

Displacement in Cyprus

Consequences of Civil
and Military Strife

Report 4

Turkish Cypriot Legal Framework

Ayla Gürel



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**TURKISH CYPRIOT
LEGAL FRAMEWORK**

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INTRODUCTION

From the creation of the Republic of Cyprus (RoC) in August 1960 until the breakdown of its bi-communal government three years later, the same legal regime prevailed throughout the country. The 1960 RoC constitutional structure, which was devised to implement the 1959 Zürich-London Accords,¹ assumed the existence of two communities on the island: the Greek Cypriots and the Turkish Cypriots.² The two communities were afforded partial communal autonomy as well as equal treatment in terms of their participation in the organs of the Republic.

A Communal Chamber was established for each community with a mandate to exercise legislative and administrative power on certain restricted communal matters (relating to e.g., religion, education and culture). They also had the power to collect communal taxes in order to provide for the needs of communal bodies and institutions.³

The central government, legislature, judiciary and public service of the RoC were formed by members of the two communities in a ratio of seven Greek Cypriots to three Turkish Cypriots. The Constitution provided for a presidential system with a Greek Cypriot President and a Turkish Cypriot Vice-President, elected respectively by the Greek Cypriots and the Turkish Cypriots on separate electoral rolls.⁴ The seven Greek Cypriot and three Turkish Cypriot members of the Council of Ministers were appointed, separately and respectively, by the President and the Vice-President. The President and the Vice-President had, separately or jointly, the right of final veto on any law or decision of the House of Representatives, as well

¹ These agreements, reached between the governments of the United Kingdom, Greece and Turkey, set out in 27 paragraphs the terms of the 'final solution' of the Cyprus problem (see at <http://www.cyprus-conflict.net/Treaties%20-1959-60.html>). Provisions in the Constitution incorporating these terms from the Zürich-London Agreements were considered as 'basic' and could not be amended 'whether by way of variation, addition or repeal'. Other provisions of the Constitution could be amended or repealed by special separate majorities of two-thirds of the total number of Greek and two-thirds of the total number of Turkish members of the House of Representatives. See Article 182 of the Constitution.

² According to Article 2 of the RoC Constitution, every citizen of the Republic was a member of one of the two communities, the Greek (comprising 'all citizens of the Republic who are of Greek origin and whose mother tongue is Greek or who share the Greek cultural traditions or who are members of the Greek-Orthodox Church') and the Turkish (comprising 'all citizens of the Republic who are of Turkish origin and whose mother tongue is Turkish or who share the Turkish cultural traditions or who are Moslems'). All other citizens who did not fall in these definitions had to opt within three months of the date of entry into operation of the Constitution either to join the Greek or the Turkish community as individuals, or, if they belonged to a religious group (e.g., Maronites, Armenians), to opt to join either community as a religious group.

³ Articles 86-90 of the Constitution.

⁴ Article 1 of the Constitution.

as on any decision of the Council of Ministers, concerning foreign affairs, defence or security.⁵ Legislative power was exercised by the House of Representatives in all matters not expressly reserved for the Communal Chambers. The Greek Cypriot and Turkish Cypriot members of the House were elected, separately and respectively, by the Greek Cypriots and the Turkish Cypriots.⁶ The House of Representatives took its decisions by a simple majority except in the case of those concerning taxation, elections and municipalities, which required a separate majority of the Greek Cypriot and Turkish Cypriot members of the House.⁷

In 1963 a constitutional crisis led to inter-communal violence which brought about the collapse of the Republic's bi-communal power sharing structures.⁸ Since then Turkish Cypriots have ceased to be part of the RoC government which has thus become a *de facto* Greek Cypriot administration.⁹ Yet the latter has claimed to be, and has gradually come to be internationally accepted as, the *de jure* government of the RoC and the sole legitimate government on the island.¹⁰ Greek Cypriots assert that they lawfully represent the RoC basing their argument on the 'doctrine of necessity'.¹¹ However, Turkish Cypriots (and Turkey) maintain to this day that the Greek Cypriots alone cannot legitimately represent the RoC as this would be contrary to the 1960 Constitution and the Zürich-London Accords that created the RoC.

⁵ Articles 48-49 and 50, 57 of the Constitution.

⁶ Article 62 of the Constitution.

⁷ Article 78 of the Constitution.

⁸ The relations between the two communities were already tense because of serious disagreements between the two communities on the implementation of certain provisions of the Constitution. The situation turned into a crisis when the Greek Cypriot President, without consulting the Turkish Cypriot Vice-President, publicly announced proposals to revise the Constitution, including some of its basic (formally unalterable) provisions. The proposed changes would have enabled the Greek Cypriot majority to rule without impediment and they were rejected by the Turkish Cypriot leadership as well as by Turkey. See Keith Kyle, *Cyprus: in Search of Peace* (Minority Rights Group International, 1997), pp. 5-15. For a detailed account of the events that ensued in the crisis of 1963, see Richard A. Patrick, *Political Geography and the Cyprus Conflict: 1963-1971* (Department of Geography, University of Waterloo, 1976), pp. 45-88.

⁹ From 1963 onwards the *de facto* Greek Cypriot government stopped recognizing the Turkish Cypriot Vice-President and in 1965 made the return of the Turkish Cypriot members of the House of Representatives impossible without their first accepting certain constitutional changes and legislative enactments which reduced the Turkish Cypriots' constitutionally guaranteed status of political equality. See *Report of the Secretary-General on Recent Developments in Cyprus* (29 July 1965), UN document S/6569.

¹⁰ This has happened without any formalities, such as a renegotiation of the 1960 Treaties that created the Republic of Cyprus, having taken place.

