599 1332; or by mail to: Coalition for the International Criminal Court, 708 Third Avenue, 24th floor, New York, NY 10017, USA
Similarly, in *Prosecutor v. Ahmad Harun and Al Kushayb* [Decision on the Prosecution Application under Article 58(7) of the Statute, 27 April 2007, ICCC-02/05-01/07-1, par. 28, the Pre-Trial Chamber held:

“The Chamber is of the view that, as required by article 21.3 of the Statute, the expression ‘reasonable grounds to believe’ must be interpreted and applied in accordance with international recognized human rights. Thus, in interpreting and applying the expression ‘reasonable grounds to believe’, the Chamber will be guided by the ‘reasonable suspicion’ standard under article 5.1.c of the *European Convention on Human Rights* and the jurisprudence of the Inter-American Court of Human Rights on the fundamental right to personal liberty under article 7 of the *American Convention on Human Rights*.”

In 2007, the Cyprus government elected me as one of its 3 candidates for the post of the Judge of the European Court of Human Rights.

I have a general experience of law and a legal expertise on a wide range of legal topics and specific issues, including Human Rights, Administrative Law and Constitutional Law.

All my Ph.D. theses, as well as my judicial work involve, to some extent, human rights, including the rights of children, the right of equality and non discrimination, the right to marry and to establish a family, the right of property and the right to be heard and have a fair trial.

I am currently a member of the Committee of the United Nations Association of Cyprus and formerly a member of the Committee for the Restoration of Human Rights throughout Cyprus.

- *How would you describe your professional legal experience that is of relevance to the judicial work of the Court?*

Quite sufficient. Please kindly *vide* answer to previous question.

**Expertise and Experience:**

10. Please describe your qualifications for this position. Please also describe the aspects of your career, experience or expertise outside your professional competence that you consider especially relevant to the work of an ICC judge.

Please kindly *vide* answers to questions 9a and 9b and my *curriculum vitae*.

From my *curriculum vitae*:
“EDUCATION AND ACADEMIC AND OTHER QUALIFICATIONS

Degrees: (Deg. in Law, Ph.D. in Law, Ph.D. in Law, Ph.D. in Law)

1973
Kykkos Secondary School, “apolytirion” (First Class Honours)

24 February 1978
Degree in Law (First Class Honours)
National and Kapodistriakon University of Athens.

21 November 1984
Ph.D. (Doctor of Philosophy in Law)
University of Exeter, U.K.
Field of Law: Private International Law (Conflict of Laws).
Supervised by Reader Antony J. E. Jaffey.

8 April 1998
Ph.D. (Doctor of Juris) (First Class Honours)
National and Kapodistriakon University of Athens, Gr.
Field of Law: Comparative Administrative Law.
Title of Ph.D. thesis: “Set-off of Betterment of the Remainder Against the Value of the Land Compulsorily Taken under the Cyprus Law – With Comparisons to the Greek Law, the English Law, the American Law, the Canadian Law and the First Protocol of ECHR”. (In Greek).
Supervised by Prof. Prodromos Dagtotoglou.

22 May 2007
Ph.D. (Doctor of Juris) (First Class Honours)
Aristotelion University of Salonica, Gr.
Field of Law: Comparative Family Law.
Supervised by Prof. Efie Kounougeri-Manoladaki.

Currently
Ph.D. cand. (Doctor of Juris candidate)
Dimokrition University of Trace, Gr.
Supervised by Prof. S. Minaides.

Other Education

Attendance and participation:

• Judicial seminars in Cyprus and abroad.
• Courses on Anglo-Cypriot Legal Studies run by the Council of Legal Education (1985-1987) and of the University of Leicester (1988-1989), (obtaining also certificates of attendance).
• Many other legal programmes, series of lectures and courses in Cyprus and abroad.
• Courses on Mediation in Cyprus and U.S.A.
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RELEVANT PROFESSIONAL ACTIVITIES

a. Judicial and Other Related Activities

1 June 1990- Judge of the Family Court.
10 January 1999 (From 1/6/90, i.e. the date of the establishment of the Family Court, until 1/2/95 the establishment of the second Family Court, Judge in all districts of Cyprus. From 1/2/95 until 1/11/96, Judge in the districts of Nicosia, Kyrenia and Paphos and from 1/11/96 until 10/1/99, Judge in the districts of Nicosia, Larnaca and Famagusta).

11 January 1999- President of the Family Court.
until today (From 11/1/99 until 9/9/99, President of the districts of Nicosia, Larnaca and Famagusta, from 10/9/99 until 14/10/02, President of the districts of Limassol and Paphos, from 15/10/02 until 30/6/05, President of the districts of Nicosia, Larnaca and Famagusta, and from 1/7/05 until today, President of the districts of Nicosia and Kyrenia).

19 May 2000- International Hague Network Judge.
until today Liaison Judge for Cyprus, for the promotion of a Judicial Network for the international protection of children under the Hague Convention of 1980 (Abduction of Children).
(Appointed by a decision of the Supreme Court).

14 November 2006- Judicial Liaison – Contact Point for Cyprus in the European Judicial Network on Civil and Commercial Matters (Appointed by a decision of the Supreme Court).

Since Jan. 2009 My election by Cyprus as one of its 3 Candidates for the post of a Judge of the European Court of Human Rights.

b. Non-Judicial Legal Activities

8-10 October 1985- Cyprus Bar Examinations, for practicing the legal profession (First Class Honours), scoring the highest mark, 960/1000.

In 1985 President of the Trainee Advocates.

11 December 1985 - 31 May 1990 Advocate. A practising lawyer. Partner with A. G. Serghides of Gray’s Inn, Barrister (my deceased father), under the style of Serghides & Serghides. Appearance before all the Courts in Cyprus, including the Supreme Court, in all kinds of jurisdiction, civil, criminal, administrative, etc.
OTHER ACTIVITIES

A. Academic

October 1986- May 1990

Head of the Law Department of Philips College (College of Higher Education in Cyprus).

Teaching the English Legal System and the English Criminal Law, as part of programme for the enrolment of law students in the second year in U.K. Universities.

Teaching the English Company Law, for students taking courses on Accounting and Finance.

May 1985 until May 1990

Secretary of the Cyprus Council of Legal Education (CLE)

(CLE was an Organ of the Bar Association of Nicosia), which Council of Legal Education ran programs of legal education, including a programme of Anglo-Cypriot Legal Studies (postgraduate level – LLM) in collaboration with the University of Leicester. Lecturer in Family Law in the courses.

November 1999 until October 2004

Lecturer in Family Law at the Cyprus Bar Council.

Lectures to Trainee Advocates for the purpose of Cyprus Bar Examinations.

January 2000 until October 2004

Examiner of the Cyprus Bar Council on the subject of Family Law, which was introduced as a subject in the Cyprus Bar Examinations in January 2000 for the first time.