¹¹ The doctrine of necessity was first invoked in the 1964 case of *The Attorney General of the Republic v. Mustafa Ibrahim and Others* (the Ibrahim Case) which has become the landmark case in relation to the application in Cyprus of this rule. In this case, the Supreme Court (consisting entirely of Greek Cypriot judges) justified, based on the concept of 'state necessity', their jurisdiction to hear the case and the suspension or inapplicability of certain provisions of the RoC Constitution, which in turn enabled the continued functioning of the state organs with Greek Cypriot members only. For a comprehensive examination of the topic, see Alecos Markides, 'The Republic of Cyprus' in *Constitutional Law of 10 EU Member States: the 2004 Enlargement*, C. Kortmann, J. Fleuren, and W. Voermans (eds.) (Kluwer BV, Deventer, 2006), pp. 1.10-1.17; and Murat Metin Hakki, *The Cyprus issue: a documentary history, 1878-2007* (I.B. Tauris, London, 2007), chapter 15. For a general discussion on the doctrine of necessity as well as a critical assessment of its application in Cyprus and the consequences of this for the Turkish Cypriot community, see Kudret Özersay, 'The Excuse of State Necessity and Its Implications on the Cyprus Conflict', *Perceptions: Journal of International Affairs* (Winter 2004-2005), pp. 31-70. Also see Costas Constantinou, 'On the Cypriot States of Exception', *International Political Sociology* (2008), No.9, pp. 145-164, which looks at the Cypriot application of the doctrine within the broader context of 'states of exception'.

After the *de facto* take-over of the Cyprus government by Greek Cypriots, Turkish Cypriots formed their own organizations in order to administer the affairs of the Turkish Cypriot population living in areas under their control. From 1963 to 1974 these areas were self-guarded enclaves scattered throughout Cyprus.¹² This was the first splitting up of the RoC territory into areas that were separately administered by Greek Cypriots and Turkish Cypriots. After the 1974 war and subsequent *de facto* division of the island by the Turkish armed forces, virtually the entire Turkish Cypriot community started living in one Turkish Cypriot-controlled territory in the northern third of the island.¹³ From 1964 until the establishment in 1983 of the present Turkish Republic of Northern Cyprus (TRNC),¹⁴ the Turkish Cypriot administration went through several different intermediate stages: the General Committee (1964-1967), the Provisional Cyprus Turkish Administration (1967-1971), the Cyprus Turkish Administration (1971-1974), the Autonomous Cyprus Turkish Administration (1974-1975), the Turkish Federated State of Cyprus (TFSC, 1975-1983). During each stage various constitutional, legislative and executive decisions were made by the organs of these administrations determining the political and social framework that operated in the Turkish Cypriot-controlled parts of the island. However, an essential continuity of the Turkish Cypriot administration was maintained during the course of all these stages (see below).

Greek Cypriots and Turkish Cypriots have thus been living in, although not completely disparate, virtually separate legal environments since about 1964. To this day, Greek Cypriots have been operating under the internationally recognized RoC regime but without the participation of Turkish Cypriots, while the latter have gone on to create their own political and legal structures. Until 1976, the year of acceptance of the TFSC Constitution, the Turkish Cypriot legal framework included the RoC Constitution (or rather its provisions considered applicable under the politically anomalous circumstances); legislation of the pre-1963 era; and new rules and laws passed by the *de facto* Turkish Cypriot administration. After that the Turkish Cypriot administration evolved under different constitutional structures, eventually to be transformed into the current Turkish Cypriot state: the TRNC.¹⁵

Unsurprisingly, the evolution of Turkish Cypriot legislation concerning property relations closely reflects the changing material circumstances and geopolitical priorities of the community during the various phases of its political organisation. Alongside the main statutes relating to immovable property inherited from the period of the original joint RoC, many additional

¹² See <http://www.prio-cyprus-displacement.net/default.asp?id=646>.

¹³ See <http://www.prio-cyprus-displacement.net/default.asp?id=646>. Since 1974 Turkey has kept around 35,000 troops there, the Turkish Cypriot-Turkish claim being that this is needed for security reasons until an overall settlement of the Cyprus problem is achieved.

¹⁴ The TRNC remains an internationally unrecognized state. Turkey is the only country that recognizes it.

¹⁵ The territory of the TRNC is the *de facto* Turkish Cypriot-administered northern part of the island, which, in EU parlance, is referred to as 'those areas of the Republic of Cyprus in which the government of the Republic of Cyprus does not exercise effective control'. See Article 1 of Protocol No. 10 of the EU Treaty of Accession (2003).

laws have been put into operation. This was done in order to address the social, economic, political and strategic needs and concerns of the Turkish Cypriot community. For example, a law passed in 1969 (*Rule for Preventing Sale of Property to Persons not belonging to the Turkish Community*, No. 06/1969) was meant to be a security measure against the danger of Turkish Cypriots becoming a 'landless community'. The point here being that at that time the Turkish Cypriot assets could have easily been purchased by the more numerous and much wealthier members of the Greek Cypriot community. After 1974, Turkish Cypriots had to deal with their displaced persons (some of whom had been displaced since 1963), build up a new social and economic environment in their new territory in the north, and generally put to proper economic use the immovable properties left behind by the Greek Cypriot inhabitants of the north who had nearly all fled to the south. Over the many years that have passed since 1974, Turkish Cypriots have put in place a whole body of complex legal measures. These reflect not only the peculiarities of the socio-economic circumstances but also the political and strategic anxieties of Turkish Cypriots connected with their ongoing conflict with Greek Cypriots. What makes these measures even more complex, of course, is the fact that they have created a property regime in the north which is in some respects highly incompatible with the one in the south and quite problematic with regard to international law (see below).

It is clear that in any process of reconciliation and/or normalization of relations between the two communities, property issues will prove to be the most challenging area. The incongruity of the property regimes operating in the two parts of the island only adds to this challenge. A sound understanding of the nature of these regimes is therefore crucial in any effort to grasp the intricacies of the Cyprus problem.

This report provides a concise summary of the Turkish Cypriot legal arrangements concerned with displaced persons and immovable properties, with a particular focus on those that have been motivated by conflict-related anxieties and/or political goals. Section 1 is an overview of the evolution of Turkish Cypriot administration from 1964 to the present. Section 2 looks at the humanitarian, social and political consequences of population displacements that occurred in Cyprus following the events of 1963 and 1974. Section 3 begins with an analysis of the apparent political rationale behind the Turkish Cypriot policies relating to displaced persons and immovable properties of dispossessed persons. Following this is a compilation of the relevant legal arrangements that are currently in force in the Turkish Cypriot-administered northern part of the island, i.e., the TRNC. Section 4 deals with the question of validity under international law of the legal acts of the TRNC to the extent that the matter has been discussed at the European Court of Human Rights. Conclusions are given in section 5.