Sept. 2009 -

Adjunct Academic, Special Scientist and Examiner at the University of Cyprus. Teaching the Cyprus Family Law and Law of Succession.

In passim

Lectures/Speeches on Family Law, at local and international seminars and conferences, at the University of Cyprus, the University of Nicosia, the Welfare Office, the Bar Associations in Cyprus, the Athens Bar Association and other venues.

B. Work Relating to Legislation

• Member of the Committee for the preparation of a Bill on the subject of mediation, pursuant to the Council of Europe’s Recommendation, No. R. (98) 1.
• By a decision of the Supreme Court appointed a representative of the Judicial Authority in the House of Parliament for the enactment of various laws on family matters.
• Participation in the preparation of a draft of procedural regulations for the application in Cyprus of the Hague Convention on the Civil Aspects of International Child Abduction.
• Member of the Committee working on the Law to ratify in Cyprus the European Convention on the Exercise of Children’s Rights.
• By a decision of the Supreme Court, since the 3rd of February 2006, a representative of the Judicial Authority in matters of Civil Law in the Working Groups and Committees of the European Council in Brussels on the enactment of European Regulations concerning family matters and succession law.

C. Other Activities

• Member of the Committee of the United Nations Association of Cyprus (since 19/05/2010).
• Former member of many committees, including the Committee for the Restoration of Human Rights throughout Cyprus.

PUBLICATIONS

……” For Publications, please vide answer to question 21(a) post.
11. Do you have legal expertise in relevant areas such as the crimes over which the Court has jurisdiction; the management of complex criminal and mass crimes cases; or the disclosure of evidence?

My expertise is limited only to what I have mentioned in my answers in relation to questions 9a and 9b above.

12. The ICC is a unique institution, and judges serving on the court will inevitably face a number of unprecedented challenges (including managing a regime of victims’ participation and protecting witnesses in situations of ongoing conflict). Even judges with significant prior experience managing complex criminal trials may not necessarily possess requisite skills and knowledge needed to manage these challenges.

a) Are you willing to participate in ongoing workplace training aimed at promoting legal innovation and coordination among all judicial chambers in adjudicating complex questions relating to law and policy?

I am very willing indeed. I have always enjoyed and welcomed continued training. My passion for research has led me to write three Ph.D. theses, which has not ended as I am currently writing my fourth. My love for reading enabled me to build a private library consisting of about 35,000 books.

Oliver Wendel Holmes in his speech on “Learning and Science” delivered at a dinner of the Harvard School Association in Honor of Professor C. C. Langdel (June 25, 1895), said that “Learning, my learned brethren, is a very good thing.” (Vide Speeches by Oliver Wendel Holmes, University Press, Cambridge, USA, p. 67, available on www.archive.org). Clarence D. Ashley ends his paper on “The Training of the Lawyer and its Relation to General Education”, read before the American School Science Association at its general meeting held at Saratoga Springs, N.Y, September 7, 1899 (a pamphlet), by saying that the universities “no greater good can they do our country than to make the lawyers of our land a highly trained body of men, infused with the high and noble principles belong to this great profession.”

b) Do you consider such training to be important?

I consider it extremely important.

13. Historically, many of the grave abuses suffered by women in situations of armed conflict have been marginalised or overlooked.

a) Please describe any expertise and/or experience you may have in dealing with crimes of sexual and/or gender based violence.
The experience I have had is only in relation to violence when dealing with custody cases and other cases of personal status.

b) Are there situations or cases in the past where you believe you have applied a gender perspective, i.e. inquired into the ways in which men and women were differently impacted? If so, to what effect?

By their nature, sexual offences cases involve gender perspective, since victims are usually females and children. Therefore, one must fully appreciate the situation in which the victim is, and to deal with the case very sensitively and most effectively.

The principle of equality of spouses is guaranteed by the Cyprus family law as well as by article 28 of the Constitution. I apply this principle in all the cases coming before me. Usually I refer to article 14 of the ECHR and to article 1 of Protocol 12 which guarantee the right of equality and non-discrimination. Most often, however, I refer to the specific provision of article 5 of Protocol 7, which is headed “Equality between spouses”, and reads as follows:

“Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.”

14. Victims have a recognised right to participate in ICC proceedings and to apply for reparations under Article 75 of the Rome Statute. Please describe any experience that you have, which would be relevant to these provisions.

None.

15. Under Article 68(3) of the Rome Statute, victims are entitled to present their views and concerns and have them considered at stages of the proceedings to be determined by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

a) Please describe any experience you may have that would make you particularly sensitive/understanding to the participation of victims in the courtroom?

I have extensive trial experience both as a former counsel and for the last 22 years, as a judge. Similarly to Article 6 of the ECHR, Article 111 of the Cyprus Constitution guarantees the right of fair trial. The trial system which applies (with only few exceptions) in Cyprus is the accusatorial or adversarial system, as opposed to the inquisitorial system. A Judge in Cyprus must hold the balance between contending parties without himself taking part in their disputation. A Judge is not allowed to descend into arena and cross-examine the witnesses himself, or to prevent cross-examination made by the parties. If he does so, the Appeal Court may most likely overturn or annul his decision, according to Cyprus and English case law.
Lord Bacon in his *Essay on Judicature* said that: “Patience and gravity of hearing is an essential part of justice; and an overspeaking judge is no well tuned cymbal [Psalm cl.5] .... The parts of a Judge in hearing are four: to direct the evidence; to moderate length, repetitions or impertinency of speech; to recapitulate, select and collate the material points of that which hath said; and give the rule or sentence. Whatever is above these is too much...” *(Vide* Richard Whately, *Bacon’s Essays: With Annotations*, London, 1857, Essay LVI, 511, pp. 512-513 available on www.archive.org).

**(b) Do you have any experience in balancing victims’ participation with the rights of the accused to due process and a fair and impartial trial? If so, please describe.**

**16. Have you advocated for the adoption and/or implementation of human rights or international humanitarian law treaties or other instruments? Please describe your experience.**

I have advocated for the adoption of human rights in relation to Cyprus family law, property law, law of compulsory acquisition and street-widening schemes, taxation, administrative law and constitutional law, during lectures as well as in books and articles. As rightly said by Martin Luther King, «injustice anywhere is a threat to justice everywhere» *(Oxford Dictionary of Phrase, Saying and Quotation, 3rd edn., by Susan Ratcliffe, Oxford, 2006, p. 247, no. 37).* So, one must fight for human rights, because a violation of human rights to anybody including himself, is a violation of human rights to humanity.

**17. Have you ever referred to or applied any specific provisions of international human rights or international humanitarian law treaties within any judicial decision that you may have issued within the context of your judicial activity or legal experience?**

Yes, I have referred and applied provisions of ECHR in my decisions, such as articles 1, 6, 8, 9, 12, 13, 14, 17, 18, article 1 of the 1st Protocol, article 5 of Protocol 7 and article 1 of Protocol 12. I have also referred to ECHR case law. Lastly, I have referred to articles 18, 23, 24 and 26 of the UN Covenant on Civil and Political Rights and to international and bilateral Conventions on the Rights of Children, ratified by Cyprus.

**18. During the course of your judicial activity, if any, have you ever applied the provisions of the Rome Statute directly or through the equivalent national legislation that incorporates Rome Statute offences and procedure? If so please describe the context in which you did.**

As a family Judge and a President of a Family Court, I have never applied the provisions of the Rome Statute.
19. Have you ever referred to or applied the jurisprudence of the ICC, ad hoc, or special tribunals? If so, please describe the context.

As a family Judge and a President of a Family Court I have never referred to or applied the Jurisprudence of the ICC but in my 4th doctorate on which I am currently working, there will be some references to the jurisprudence and the case law of the ICC.

20. Have you served on the staff or board of directors of human rights or international humanitarian law organisations? Please describe your experience.

I am a member of the Committee of the United Nations Association of Cyprus (since 19/05/2010). I have also been a member of the Committee for the Restoration of Human Rights throughout Cyprus.

21. a) Please provide us with a list of and/or links to your writings and opinions relevant to evaluating your experience.

From my curriculum vitae:

I am the Editor of the series "Studia Juris Cyprii", consisting at the moment of 9 volumes. I am the Author of 6 books, a joint Author of 3 books and I have contributed in another 3. I am also the writher of many publications.

- Studia Juris Cyprii

G. A. Serghides ed. «Studies in Cyprus Law» ("Studia Juris Cyprii") – a series of publications. Nine volumes have been issued to date. Further details of the above Studies:


Volume no. 4 (pages 705), Study No. 4 (in Greek): “Set-off of Betterment of the Remainder Against the Value of the Land Compulsorily Taken under the Cyprus Law – With Comparisons to the Greek Law, the English Law, the American Law, the Canadian Law and the First Protocol of ECHR “, Nicosia, 1999. Author: G. A. Serghides. Editor: G. A. Serghides.


Volume 7 (pages 150) Study No. 6 (in Greek): The Technique of Cross-Examination – The Golden Rules of Cross-Examination and Four Masters of Antiquity, two Greeks (Socrates and Aristotle) and two Latins (Cicero and Quintilian). Author: G. A. Serghides. Editor: G. A. Serghides. With a foreword by Dr. D. H. Hadjihambis, a Judge of the Cyprus Supreme Court, and a former lecturer of Exeter University.

Volume 8 (pages 837), General Title of the Volume: “Advocacy and Cross-Examination” Study No. 7 (translation into Greek of an old treatise on the "Study and Practice of the Law”), Study No. 8 “On the Art of Cross-Examination etc” (in English, Author G. A. Serghides). Editor G. A. Serghides.
Volume 9 (pages 761) General Title of the Volume: “Pecuniary Relations of Spouses and Cohabitants (Literature and First Instance Judgments) & Miscellaneous Legal Topics” Studies No. 9 & 10, containing judicial judgments on property relations of spouses and many articles on various legal topics, on family law, administrative law and criminal law, in Greek and in English. Editor and main author G. A. Serghides. With the contribution of Professor Th. Papazissi.

- Part of the vol. 8 (pages 295) is also published separately. The book was published in Nicosia, 2009 and is entitled “On the Art of Cross-Examination. Four Great Old Authorities, Two Englishmen and Two Americans, With Emphasis on Their Principles”.

- Contributions in Books

4. G. A. Serghides, “Property Relations of Spouses According to Cyprus Law” in a book to be published soon by the University of Cyprus, Law Department. (In Greek).

- Other Works and Publications in legal periodicals in Cyprus and Greece, in the Judges’ Newsletter and Cyprus newspapers. Some are mentioned here below:


• Judicial Judgments (since 1990) in all Matters of Family Law, e.g. Divorce, Nullity of Marriage, Parental Control and Custody of Children, Determination of Right of Access, Maintenance of Children and Spouses, Property Relations of Spouses, Adoption of Children, Legitimation of Children, Recognition of Foreign Decrees, abduction of children and application of EC Regulations in family matters.

• Member of the Scientific Committee of the Cyprus and European Law Review (since May 2006).

b) Please provide us with an electronic copy of and/or links to any writing or opinion describing your experience as outlined in questions 1a), 1b) and 5.

Please find attached at the end of the Questionnaire under Appendix A, article in English:

I refer also to a brief article available in English and French at Hague Permanent Bureau’s website www.hcch.net, publications, Judge’s Newsletter:

Volumes 1, 3, 4, 5, 6, 7 of “Studia Juris Cyprii” are available, inter alia, in the Congress Library and can be traced under by name “George Serghides”. Also my book “On the Art of Cross-Examination. Four Great Old Authorities, Two Englishmen and Two Americans, With Emphasis on Their Principles”(written in English), is available in the Congress Library (www.loc.gov/index.html) and is for sale by Wildy and Sons (www.wildy.com), the Lawbook Exchange, Ltd (www. lawbookexchange.com), bookfinder (www.bookfinder.com), abebook (www.abebook.com), alibris (www.alibris.com) and other internet bookshops.

Please send your completed questionnaire to judicial-elections@coalitionfortheicc.org; by fax to 1 212 599 1332; or by mail to: Coalition for the International Criminal Court, 708 Third Avenue, 24th floor, New York, NY 10017, USA
c) Is there any other information in the public domain that would support your candidacy or provide additional evidence of your qualification as a judge at the ICC?

Inter alia:

- Judge and President of a Family Court for almost 22 years.
- Academic, teaching Law and being an Examiner at the University of Cyprus and formerly teaching law and being an Examiner at the Cyprus Bar Council and a Cyprus college.
- International Hague Network Judge (Abduction of Children).
- Judicial Liaison (Contact Point) for Cyprus in the European Judicial Network on Civil and Commercial Matters.
- Elected by Cyprus as one of its 3 Candidates for the post of a Judge of the ECHR.
- Member of the International Association of Family Judges.
- Representative of Judicial Authority in the House of Parliament for the enactment of various laws on family matters.
- Representative of Judicial Authority in matters of Civil Law in the Working Groups and Committees of the European Council in Brussels on the enactment of European Regulations concerning family matters and succession law.
- Member of the Committee for the preparation of a Bill on the subject of mediation, pursuant to the Council of Europe’s Recommendation, No. R. (98) 1.
- Writer of legal books and periodicals.

Other matters:

22. Have you ever resigned from a position as a member of the bar of any country or been disciplined or censured by any bar association of which you may have been a member? If yes, please describe the circumstances.

No.

23. Have you ever been found by a governmental, legal or professional body to have discriminated against or harassed an individual on the grounds of actual or perceived age, race, creed, colour, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status, or any other grounds of discrimination? If yes, please describe the circumstances.