1. TURKISH CYPRIOT ADMINISTRATION: FROM 1964 TO THE PRESENT

Several months after the disruption of December 1963, the Turkish Cypriot leadership reorganized and formed, in the Turkish Cypriot quarter of Nicosia, a 'General Committee'. The Committee was headed by Dr Fazıl Küçük, Vice-President of the Republic, and initially consisted of 13 members drawn from amongst the Turkish Cypriot members of the Republic's Council of Ministers, House of Representatives and Judiciary, and from the executive committee of the Turkish Cypriot Communal Chamber. In Nicosia, Famagusta, Larnaca, Limassol and Paphos, district committees were established under the control of the General Committee. Village and municipal councils were in turn answerable to the District Committee. While legislative, executive and judicial affairs of the Turkish Cypriot community were generally administered under this structure, at the level of village and district quarter, the *de facto* leadership was often assumed by the 'Fighters' (*Mücahitler*, plural of *Mücahit*, which is pronounced as mudjahid).¹⁶ In other words the community's government was a mixture of civil and military elements.¹⁷

The General Committee continued to function until late 1967 by which time it was coming under severe criticism for being inefficient, partly due to excesses of patronage. At the same time a serious military crisis erupted in November 1967. This was defused by accession of Greek Cypriots and the Greek Government to the Turkish ultimatums, opening the way for political negotiations to start between Greek Cypriots and Turkish Cypriots.¹⁸ Under these circumstances, the Turkish Cypriot leadership together with Turkey decided to reform the existing Turkish Cypriot administration into a more efficient and democratic structure. The aim of this change seems also to have been to boost the administration's general standing, thus strengthening the Turkish Cypriot side's hand in the forthcoming inter-communal talks.¹⁹

¹⁶ The Fighters (*Mücahitler*) constituted the Turkish Cypriot military force. It was created in 1963 as an expansion of TMT (*Türk Mukavemet Teşkilatı*), the Turkish Cypriot paramilitary organisation which originally emerged in 1958.

¹⁷ Patrick, pp. 82-83. For another account of the setting up of the General Committee, see Aytuğ Plümer, *Cyprus, 1963-64: The Fateful Years* (CYREP, Nicosia, 2003), p. 24.

¹⁸ Patrick, pp. 142-144.

¹⁹ *Ibid.*, pp. 169-177.

On 29 December 1967, the General Committee was converted into the 'Provisional Cyprus Turkish Administration'. A set of 'Basic Principles' (*Temel Kurallar*) was established, according to which Turks living in the Turkish areas would come under the Turkish administration 'until such time as the provisions of the Constitution of 1960 have been fully implemented'.²⁰ The Provisional Administration's Legislative Assembly was composed of the Turkish Cypriot members-in-absentia of the Republic's House of Representatives and the members of the Turkish Cypriot Communal Chamber. All the rules that should be complied with in the Turkish areas would be decided by the Assembly of the Provisional Cyprus Turkish Administration. The laws passed prior to 21 December 1963 in accordance with the 1960 Constitution were valid and in force. The laws that had been issued between 21 December 1963 and 28 December 1967 were also valid and in force. Executive functions were vested in an Executive Council which was organized as a cabinet. Dr. Küçük, Vice-President of the Republic, became President of this Council. Rauf Denktaş, President of the Turkish Cypriot Communal Chamber, became the Executive Council's Vice-President. The nine other members of the Council were seated as 'ministers'. Judicial affairs were to be dealt with by the 'Independent Turkish Courts'.²¹ In April 1971, the adjective 'provisional' was dropped, changing the administration's name to the 'Cyprus Turkish Administration'.

After the island's division and physical separation of the two communities, on 1 October 1974 the word 'Autonomous' was added to the title of the government of Turkish Cypriots changing it to the 'Autonomous Cyprus Turkish Administration'.

On 13 February 1975 the Legislative Assembly of the Autonomous Cyprus Turkish Administration declared the establishment of the Turkish Federated State of Cyprus (TFSC) (*Kıbrıs Türk Federe Devleti*).²² This, it was thought, would give a legal basis for the Turkish Cypriot state thus facilitating progress toward 'the establishment of the future independent Federal Republic of Cyprus'. The resolution adopted by the Assembly noted that 'the Autonomous Cyprus Turkish Administration should be re-structured and organized on the basis of a secular federated State, until such time as the 1960 Constitution of the Republic, the basic articles of which were determined by international agreements in compliance with international law, is amended in a similar manner, to become the Constitution of the Federal Republic of Cyprus, until the said Federal Republic is established'. Also, it was assumed that clarification of the Turkish Cypriot community's status would help the economic development that was needed. A 40-member Constitutional Assembly was formed under the chairmanship of Rauf Denktaş, who was also made the President of the new state. The Constitutional

²⁰ Article 1 of the 'Basic Principles'. See *Temel Kurallar* at <http://www.mahkemeler.net/cgi-bin/anayasa.aspx>.

²¹ The Greek Cypriot government declared the establishment of the Provisional Administration as 'flagrantly unlawful', and that its actions would be considered 'null and devoid of any legal effect'. See Patrick, pp. 169-170.

²² Greek Cypriots reacted negatively, considering this move as a clear step towards secession. The UN Security Council regretted the declaration of the 'Federated Turkish State' but noted that this was not intended to 'prejudge the final political settlement of the problem of Cyprus' (UN Security Council Resolution 376, paragraphs 2-3).

Assembly included 25 members of the existing assembly, four members appointed by the President, and representatives appointed by the sole political party that existed at that time (the Republican Turkish Party or *Cumhuriyetçi Türk Partisi*), and by various unions as well as other social and professional organisations of major groups in society: teachers, farmers, lawyers, doctors, civil servants, engineers and architects, etc.²³

The TFSC Constitution prepared by this assembly was put to the vote in June 1975. The turn-out at the referendum was 72 per cent and the Constitution was approved by 99.4 per cent of the voters. According to the Constitution the executive branch of the government consisted of the President, who was also the Head of State, and the Council of Ministers led by a Prime Minister, who was appointed by the President from among the members of the Legislative Assembly. As an illustration of the ultimate Turkish Cypriot goal of agreement between Greek Cypriots and Turkish Cypriots to create a Federal Republic in Cyprus, Provisional Article 2 of the TFSC Constitution stipulated that 'the TFSC Constitution will be amended as necessary upon the entering into force of the Constitution of the Federal Republic of Cyprus.'²⁴

On 15 November 1983, the TFSC parliament unanimously accepted the proclamation of independence and establishment of the Turkish Republic of Northern Cyprus.²⁵ The existing 40-member TFSC Parliament was enlarged to a 70-member Constitutional Assembly by inclusion, as in the case of the TFSC Constitutional Assembly, of representatives of various social and professional institutions. This Assembly prepared the TRNC Constitution which was put to referendum and accepted on 5 May 1985 (the turn-out was 78.3 per cent, with 70.2 per cent in favour and 29.8 per cent against).