No.

24. It is expected that a judge shall not, by words or conduct, manifest or appear to condone bias or prejudice, including, but not limited to, bias or prejudice based upon age, race, creed, colour, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status and shall require staff, Court officials and others subject to his or her direction and control to refrain from such words or conduct.
a) Do you disagree or have difficulty with this expectation?

I do not disagree or have any difficulty with this expectation.

b) Please provide any relevant information regarding your ability to meet this expectation.

Almost 22 years of impartial judging in Cyprus, as a Family Judge and a President of a Family Court.

25. Article 40 of the Rome Statute requires judges to be independent in the performance of their functions. Members of the CICC and governments are concerned about the difficulties a judge may experience in independently interpreting articles of the Rome Statute on which his or her government has expressed an opinion.

a) Do you expect to have any difficulties in your taking a position on any matter independent of, and possibly contrary to, your government?

Absolutely none at all.

b) Article 41 requires a judge’s recusal “in any case in which his or her impartiality might be doubted on any ground.” Do you feel you could participate in a judicial decision involving a matter in which your government has an interest, such as whether an investigation by your government on a matter of which the ICC was seized was genuine?

If my impartiality was reasonably doubted on any ground, I would most certainly recuse myself as provided by article 41 § 2.

26. The Rome Statute requires that judges elected to the Court be available from the commencement of their terms, to serve a non-renewable nine-year term, and possibly to remain in office to complete any trials or appeals. In addition, a judge is expected to be on the bench or otherwise handle legal matters for at least seven hours per day, five days per week, and at times a judge’s responsibilities may require him or her to be on the bench or at work into the evenings and on weekends. It may also include working on more than one case at a time and for Pre-Trial Division and Trial Division judges, the possibility of temporary attachment to the opposite Division.

a) Do you expect to be able to serve at the commencement and for the duration of your term, if elected?

Yes I do.
b) Do you expect to be able to perform the judicial tasks described above on your own or with reasonable accommodation? If no, please describe the circumstances.

Yes I do.

27. If there are any questions you wish were asked in this questionnaire but were not, or if there are any matters that you otherwise wish to bring to the attention of the Coalition in this questionnaire, please feel free to address them here.

None.

Thank you very much indeed for giving me the opportunity to complete such a comprehensive, well balanced and extremely useful questionnaire.

Dr. George A. Serghides 1st of September, 2011.
APPENDIX A
(question 21(b), p. 21 of the Questionnaire)

CYPRUS FAMILY JURISDICTION
RATIONE PERSONAE AND RATIONE MATERIAE*


By Dr. George A. Serghides

In Cyprus, there is an interpersonal conflict of family jurisdictions.2 There are five secular Courts dealing with family matters, thus the Family Courts, the respective Family Courts of the religious groups of Armenians, Maronites and Roman Catholics, and the District Courts, the Presidents or the Judges of these Courts, depending on the subject-matter, as will be seen later on. Appeals of the Family Courts go to the Family Court of second instance, appeals from the Family Court of a religious group go the respective Family Court of second instance of the relevant religious group, and lastly appeals from District Courts go the Supreme Court sitting as a Court of Appeal. There are also the Turkish Communal Courts which, however, do not operate, though their jurisdiction was never repealed by law, save that which was suspended by Law 120(I)/2003 in relation to certain family matters. This paper will not extend to the situation which illegally exists in the northern part of Cyprus and which is occupied by the Turkish troops.

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*Presentation at an International Seminar entitled: “La singularité de Chypre dans l’ Union Européenne. La diversité des droits et de statuts”, organized by the University of Cyprus and the François Rabelais University of Tours, Limassol, 29/10/2010.

1 G. A. Serghides, Ph.D. (Athens), Ph.D. (Sal/ca), Ph.D. (Exon), is the President of the Family Court of Nicosia-Kerynia, and an Adjunct Academic teaching Family Law and Succession Law at the University of Cyprus.

Apart from the civil courts, the ecclesiastical courts of the Greek Orthodox Church still operate in Cyprus. However, the operation of the ecclesiastical courts is exercised *ultra vires* the provisions of the new article 111 of the Constitution, as amended by Law 95/1989, by which the matrimonial jurisdiction of the ecclesiastical courts was transferred to the Family Courts. The operation of the ecclesiastical courts will typically cease in a few months, when the new Charter of the Greek Orthodox Church of Cyprus will come into force, though, as will be seen later, by virtue of the new Charter, under the umbrella of the “spiritual dissolution” of the marriage, which will be carried out by the church, there will be a hidden exercise of divorce jurisdiction on the substance of the case.

By the Amendment Law 26(I)/1998, which was considered constitutional by the Court of Appeal in *Christodoulides v. Toumaian*,\(^3\) the Family Courts are the only competent Courts in Cyprus, to deal with all family matters of all people, irrespective of their religion and nationality, subject to the following three cases:

(a) to divorce, and probably to the use of matrimonial home, but not to any other family relations, of members of the three recognized religious groups, thus of Armenians, Maronites and Roman Catholics, who must be Cypriot citizens.

(b) to those family relations of members of the Turkish Community (thus nullity of marriage, divorce, maintenance of children and spouses and custody of children), for which the jurisdiction of the Turkish Communal Courts was suspended by Law 120(I)/2003, provided that their marriage was celebrated in Cyprus.

(c) to those family relations of members of the Turkish Community for which the jurisdiction of the Turkish Communal Courts was not suspended (thus legitimacy of children, pecuniary relations of spouses and adoption).

Before dealing with the competent Court in cases (a), (b) and (c), above, it is important to say that the Supreme Court sitting as an appeal Court in

\(^3\) (2007) 1B CLR 1024.
Dadakarides v. Dadakarides, \(^4\) observed that to the phrase “family relations” employed in the new article 111.2B of the Constitution must be given its ordinary literal meaning, which also corresponds to the scope of the legislature. The Court also pointed out that the said term, which is very wide, extends to all family matters which are considered so in Greece.

Returning now to the cases where the jurisdiction of the Family Courts is ousted, in case (a) above, the competent Court is the Family Court of the religious group of the church where the marriage took place, provided that the parties belong to the same or different religious groups. \(^5\) If the parties decide to celebrate a civil marriage, the Family Court of the religious group to which both parties belong, has jurisdiction. \(^6\) If they belong to different religious groups and celebrate a civil marriage, the competent court is the Family Court and not any of the Family Courts of the religious group to which either party belongs. \(^7\)

In case (b) above, thus in the case of members of the Turkish Community who celebrated their marriage in Cyprus, the competent Court is the President of the District Court. \(^8\)

In case (c) above, since the competent Courts, by the Constitution, are the Turkish Communal Courts, which, in fact, do not operate, and since their jurisdiction has never been suspended and given to another Court, there is no Court in Cyprus available to deal with the case. However, concerning adoption, as will be seen, the approach of the Family Court of second instance \(^9\) was different since it decided, *obiter dicta*, that the District Courts are the competent Courts to deal with the adoption of members of the Turkish Community.