This Constitution, which was generally based on the 1975 TFSC Constitution, provided for an independent state, without any reference to a Federal Cyprus Republic. However, in the 15 November 1983 TFSC Legislative Assembly decision declaring independence and the establishment of the TRNC, it was stated that the proclamation would not hinder but rather facilitate the re-establishment of a federal partnership between Turkish Cypriots and Greek Cypriots.²⁶ In his speech at the UN Security Council at the time, Turkish Cypriot President Denktaş emphasized that this declaration of independence was not an attempted secession.²⁷

²³ C.H. Dodd, 'From Federated State to Republic: 1975-1984' in C.H. Dodd (ed.), *The Political, Social and Economic Development of Northern Cyprus* (Eothen Press, Huntingdon, 1993).

²⁴ On the TFSC Constitution, see Zaim M. Nedjati and Gerald Leathes, 'A study of the Constitution of the Turkish Federated State of Cyprus', *Anglo-American Law Review* (1976), vol. 5, no. 1, pp. 67-92.

²⁵ This Turkish Cypriot move was deemed to be 'legally invalid' by the UN Security Council (see section 4), and no state other than Turkey has since recognized the TRNC as an independent state.

²⁶ TFSC Assembly Resolution No. 50, 15 November 1983.

²⁷ In his speech on 18 November 1983, Denktaş said: 'We are not seceding from the independent island of Cyprus, from the Republic of Cyprus, or will not do so if the chance is given to us to re-establish a bizonal federal system. But if the robbers of my rights continue to insist that they are the legitimate Government of Cyprus, we shall be as legitimate as they, as sovereign as they in the northern State of Cyprus, but we shall keep the door wide open to re-establishing unity under a federal system.' See Michael Moran (ed.), *Rauf Denktaş at the United Nations: Speeches on Cyprus* (Eothen Press, Huntingdon, 1997), p. 193.

The TRNC as it now exists is established as a secular state based on principles of democracy, social justice, and the supremacy of law. The President, elected for five years, is the Head of State and Commander in Chief, although the security forces are the responsibility of the Prime Minister. The President can preside over meetings of the cabinet, the Council of Ministers, but does not have a vote. He also names the Prime Minister from those elected to the Legislative Assembly, and appoints, in consultation with the Prime Minister, other ministers, who need not be elected members. The Legislative Assembly is a unicameral body of 50 members elected for five-year terms. It enacts laws, exercises control over the Council of Ministers, approves the budget, has authority to give general and special amnesty, decides whether to carry out death penalties imposed by the courts, and ratifies international agreements.

The judicial system established by the 1985 Constitution is similar in several ways to that provided for in the 1960 Constitution of the RoC. The Supreme Court consists of a president and seven judges, and can sit as the Supreme Constitutional Court, the Court of Appeal, and the High Administrative Court. As the Constitutional Court it is composed of five judges, and as a Court of Appeal, three. The Supreme Court, in its role as High Administrative Court, fulfils the same functions as described in Article 146 of the 1960 RoC Constitution.

2. DISPLACEMENT: LOSS OF HOMES AND PROPERTY BUT ALSO GEOPOLITICS

Land ownership has always been a sensitive issue in the long history of the Greek-Turkish political dispute over Cyprus. In pursuing their clashing political aspirations, both communities have traditionally relied on competing claims as to how much land rightfully ‘belongs’ to either community.

This rivalry essentially began during the British Colonial period – a period of flux in property ownership as transition occurred from the feudal traditions based on the Ottoman land code to modern property relations.²⁸ And no doubt that had something to do with the inclusion of a regulatory stipulation like the following one in paragraph 19 of the Zürich-London Agreements that founded the Republic of Cyprus (RoC): ‘In the event of agricultural reform, lands shall be redistributed only to persons who are members of the same community as the expropriated owners.’

Land ownership continued to be a politically significant issue during the inter-communal crisis of the 1960s when claims and counter-claims were difficult to verify as neither community would allow impartial inspection of its land registry records.²⁹ Of course this controversy not only remained unresolved but became spectacularly more complex after the 1974 *de facto* division of the island. Division left nearly one-third of the Greek Cypriot community and about half of the Turkish Cypriot community displaced, thus resulting in a huge problem of rights with respect to lost homes and properties.

During the 1963–64 period, it is estimated that around 25,000 Turkish Cypriots (one-quarter of the Turkish Cypriot population at that time), and 700 Greek Cypriots (including 500 Armenians) were displaced. Between December 1963 and August 1964, Turkish Cypriots completely evacuated their homes in 72 mixed villages and abandoned 24 wholly Turkish Cypriot villages. In addition, they partially evacuated eight mixed villages and town quarters in each of the six districts.³⁰

Most of these people were still displaced when the events of 1974 struck, leading to the present *de facto* division of Cyprus into a Turkish Cypriot-administered north and a Greek Cypriot-administered south.

²⁸ This occurred in 1946 through the enactment of the *Immovable Property (Tenure, Registration and Valuation) Law*, Cap. 224.

²⁹ Patrick, p. 15. Lack of a reliable data base of land registry records relating to immovable properties on both sides of the island still persists today due to the continuing distrust between the two communities.

³⁰ Patrick, pp. 74–79.

Division had long-term drastic consequences. Large-scale displacement upset the lives of many local communities and led to restrictions as regards Cypriot individuals' freedom to travel and settle throughout the island and exercise property rights. Nearly all of the 162,000 Greek Cypriot inhabitants of the area to the north of the divide fled or moved to the south. Similarly, almost all of the estimated 48,000 Turkish Cypriots then living in the south moved to take refuge in the north. These population transfers rendered the two parts of the island in effect ethnically homogenized. Until April 2003, travel between north and south was virtually impossible for Cypriots.