In this paper, the discussion will be centred on three cases which are important for the jurisdiction of the Cyprus family Courts, since they determine

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\(^4\) (1990) 1 CLR 566, p. 578.
\(^5\) Law 87(I)/94, s. 2(b) term “divorce trial”.
\(^6\) *Ibid.*
\(^7\) Law 23/90 (as amended by Law 26(I)/98), s. 11(2)(b).
\(^8\) Law 120(I)/2003, ss. 3-4.
\(^9\) See note 17 below.
the limits and boundaries of their jurisdiction in important aspects of interpersonal law.

**Damsa and Christodoulidou cases**

Now, the discussion will be turned to two cases which concern the transfer of all family jurisdiction of the Family Courts of religious groups apart from divorce (and probably the use of matrimonial home) to the Family Courts, in 1998. The first case was *Damsa v. Damsa (no. 2)*, where it was decided by the Family Court of second instance that the jurisdiction of the Family Courts of the Roman Catholic religious group in regard to pecuniary disputes of spouses was transferred by Law 26(I)/1998, to the Family Courts. The second case was *Christodoulidou v. Toumaian* where it was decided by the Supreme Court sitting as full Court, that Law 26(I)/1998, by which the said transference of jurisdiction was made, was not unconstitutional, as not being contrary to article 111.3 of the Constitution.

My criticism to these two cases is this: *Damsa* should be decided differently. Since section 11(2)(e) of Law 23/1990, as amended by Law 26(I)/1998, simply provided that the Family courts have jurisdiction to pecuniary relations of spouses, without by its wording clearly removing the jurisdiction of the Family Courts of the religious groups and giving it to the Family Courts, one would not have taken the view that the jurisdiction of the Family Courts of the religious groups which was specifically provided by article 111.3 of the Constitution and was established by a separate law, Law 87(I)/94, should have removed impliedly. Even if the wording of the amendment was not clear, it would be appropriate, according to a basic principle of constitutional

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11 Which amended the basic Law 23/1990 by which the Family Courts were established.
12 (2007) 1B CLR 1024.
13 *Vide* comments of Prof. Dr. Nikitas Hadjimichael on the case, in *Lysias*, Year 1st, issue 1 (new series), July-Dec 2008, p. 43 *et seq.*, esp. p. 47. Hadjimichael, rightly asserts that by this decision there was finally a transformation of the Family Courts from communal courts to general courts of special jurisdiction, as opposed to the District Courts which are general courts of general jurisdiction.

Assuming now that \textit{Damsa} was right and that the amendment Law had indeed caused a transfer of jurisdiction, then \textit{Christodoulidou}, according to my humble view would have to consider unconstitutional the said Law. It is clear from the wording of article 111.3 of the Constitution, that the intention of the constitutional legislator was that the Court established by Law as the court of a particular religious group, would be \textit{the only} competent court to deal with \textit{all} the family matters of the members of this group. Article 111.3 provides that every family relation of those persons belonging to a religious group will be cognizable by a Family Court established by Law. Such wording indicates clearly the constitutional intention for separation of the Family Courts of the religious groups and the independence and the exclusiveness of jurisdiction of each one of them, in regard to all family relations of their members. The constitutional provision that the Courts’ establishment will be effected by Law does allow the legislature to violate the said constitutional intention and to transfer jurisdiction from one Court of religious group to another, and even worse to the Family Court, to which para. 3 of article 111 of the Constitution does not apply, and the establishment of which is provided directly by the Constitution, by virtue of para. 2, and not by the ordinary Law. The fact that the Constitution deals with the Family Courts in a paragraph separate from that which deals with the Family Courts of the religious groups, shows again the intention that at least these courts should be independent. Furthermore, it would not be the intention of the constitutional legislator, which by para.2 of article 111, requires the judges of the Family Court to be members of the Greek Orthodox Church, \textit{also to be} the judges competent to deal with family matters of members of religious groups who do not belong the Greek Orthodox Church, but who belong to other churches, and for whom the Constitution makes a
separate regulation in another paragraph. Indeed, Law 87(I)/94 established three Family Courts, one for each religious group with the jurisdiction to deal with all family matters of their members, and still this Law provides by its article 9, that these Courts exercise the jurisdiction and the powers given to them, by virtue of article 111 of the Constitution.

**Holubova case**

In *Holubova v. Mehmet Ali*, the Family Court of second instance decided that a petition for the dissolution of the marriage of two members of the Turkish Community who celebrated a civil marriage in Czech Republic, falls within the jurisdiction of the Family Courts, since such a marriage was not celebrated in Cyprus under the Turkish Family Law, CAP. 339 and did not formerly fall within the jurisdiction of the Turkish Family Courts, CAP. 338, but of the Supreme Court, the jurisdiction of which was later transferred to the District Courts and subsequently to the Family Courts.

With all respect, this decision may rightly receive the following criticism:

Why should the *loci celebrationis* factor prevail over the community factor here, by determining the choice of law problem? *Holubova* failed to take into consideration that the jurisdiction of the Turkish Communal Courts was *wider* than that of the Turkish Family Courts.

By virtue of articles 87.1(c), 152 and 160 of the Cyprus Constitution, the jurisdiction of the Turkish Communal Courts, extends to *all* matters of personal status of the Turkish Community without the Constitution placing as a condition upon the jurisdiction of these Courts that the wedding took place in Cyprus by the Turkish Family Law, CAP. 339. Here the latin maxim “*ubi lex non distiguit, nec nos distinguere debemus*”, is applicable.

Moreover, the argument in *Holubova* is not valid since the family courts of the Greek Community, thus the Courts of the Greek Orthodox Church and of the three recognized religious groups had, by virtue of article 111 of the

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15 *(2003) 1 CLR 643.*
16 *7 Co. 5.*
Constitution, before its amendment in 1989, jurisdiction over their members, irrespective of the place of celebration of the marriage. Why should one make this unfair distinction between the religious courts of the Greek Community with those of the Turkish Community without any reason and contrary to the Constitution?

Lastly, one may rightly wonder: What is the logic in establishing two different Courts in Cyprus, namely the Family Courts and the Presidents of the District Courts, to deal with the dissolution of the marriage of members of the Turkish Community, with their jurisdiction being dependent solely on whether the marriage was celebrated in Cyprus or abroad? - Two different Courts not only as to their composition but with different international jurisdiction, following different procedures and applying different grounds of divorce.