In 1974, with such a high proportion of the population having been displaced and thus having lost their homes and properties, a huge humanitarian problem emerged. The situation in the south was obviously more serious, given the overcrowding caused by the sudden influx of so many displaced persons and scarcity of resources available for accommodating them. For the Turkish Cypriots, on the other hand, the move was from confinement in enclaves to – what they regarded as – freedom in the northern one-third of the island. The main challenge in the north was to organize efficient and productive utilization of abundant property and resources left behind by the Greek Cypriots – a task hampered by the insufficient size of the Turkish Cypriot population.³¹

In the elapsed period of over three decades the displaced persons in both parts of the island have been accommodated and have largely adapted to their new environments.³² However, claims related to their lost homes and properties have largely remained unsettled until now. The question of resolution of these claims, generally referred to as 'the property issue', is a key item on the agenda of the inter-communal negotiations concerning the geopolitical future of Cyprus. A major difficulty in resolving the property issue stems from disagreements which can be traced to the fundamental political conflict between Greek Cypriots and Turkish Cypriots and, in particular, to their very different perceptions of the causes of the 1974 division.

From about 1977 onwards, the ostensibly mutually accepted objective of the negotiations to solve the Cyprus problem has been to create a federation that will engender the island's

³¹ In order to prop up the population and help create a viable economy in the north, the settlement of Turkish nationals was encouraged and facilitated until the early 1980s as part of a joint policy of the Turkish Cypriot authorities and the Turkish government. Immigrants arriving under this policy were allocated Greek Cypriot property and citizenship right away. About 20,000 Turkish nationals took up that call at the time – the group of immigrants that can justifiably be described as 'settlers' given the scheme under which they were brought to Cyprus. However, because of internal discontent and, not least, international pressure stirred by Greek Cypriot protests, privileges in the form of offering properties and automatic granting of citizenship were stopped in the early 1980s and the policy of encouraging Turkish nationals to settle in Cyprus faded away. Still, Turkish immigrants continued coming to northern Cyprus of their own initiative, mostly as economic migrants, with some going on to acquire citizenship. From 2004 onwards, serious effort has been made by the Turkish Cypriot government to put in place measures regulating both immigration and acquisition of TRNC citizenship. For a comprehensive exposition and analysis of immigration from Turkey, see two reports by Mete Hatay: *Is the Turkish Cypriot Population Shrinking*, PRIO Report 2/2007, pp. 1-13; and *Beyond Numbers*, PRIO Report 4/2005, pp. 5-14.

³² Internal Displacement Monitoring Centre (IDMC), *Cyprus: Prospects remain dim of political resolution to change situation of IDPs* (2009).

reunification on a bizonal basis. However, the negotiating parties have yet to agree on what 'reunification' and 'bizonality' should actually entail.³³

In the Turkish Cypriot view, division came as the inevitable consequence of the progressive segregation of the two communities since at least 1963 caused, very largely, by Greek Cypriot aggression which stemmed from their dissatisfaction with the 1960 Treaties and their desire to reduce the Turkish Cypriots to an insignificant minority in a Greek island. In the secure zone created in the north after 1974 the Turkish Cypriots can live as masters of their own destiny and away from threats of Greek Cypriot domination. This situation is the basis – albeit after some territorial adjustments – of what Turkish Cypriots understand by a bizonal solution. Hence they insist that under a settlement the exercise of property rights by displaced persons should be restricted in order not to upset too much the present settlement patterns of the two communities.

In contrast, the Greek Cypriots generally think of the Cyprus problem as having started in 1974 as a result of what they see as Turkey's unprincipled 'invasion and occupation' of a substantial part of their country. They see the subsequent *faits accomplis* of this act as threats to the survival of Cypriot Hellenism in its ancestral lands and the unity of its historical space. Thus the Turkish Cypriot conception of bizonality is unacceptable to the Greek Cypriots. For them this is perpetuation of division, a situation which must be resisted and reversed as much as possible. In line with this position, the Greek Cypriot side emphasizes the application throughout the island of freedom of movement and settlement and property rights as a crucial element of a solution. Thus on the property issue the Greek Cypriot side demands full respect for basic human rights, including displaced persons' right to repossess and return to their properties irrespective of any bizonal arrangements.

Apart from this incompatibility of political goals, social and economic considerations as well as legal and normative prerequisites also pose serious challenges to reconciliation of the two sides' positions.

After the division, the Turkish Cypriots generally presumed that the two communities were now separated permanently and that each community should organise 'its own internal structure in its own area'. In the north, this implied construction of a new social and economic environment; a process in which, given the landownership figures mentioned above, the Turkish Cypriots had no alternative but to rely extensively on property left by Greek Cypriots. Since 1974, a series of measures and laws has been put in place that allowed the allocation of Greek Cypriot properties – initially only for use but later also with ownership rights – to displaced Turkish Cypriots and various other categories of citizens and public and private bodies in the north. In this way, these properties gradually became part of the social and economic fabric of the north. Within the north's legal system, most Greek Cypriot property is now under new ownership (private or public) and can be inherited, mortgaged, traded, including being sold to foreigners, and developed for private or public use.

³³ Ayla Gürel and Kudret Özersay, *The Politics of Property in Cyprus* (PRIO Report, 2006).

Contrary to all this, the Greek Cypriot view has been that the present division of the island is temporary. It will end once an agreement is reached dismantling the 'unlawful' Turkish Cypriot state. Any settlement agreement must also ensure that all displaced persons from either community have the right to have their properties reinstated. Yet, notwithstanding the position that all Greek Cypriot and Turkish Cypriot property belongs to the original, i.e., pre-1974, owners, the Greek Cypriot government also adopted legal measures allowing allocation or lease of Turkish Cypriot properties in the south to Greek Cypriot displaced persons, or to the government, local authorities and public benefit organisations. Transfer of title to another person is explicitly ruled out but compulsory acquisition or sale of Turkish Cypriot property is exceptionally allowed if deemed beneficial for the owner or necessary in the public interest. However, the legislation in force prevents Turkish Cypriot owners from claiming their properties or any relevant compensation or other payment otherwise due to them until after a comprehensive settlement. As a result of these practices, since 1974 much Turkish Cypriot property has been modified through 'development and productive use' – both for private and public purposes, the latter including building refugee housing estates and various forms of infrastructure. Needless to say, in the future full restitution of such property to pre-1974 owners is quite unlikely.