**Biyikli case**

In *Re Biyikli, Re Adoption Law*, the Family Court of second instance decided that the first instance Family Court of Nicosia-Kyrenia was right to dismiss the petition regarding the adoption of a child by members of the Turkish Community, for lack of jurisdiction. However, it proceeded to say incidentally that the competent Court was the District Court, and this obiter dicta statement was made, because the first instance Court also proceeded to say that the competent court was the Turkish Communal Court under articles 160(1) and 87.1(a) and (b) of the Constitution and under the Turkish Communal Courts Law of 1960 (Law 8/1960).

The above judgment was in my opinion correct to the extent that it decided that the first instance Family Court did not have jurisdiction. However, I humbly disagree with its dictum that the District Court has jurisdiction.

The Family Court of second instance observed that: “[i]t is a fact that Law 8/60 has never been repealed, with the result the conclusion of the first instance...”

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court that the jurisdiction of the Turkish Communal Courts is preserved, to be correct.” Earlier in its judgment the Court of second instance refers with approval to the argument of the first instance Court that Law 120(I)/2003, based on the Law of Necessity, suspended provisionally the jurisdiction of the Turkish Communal Courts to certain family matters, by transferring their jurisdiction to the Presidents of the District Courts, but it failed to do so with regard to adoption cases.

The argument of the Family Court of second instance that the District Court is the competent Court for adoption cases of members of the Turkish Community was based on a provision of the Adoption Law of 1995 (Law 19(I)/1995), specifically section 2(b), which provides that “in any other case” the competent court is the District Court. It is to be noted that para. (a) of the same section which gives jurisdiction to Family Courts is confined to members of the Greek Community. In *Re Ajero* the Family Court of second instance decided that section 2 above, was impliedly repealed by a subsequent provision, section 11(2)(e) of Law 23/90, as amended by Law 26(I)/98, giving in all cases of adoption, jurisdiction to Family Courts. That case, however, did not concern members of the Turkish Community, and the Family Court of second instance in *Biyikli*, approved the opinion of the first instance court, that the *Ajero* could not apply to members of the Turkish Community.

Since correctly section 11(2)(e) was interpreted that it could not apply to members of the Turkish Community, the same interpretation would have been given to section 2(b) of the Adoption Law, so as to bring it in line with the Constitution, which, according to the Court of second instance, continues to preserve the jurisdiction of the Turkish Communal Courts in all family matters of the Turkish Community. Why should there be a need for the suspension of the jurisdiction of the Turkish Communal Courts, by Law 120(I)/2003, in certain family matters other than adoption, by virtue of the Law of Necessity, in order for another Court to exercise jurisdiction in the non-occupied area of

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Please send your completed questionnaire to judicial-elections@coalitionfortheicc.org; by fax to 1 212 599 1332; or by mail to: Coalition for the International Criminal Court, 708 Third Avenue, 24th floor, New York, NY 10017, USA
Cyprus, when it would be so easy to interpret a vague ordinary legislation, not based on the Law of Necessity, as transferring family jurisdiction of members of the Turkish Community to the District Court, a court other than that provided by the Constitution? Section 2(b) is vague in the sense that it does not clearly say that it applies also to members of the Turkish Community. It might have properly been interpreted as to apply to all cases of non members of the Greek Community, thus cases where the petitioners are foreigners, but definitely not to cases of members of the Turkish Community. It is to be noted that a requisite for a person to be a member of a Community, is to be a Cypriot citizen.

The Family Court of second instance in Biyikli maintains the view that a different interpretation of section 2(b), would lead to the violation of the right to adopt and the right to access to the court. My view is that one cannot by invoking human rights decide a case contrary to the Constitution. It is for the legislature which by inadvertence omitted to cover by Law 120(I)/2003, adoption cases, to render rightly the matter immediately, by the necessary modification of Law 120(I)/2003 or other legislative mode, and not for the Courts to interpret ordinary laws as having superior force to constitutional provisions. According to article 179.2 of the Constitution: “[n]o law of the House of Representatives …. shall in any way be repugnant to, or inconsistent with, any of the provisions of this Constitution”, and according to a basic principle of constitutional law, to which adherence was made earlier, one must choose such interpretation which brings the law in line with the Constitution and not against it. The interpretation given to section 2(b), unfortunately brought the said provision directly against the relevant articles of the Constitution which empower the Turkish Communal Courts with exclusive jurisdiction on the matter. To the extent that it says that the District Courts are the competent Courts, the decision of the Family Court in Biyikli is not binding, because what was said, was obiter dicta. However, it has a persuasive force and until there will be in the future a binding precedent, all the cases of adoption by
members of the Turkish Community will continue to go to the District Courts. The Parliament must proceed straight away to solve the problem.

**The ambit of Law 120(I)/2003 ratione materiae**

Probably by inadvertence, Law 120(I)/2003 suspends, on the basis of the Law of Necessity, the jurisdiction of the Turkish Communal Courts and the application of CAP. 339, only to the celebration of the marriage, its validity and divorce, while at the same time transfers the jurisdiction of these Courts to the President of the District Court also to maintenance of children and spouses and custody of children. This inconsistency surely leads to a legal anomaly.

Irrespective of this inconsistency and legal anomaly, one wonders what is the logic behind Law 120(I)/2003 in transferring the jurisdiction of the Turkish Communal Courts only to nullity of marriage, divorce, maintenance of children and spouses and custody of children, and not to all family matters, including, of course, adoption of children, legitimacy of children, and pecuniary relations of spouses. As we have seen in Biyikli, it was said obiter dicta that the District Courts are competent to deal with the adoption of members of the Turkish Community. It is to be noted that, in regard to matters to which Law 120(I)/2003 applies, the Presidents and not the Judges of the District Courts are competent to deal with them.

It is clear from articles 87.1(c), 152 and 160 of the Cyprus Constitution that the jurisdiction of the Turkish Communal Courts was extended to all family matters of the Turkish Community, even to all matters of “personal status” - a term wider than “family relations”, as was pointed out by the Supreme Court in Dadakrides v. Dadakaridou. For those family matters concerning the Turkish Community which are not regulated by Law 120(I)/2003, there is a casus omissus, since there is no Court in the non-occupied part of Cyprus to deal with them, and, no doubt, the Republic of Cyprus according to Selim v.

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19 Section 4(a)-(c).
20 Section 4(d).
21 (1990) 1 CLR 566, at p. 578.
Cyprus,\textsuperscript{22} violates article 12 of the ECHR which protects the right to marry and to found a family as well as article 8 of the ECHR which protects the right to respect one’s private and family life.

What is the logic in the President of the District Court applying the anachronistic English law, which was applied by the Supreme Court of Cyprus before Independence Day, regarding family matters of the Turkish Community apart from the case of the validity of their marriage, instead of applying the Turkish Family Law, CAP. 339,\textsuperscript{23} which was designed and enacted specifically for the Turkish Community and which is much more modern than the old English law?