Meanwhile, since the 1990s hundreds of property-related cases have been piling up before the European Court of Human Rights (ECtHR or the Court). Most of these are Greek Cypriot applications concerning property in the north, except for a small number of more recent applications against the RoC by Turkish Cypriot owners of property in the south. In its judgements on several of the Greek Cypriot cases, the ECtHR has ruled that the dispossessed Greek Cypriots remain the owners of the property they left in the north and that their property rights are being violated under the arrangements that apply in that part of the island. In response, new legislation has been implemented in the TRNC in order to deal with Greek Cypriot property claims. In 2010 the Court accepted the mechanism of redress thus provided as an 'effective domestic remedy' under the European Convention on Human Rights (the Convention).

The rulings of the ECtHR have not produced an answer as to how the property issue may ultimately be resolved. However, they did lay down some minimum guidelines that any negotiated property settlement compatible with the Convention would be expected to satisfy.³⁴ In addition, the rulings have arguably influenced the Turkish Cypriots to move towards a more moderate stance on the settlement of the property issue: from demanding that reciprocal property claims are collectively written off between the two sides, to a solution that respects individual rights and allows property to be reinstated under certain conditions which, among other things, ensure that bizonality is protected.

³⁴ For an analysis of the implications of the ECtHR decisions for a political settlement of the Cypriot property dispute, see Rhodri Williams and Ayla Gürel, *The European Court of Human Rights and the Cyprus Property Issue: Charting a Way Forward* (PRIO Cyprus Centre, Nicosia, 2011).

3. LEGAL SITUATION CONCERNING DISPLACED PERSONS AND IMMOVABLE PROPERTIES OF DISPOSSESSED PERSONS

This section looks at the specific norms and legislation relating to displaced persons and immovable properties of dispossessed persons that are presently in force in the TRNC.³⁵ A key objective here is to show how the conflict has impinged on the development of these legal arrangements. Thus the first part analyzes the rationale of the policies which these arrangements are meant to implement. The arrangements comprising constitutional provisions, international treaties and statutes are presented in the second part.

3.1 RATIONALE OF POLICIES

On 15 November 1983, Resolution No. 50 of the TFSC Legislative Assembly approved the 'Declaration of Independence' and the establishment of the TRNC. Paragraph 14 of the declaration stated:³⁶

Thousands of Turks living in South Cyprus clandestinely crossed to the North zone through mountain paths, leaving behind all their material assets and in many cases risking their lives, in order to escape from oppression and cruelty and to live in safety and freedom in the bosom of their own national community. The Turkish Cypriot People, using the opportunity provided by the 'Vienna Agreement' of 2 August 1975, assembled as a whole in the North zone.

This People are determined to live together; to preserve their national identity, to rule themselves democratically, and to reach just and peaceful solutions on all issues by negotiating them under equal conditions with the Greek Cypriot People.

It is clear from the above quotation that the Turkish Cypriots have generally considered the island's *de facto* division in 1974 and the subsequent transfer of populations between the north and the south as the foundation of any future political Cyprus settlement. According to

³⁵ A more extensive compilation of the main legislation regarding immovable property, including the laws in Turkish (and, when available, in English) can be found at <http://www.prio-cyprus-displacement.net/default.asp?id=756>.

³⁶ Translated from Turkish by the author.

the official Turkish Cypriot position the current *de facto* situation, albeit after the handing over of some territory to the Greek Cypriot administration, is the manifestation of the 'principle of bizonality', which is a long-established basic parameter at the UN-led inter-communal negotiations for reunifying Cyprus under a federal state.

It is also assumed that the issue of displaced persons was settled between the two communities through the 1975 Vienna III Agreement.³⁷ This comes from the specific Turkish Cypriot interpretation of the Agreement as having been 'reached for an exchange of populations as a first step towards the establishment of a bi-zonal federal Republic.'³⁸ As declared in 1976 by the elected representatives of Turkish Cypriot community:³⁹

The juridical and bi-zonal status of the two communities was established in 1975 as a result of an agreement reached at the third round of the Vienna talks where the freedom of movement to the North of the Turks enclaved in the South and freedom of movement of Greeks living in the North to the South was accepted by the inter-communal negotiators. As a result of the above-mentioned agreement, the transfer of the entire Turkish Cypriot population to the North and the transfer of the majority of the Greek Cypriots to the South materialised.

Therefore, as Rauf Denктаş put it, the Agreement constitutes 'the very foundation of a bi-zonal solution for the two communities accepted both by Clerides [in 1975] and Makarios [in 1977]'.⁴⁰

The concept of bizonality, as it is understood by the Turkish Cypriot side involves two elements:

- (a) Regarding population: the majority population in the northern zone will remain Turkish Cypriot, and in the southern zone Greek Cypriot (already realised through the implementation of the 1975 Vienna Agreement for 'exchange of populations').

³⁷ For the full text of the Vienna III Agreement, see <http://www.prio-cyprus-displacement.net/default.asp?id=752>. It is worth noting here that this was a kind of gentlemen's agreement between the interlocutors, and was drafted in a way that enabled each side to include what really was significant from its own political perspective. In the case of the Turkish Cypriot side, what mattered was to enable Turkish Cypriots to safely move to the north; in the case of the Greek Cypriot side, what mattered was freedom for Greek Cypriots to stay and live under decent conditions in the north. For example, while the Agreement provided for the safe passage of Turkish Cypriots from the south to the north, it contained no provision for Turkish Cypriots wishing to remain in the south. This could be construed as being due to a tacit assumption that the latter would be an exceptional situation, and no doubt reflected the Turkish Cypriot side's desire for that to be the case. On the other hand, the provisions for Greek Cypriots wishing to remain in the north were very clearly expressed, and it was stated that they would be given every assistance necessary to lead a normal life. Here again, in an *e contrario* interpretation, one could argue that the Turkish Cypriots choosing to remain in the south would not benefit from such help.

³⁸ Necati Münir Ertekün, *Inter-Communal Talks and the Cyprus Problem* (Nicosia: Turkish Federated State of Cyprus State Printing Office, 1977), p. 17.

³⁹ TFSC, Resolution No. 1 of the Legislative Assembly, adopted unanimously on 5 November 1976. Needless to say, the Greek Cypriot view of the Agreement is quite different. They talk about the Vienna III Agreement as a humanitarian arrangement which, if it had been properly implemented, 'would have allowed 20,000 Greek Cypriots and Maronites to stay and live a normal life in the occupied Karpasia Peninsula and the Maronite villages'. See RoC Embassy in the USA, 'The Cyprus Problem in Perspective'; available at <http://kypros.org/Embassy/cyprus/Cyprus%20Problem%20in%20Perspective.htm>. For a critical assessment of the Turkish Cypriot interpretation of the Vienna III Agreement, see Gürel and Özersay, *The Politics of Property...*, pp. 16-20.

⁴⁰ Necati Münir Ertekün, *In Search of a Negotiated Cyprus Settlement* (Nicosia: Ulus Matbaacılık, 1981), pp. 40-41.

(b) Regarding property ownership: the majority of property in the northern zone will be owned by Turkish Cypriots, and in the southern zone by Greek Cypriots (to be realised through a settlement of the property dispute on the basis of a scheme which does not include restitution of properties to dispossessed owners [from either community], or something very close).

Thus, the Turkish Cypriot position has been that it is up to the two governments (of the two communities) to resettle and rehabilitate their own displaced persons. As regards the reciprocal claims of the dispossessed owners, the Turkish Cypriot negotiators until recently have sought agreement with their Greek Cypriot counterparts on a formula of global exchange and collective compensation.

The global exchange and compensation formula was put forward as early as February 1976 in a paper at the fifth round of the Vienna Talks.⁴¹ It translates as a kind of 'lump-sum agreement' between the two Cypriot administrations, entailing an exchange of all Turkish Cypriot properties in the south for all Greek Cypriot properties in the north, with compensation to be paid, if necessary, for any difference in the value of the properties, taking into account the Turkish Cypriot losses before 1974.⁴²

Until 2003, this was a firmly held doctrine of the Turkish Cypriot administration; it was a stance promoted by both the authorities and the mainstream media, and it had the overwhelming support of the public and the major political parties. One should bear in mind that, until the publication in November 2002 of the UN proposal for the comprehensive settlement of the Cyprus problem (the so-called Annan Plan), global exchange and compensation was the property solution adopted by almost every Turkish Cypriot political party, certainly by the mainstream ones. The idea, although always rejected by the Greek Cypriots, has until recently formed the basis of the Turkish Cypriot policies concerning the properties of dispossessed persons.

Pending a settlement between the two communities, the Turkish Cypriot side acted unilaterally and adopted measures that in effect represented the first part of the sequence of needed steps towards the global exchange of properties. Thus Article 159 of the TRNC Constitution that came into operation in 1985 declared 'abandoned' Greek Cypriot properties in the north as 'the property of the Turkish Republic of Northern Cyprus notwithstanding the fact that they are not so registered in the books of the Land Registry Office' (see below). Following this, the legislation known as the *Housing, Allocation of Land, and Property of Equal Value Law* (*İskan, Topraklandırma ve Eşdeğer Mal Yasası* [İTEM law], No. 41/1977) was amended numerous times, eventually to allow the granting of title deeds to various categories of TRNC citizens who had been allocated such properties (Amendment Law No. 52/1995) (see below).

⁴¹ See Ertekün, *Inter-Communal Talks...*, pp. 29–32.

⁴² *Ibid.* The losses that have allegedly arisen due to 'all kinds of usurpations of Turkish land over the years, of illegal acquisition of Turkish land and of preventing [since 1963] the registration of land in the names of the Turks'.

Under this law, titles to ‘abandoned’ Greek Cypriot properties, allocated on the basis of properties of ‘equal value’ left in the south, were issued after all rights relating to the latter were transferred to the state (TRNC). This arrangement, adopted in accordance with the above-mentioned article of the Constitution, clearly reflected the assumption that a global exchange of properties would be part of an eventual solution. In addition, there are provisions in the İTEM law under which certain groups of TRNC citizens who did not necessarily leave any property in the south were given ownership of Greek Cypriot properties, this time the assumption no doubt being that what would not come under global exchange would be dealt with under a scheme of global compensation.

Under these arrangements compensation to Greek Cypriot dispossessed owners was withheld, presumably until acceptance of an exchange-based formula in the negotiations to end the Cyprus problem. This situation changed when the Turkish Cypriot government passed in December 2005 the *Law Regulating Compensation, Exchange and Restitution of Properties*, No. 67-2005. The law has been implemented in response to judgements by the ECtHR in cases concerning Greek Cypriot dispossessed owners’ property claims. The law established an ‘Immovable Property Commission’ (IPC) with authority to decide on three alternative forms of settlement of such claims: restitution of the property, property exchange between north and south, or payment of compensation in return for relinquishing title to the property. The objective here has been to provide a redress mechanism that conforms to the standards of the Convention on European Human Rights while at the same time respecting the bizonality principle, as understood by the TC side.⁴³ In March 2010 the Court approved this mechanism as an ‘effective domestic remedy’ under the Convention.⁴⁴

3.2 LEGAL ARRANGEMENTS

3.2.1 CONSTITUTIONAL PROVISIONS

One of the basic provisions relating to property rights, *Article 36* of the TRNC Constitution, contains standard clauses which are almost identical to those in the main Article regarding property in the RoC Constitution (Article 23). It stipulates that every citizen has a right to property and a right of inheritance, and that these rights can be restricted by law in the public benefit. It also specifies, in terms which are exactly the same as those in its predecessors, that: ‘Restrictions or limitations which are absolutely necessary in the interest of the public safety or the public health or the public morals or the town and country planning or the development and utilisation of any property to the promotion of the public benefit or for the protection of

⁴³ The relevant legislation refers to ‘the principle of and the provisions regarding protection of bizonality, which is the main principle of 1977-1979 High Level Agreements and of all the plans prepared by the United Nations on solving the Cyprus Problem’ (see below).

⁴⁴ *Demopoulos v. Turkey and 7 other cases* (Admissibility, 2010), App. Nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04.

the rights of others may be imposed by law on the exercise of such right.’ Another clause, which is identical to the relevant clause in its predecessors, states that: ‘Just compensation shall be promptly paid for any such restrictions or limitations which materially decrease the economic value of such property.’

What is different from the norm is the final paragraph of Article 36, which is directly related to the circumstances that emerged after the 1974 division of the island. It stipulates that the right of the State (i.e., the TRNC) to the immovable properties mentioned in Article 159 of the same Constitution (see below) is reserved. Article 159 is a very important article that specifies that the TRNC has ownership over all public property within its territory, including property registered in the name of the RoC government, and in effect over all private property registered in the name of either Greek Cypriot individuals or Greek Cypriot corporations.