It is important to note that as regards dissolution of the marriage, though one by virtue of section 3 of Law 120(I)/2003, could have expected the grounds provided by the Marriage law of 2003 (Law 104(I)/2003) to be applied by the President of the District Court, however none of these grounds can be applied by the President of the said Court, since the Marriage Law of 2003 makes provision for grounds of divorce to be applied only by the Family Court and the Family Court of the religious groups and not also by the District Court. The President of the District Court has, therefore, no other choice than applying the English law by virtue of section 29(3) of the Court of Justice Law of 1960 (Law 14/1960), to which reference is made by section 4(d) of Law 120(I)/2003.

\textit{The ambit of Law 120(I)/2003, ratione personae}

Now, I shall turn to the question as to whether Law 120(I)/2003 applies only when both parties are members of the Turkish Community or also to the case where only one party is a member of this Community. This question has not as yet been raised and therefore has not been examined and decided by the Family Court of Second Instance.

\textsuperscript{22} ECHR appl. no. 47293/99 of 18/09/2001 and 16/07/2002.
\textsuperscript{23} It is to be noted that CAP. 339 contains provisions for the celebration of the marriage, nullity of marriage, divorce, judicial separation, maintenance of wife and children, custody and education of children and legitimacy of children.
Section 3 of this Law provides that all the provisions of the Marriage Law of 2003 with regards to all topics and subjects for which there is a provision in the said Law, are applicable also to the case where either or both parties belong to the Turkish Community. Section 4(d) of Law 120(I)/2003, vests the President of the District Court with power to deal with the family matters aforementioned, concerning marriages coming under the ambit of section 3 of the same Law. Therefore, according to the literal rule of interpretation, the President of the District Court has under Law 120(I)/2003 jurisdiction also to the case where either party is a member of the Turkish Community.24

I disagree with this approach because it is obvious that the literal meaning of the Act is not in accordance with the legislative purpose. I strongly believe that the mischief rule of construction or a purposive-and-strained construction should therefore be applied.25 It is the duty of the Court to further the purpose of the Parliament in passing this enactment. The mischief rule dissolves into the presumption that legislature intended to provide a remedy for a particular mischief and that a purposive construction is desired.26 In using the mischief for the purpose of interpretation it may be important to determine the precise scope or the ambit of mischief Parliament intended to remedy.27 As Bennion says: “[w]here the mischief concerns the operation of some legal rule, the remedy is likely to take the form of a modification of the rule. If the drafter fails to understand the legal rule he or she is to modify, the modification is likely to be misconceived. The court, in construing the enactment, is then forced to take account of the drafter’s error. The court must do the best it can, being ready to

24 This interpretation was followed by the Family Court of Larnaca in the case of Singh v. Emine, appl. no. 301/08, which was dismissed by lack of jurisdiction because the respondent was a member of the Turkish Community (Judgment dated 10/6/2009). However, there was no appeal in this case.
25 Francis Bennion, Statutory Interpretation, 2nd edn., London, Dublin and Edinburg, 1992, p. 667. This purposive construction is otherwise called exceptional or equitable construction (R. Wilson & Br. Galpin, ed., Maxwell on Interpretation of Statutes, 11th edn., London, 1962, pp. 221 et seq. & 244 et seq. Lord Mansfield in R. v. Williams (1758) 1 W. Bl. 95 said that equity was synonymous with the intention of the legislature, and in this sense an equitable construction is free from objection.
26 Bennion, op. cit., 404.
27 Bennion, op. cit., 646.
apply a strained construction in order to tailor the enactment to the true legal rule.”

From the whole Act under discussion as well as from its preamble, it is clear that the legislative purpose was to remedy the mischief of rendered *casus omissis* due to the fact that the Turkish Communal Courts are not functioning in the non-occupied part of Cyprus. So the purpose of the Act was to transfer to the President of the District Court *only that* jurisdiction *ratione personae* belonged to the Turkish Communal Courts, which was suspended for this purpose by the same Act due to the Law of Necessity. Especially from the aforementioned constitutional provisions, and from sections 1 and 3 of the Turkish Communal Courts (Establishment) Law of 1960 (Law 8/1960), it is apparent that the jurisdiction of these Courts was confined *only* in the case where *both* parties belonged to the Turkish Community. The same held true also in relation to the former Greek Communal Courts which had jurisdiction only when *both* parties were members of the Greek Community.

Therefore, there was no need and no point for the legislature to transfer to the President of the District Court jurisdiction which the Turkish Communal Courts never had, in view also of the fact that it transferred since 1998, by Law 26(I)/1998, *all* the family jurisdiction of the District Courts, *ratione personae* and *ratione materiae*, to the Family Courts, including of course the case where only one of the parties is a member of the Turkish Community. By the proposed construction, the Laws by which the jurisdiction of the Family Court and the President of the District Court was established, are reconciled and the Law generally seems to be more coherent and self-consistent and satisfies the common sense construction rule. Besides, as Maxwell points out, repeal by

28 Ibid., 613.
30 For the “commonsense construction rule”, see Bennion, at pp. 407-411. The proposed interpretation is strengthened by the argument that the law will not permit an inconvenience: “*argumentum ab inconvenienti est validum in lege quia lex non permittit aliquod inconvenienti*”, Co. Lit. 258.
implication is not favoured and an Act ought not to held to be repealed by implication without some strong reason.31

I believe what led to the provision at hand, contained in section 3 of the Law 120(I)/2003, was the fact that the Law preceding the Marriage Law 2003, thus CAP. 279, prohibited the celebration of a marriage where either party was a Turk professing the Moslem faith (section 34), and because of this provision of CAP. 279, Kemal Selim, a Cypriot Turkish Muslim, who was prohibited to celebrate a marriage in Cyprus with a Romanian lady, had filed successfully a recourse to the ECHR. Not only the Parliament contemporanea expositio of the Act, had in mind the case of Selim v. Cyprus, but reference to it, is made in the preamble of the Act, and this case is referred in the preamble as one of the reasons and justifications of the enactment of the Act.

What was said in section 3 regarding the matter under discussion is, however, correct in only two respects. That anybody irrespective of his or her Community can get married under the Marriage Law of 2003. And that if before the marriage, the husband is a member of the Turkish Community and the wife of the Greek Community, then automatically by the celebration of their marriage, according to article 7(a) of the Constitution, both parties belong to the Turkish Community, so vesting the President of the District Court with that jurisdiction the Turkish Communal Courts had by virtue of the Constitution.

Save the above exceptions, the provision which vests the President of the District Court with jurisdiction in cases where only one party is a member of the Turkish Community, is erroneous. The principle of “reddendo singula singulis” (render each to each),32 cannot apply here since section 3 does not make use of family matters distributively.

By concluding, it was not the purpose of the Act to cover family matters arising out of the marriage between a member of the Turkish Community and a party who is not a Cypriot citizen except the formation of their marriage. These family matters definitely fall within the jurisdiction of the Family Court.

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32 Bennion, op. cit., 871.
The New Charter of the Greek Orthodox Church

A few words now about the new Charter of the Greek Orthodox Church, which will come into force soon. The information I have is from a publication of the legal adviser of the Church in the press,\(^{33}\) which actually is an official report concerning the provisions and regulations of the new Charter. Though in the new Charter there will be no chapter about ecclesiastical courts and no chapter about grounds for divorce, however there will be a chapter dealing with spiritual dissolution of the marriage which will incorporate in effect matrimonial jurisdiction on the substance of divorce.

In Greece, the spiritual dissolution of a Greek Orthodox marriage always was and is, simply a typical act by the Church confirming that the marriage which was celebrated by it, and was dissolved by the civil Court, is also dissolved for the Church.\(^{34}\) In Greece, by the production to the Church of the final decision of the state court, the Church is obliged to proceed to the spiritual dissolution of the marriage, without examining again the merits of the case.\(^{35}\)

On the contrary, in Cyprus, under the new Charter, the Church has a duty to try again to save the marriage, ignoring the fact that the marriage might have already been dissolved by the Family Court which is the only competent Court by the Constitution to dissolve it, and also ignoring the fact that an attempt for reconciliation, made by the Church, was preceded the filing of the divorce petition to the Family Court.

Furthermore, concerning the spiritual dissolution of the marriage, the Cyprus Greek Orthodox Church instead to confining itself only to the decision of the Family Court, which, in any way, the Church does not consider as a requirement, it does however require a petition with the facts of the case and the

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\(^{35}\) *Ibid.* As Maridakis said, a right of the Church to refuse to proceed with the spiritual dissolution of the marriage, would amount to an exercise of control by it over the State. See Maridakis, *op. cit.*, p. 158.
grounds on which it is based, which grounds must be presented and explained during the procedure.

Under the new Charter, the only requirement for the admissibility of the petition for spiritual dissolution, is the fact that an attempt for reconciliation was preceded. It is clear that the decision of the Family Court, is again under the provisions of the new Charter, ignored! Also, the provisions of Law 22/1990\(^{36}\) which deal with the time limit of 15 days completion of the spiritual dissolution of the marriage, are ignored, since by the new Charter, the procedure of the spiritual dissolution can take place without any time-limitation, irrespective of whether there is a decision of the Family Court.

It must be stressed that Law 22/1990 was enacted to effectuate the provisions of article 111.1 of the Constitution. The petition for the spiritual dissolution is presented to and heard by a spiritual Council consisting of three priests. The Council tries to save the marriage, and in case it decides that the marriage cannot be saved and that there is in fact an irretrievable breakdown of the marriage and that the spiritual dissolution of the marriage will not burden any more the already existing legal and factual situation, it makes a suggestion to the Bishop for the spiritual dissolution of the marriage. If the Bishop needs clarifications he may ask for a new hearing before it. Against the decision of the Bishop, there may be an appeal before the Holy Synod, which shows that there may be cases where the spiritual dissolution may not be granted, even if there is a decision of the Family Court dissolving the marriage.

From the above, it is clear that despite some improvements in the new Charter, the ecclesiastical courts will not truly be abolished, but they will simply change their “costume”, since under the umbrella of “spiritual dissolution” they will still try the divorce cases on their merits, following in practice the ground of the irretrievable breakdown of the marriage, and at the same time they will perform a second attempt for reconciliation. That was not the intention of article 111 of the Constitution, and surely there will be problems in the future.

\(^{36}\) Section 7(2).
The argument of the church that there is no violation of the Constitution because the procedures before the Family Courts and the Church are parallel, is invalid, since the Constitution considers the Family Courts as the only competent Courts to deal with the dissolution of the marriage of members of the Greek Orthodox Church, without leaving room for concurrent jurisdiction of any other Court.

It is unfortunate that under the new Charter not only the decision of a Family Court for the dissolution of the marriage is a requirement for its spiritual dissolution, but also the absence of such decision of a Family Court is not an impediment for the celebration of a new religious marriage by the parties involved with other persons. Would it be the intention of the constitutional legislator who by article 111 trusts the validity of the ecclesiastical marriage to be governed by the ecclesiastical law to allow such an anomaly, which may lead to bigamies? Surely not.

In summary, the new Charter violates article 111 in many ways, (a) it still empowers ecclesiastical organs to exercise substantial matrimonial jurisdiction even if the nature of the previous trial is somehow changed, (b) it completely ignores the legal effect of the decisions of the Family Courts, the only competent Courts to dissolve an ecclesiastical marriage and (c) it violates article 111.1 which provides that the spiritual dissolution should be made before a Bishop, and not before a spiritual Council of three priests.

There is no country in the world which could tolerate the celebration of a new marriage by a party whose previous marriage was only spiritually dissolved by the Church and not by the competent Court. In the history of Cyprus and of Greece, the church had power to dissolve the marriage of their members only when its ecclesiastical courts were by the state law, the competent Courts. If one were to follow the concept and policy of the new Charter, one would come to the dilemma of what really is the new stand of the Church: its organs will indeed operate as Courts in a new form and procedure, or the church no longer requires a decision of a Court to dissolve the marriage of its members. If the
latter were to be true, a mere blessing would be sufficient, but this is not the case. So, this is another proof that the Church courts will still operate contrary to the Constitution.

One must not erred by the argument of the Church that because the validity of the religious marriage is governed according to the Constitution by the ecclesiastical law, the Church has also the right to legislate on divorce, and to place its own conditions as to when the marriage is to be considered dissolved in order for it to proceed to celebrate a new religious marriage.

The intention of the Constitution was clear: the validity of the marriage is governed by the church, but divorce is regulated by the state and the church only proceeds with the spiritual dissolution, and it cannot intermingle the celebration of the new marriage with whatever it has no competence to decide. Surely, the constitutional legislator could not have intended any concept of spiritual dissolution, other than that applied in Greece.

The Author’s Proposal

I humbly propose that it would be more sensible and far more convenient for there to be only one Family Court in Cyprus, dealing with all family matters and applying the same law in all cases, irrespective of the community, the religion and the nationality of the parties. For this to be pursued, all the necessary constitutional amendments should be introduced. All the provisions of article 111 of the Constitution which are based on the religious element, as regards the composition of the Family Court and its applicable law should be repealed. The fact that the Turkish Family Law was secularized in 1951, makes things even easier in this direction. The proposed Annan Plan of 2004 though it was not accepted, makes an important provision in article 14(3)(i) of its Annex A, with regard to the family law of the two component states: that they shall strive to coordinate or harmonize their policy and legislation regarding family law.
I strongly believe and hope that the political solution of Cyprus, whatever it may be, should be appropriately designed so as intercommunal and interpersonal conflicts with regard to the family law of its people are avoided.