Article 37 of the TRNC Constitution refers to the State’s duty to ensure efficient utilization of land and to provide land to farmers who own no or an insufficient amount of land. A partial implementation of this constitutional provision came to pass as a result of land distribution as provided under *41/1977 Settlement, Land Distribution, and Equivalent Property (ITEM) Law* (see below). Needless to say, this application relied on the availability of abundant land due to around 1.5 million donums of Greek Cypriot property left behind in the north after 1974.

Article 41 is a standard provision for regulating compulsory acquisition and requisition of immovable property by the State, in a similar manner to that in Article 23 of the RoC Constitution. *Article 42* states – as did both the TFSC and RoC Constitutions – that compulsory acquisition and requisition of Vakf land shall be regulated by the Basic Principles of Evkaf (*Ahkâm-ul Evkaf*).

Article 43 provides for nationalisation with compensation, in the public interest, of movable and immovable properties of ‘aliens’⁴⁵

Article 44 of the TRNC Constitution stipulates the State’s duty to ensure that the housing requirements of families without a home are met. Obviously, this provision is relevant to the rehabilitation of displaced persons. The statute through which this article has been implemented as such is *41/1977 Settlement, Land Distribution, and Equivalent Property (ITEM) Law* (see below).

Article 159 is a much-debated and significant provision of the TRNC Constitution. Crucially, it involves the ‘nationalization’ of all immovable property registered in the name of Greek

⁴⁵ The term alien, as defined in Law 32/1975 as well as in Law 41/1977 (see below for both laws), refers to any natural or legal person who is not a TRNC citizen or a member of the Turkish Cypriot community and:

(a) is a citizen of the RoC or is of Cypriot origin; or

(b) is a citizen of Greece or is of Greek origin; or

(c) as a legal person such as a company, a partnership, or any other kind of institute, was partly or wholly established by persons such as the above.

In case of persons who are citizens of any other country or are of any other national origin, the Council of Ministers has the discretion to decide whether to consider them as ‘alien’.

Cypriot individuals or corporations as well as all immovable property registered in the name of the RoC government. Paragraph 3 of the Article specifies which of these 'nationalized' properties belong to the group whose ownership may be transferred to real and legal persons as regulated by law.⁴⁶ Again, the statute under which this took place is 41/1977 *Settlement, Land Distribution, and Equivalent Property Law* (see below).

It is important to note here, however, that the above-mentioned act of nationalisation as stipulated in Article 159 have not been accepted by the ECtHR, which ruled that the TRNC, because it lacks international recognition as a State, cannot legally take over Greek Cypriot property. Thus, in international law, the Greek Cypriots remain the legal owners of these properties, and the refusal of the TRNC to allow them free use of their properties constitutes a 'continuing violation' of the European Convention on Human Rights.⁴⁷

Paragraph 4 of Article 159 provides for the regulation by law of payment of compensation to (Greek Cypriot) persons claiming legal rights in connection with the immovable properties they left behind within the boundaries of the TRNC. This provision came to be implemented by 67/2005 *Law for Compensation, Exchange and Restitution of Immovable Properties* (see below).

Transitional Article 1 concerns the safeguarding of rights of persons who have been affected by the Cyprus conflict. Paragraph 1 of this Article provides for a law laying down the social, economic, financial and other measures necessary to protect citizens who migrated or incurred any loss because of or during the national resistance of the Turkish Cypriot community. Paragraph 2 affirms, gives priority to, and provides for a law regulating the right of TRNC citizens to claim 'immovable property of equal value, from the State [from among those described in Paragraph 2 of Article 159], in return for their immovable properties left in Cyprus outside the boundaries of the State'. Paragraph 3 of the same Article is for rehabilitation of refugees/displaced persons (*göçmenler*). It stipulates that the State shall take social, economic, financial and other measures necessary to rehabilitate such persons as self-sufficient individuals useful to their families and the community, and to provide them with aid until they are rehabilitated. Paragraph 4 affirms, and provides for a law to regulate, the rights of TRNC citizens 'to claim compensation for loss of income or damage sustained by them as a result of being obliged to abandon their movable and immovable properties'. Again, 41/1977 *Settlement, Land Distribution, and Equivalent Property Law* has been the legislation regulating the application of the provisions of this Article.

⁴⁶ This category is said to comprise immovable properties 'which were found abandoned on 13th February, 1975 when the Turkish Federated State of Cyprus was proclaimed or which were considered by law as abandoned or ownerless after the above-mentioned date, or which should have been in the possession or control of the public even though their ownership had not yet been determined' but which are not 'forests, green areas, monuments and parking places, waters, underground waters, natural resources and buildings, installations and sites required for defence, public administration and military purposes and those required for purposes of town and country planning and soil conservation'.

⁴⁷ See ECtHR, *Loizidou v. Turkey* (Merits), App. No. 40/1993/435/514 (1996), paras. 44-46.

Paragraph 5 of *Transitional Article 1* of the TRNC Constitution stipulates that the transfer of ownership of immovable properties described in Paragraph 2 of Article 159 (i.e., properties left behind by Greek Cypriots) to 'entitled persons' (as described by 41/1977 *Settlement, Land Distribution, and Equivalent Property Law*) 'shall be completed within a period of five years, at the latest, as from the date of the coming into operation of this Constitution' – a requirement which the authorities could not fulfil.

Transitional Article 3 concerns the transfer of ownership of 'forest lands' which, although State property, have been used as agricultural land since 1 January 1955. It provides for a law to regulate transfer of such land to its user. This has been done through 19/2003 *Law Regulating Transfer and Lease of Low Altitude Forest Lands*.

3.2.2 RELEVANT INTERNATIONAL TREATIES

The European Convention on Human Rights and its First Protocol applies as part of the Turkish Cypriot legal regime by virtue of the fact that it was ratified in 1962, i.e., before December 1963, by the joint parliament of the RoC, the House of Representatives in which Turkish Cypriots participated.⁴⁸ This means that the Convention is part of the domestic law that prevails in the Turkish Cypriot-administered territory.⁴⁹ However, the TRNC is not – and indeed cannot be – a party to the Convention as it is not an internationally recognized.

In a similar way, *the Universal Declaration of Human Rights* is part of Turkish Cypriot law. In addition, the TRNC Legislative Assembly ratified the following: *International Convention on the Elimination of All Forms of Racial Discrimination*; *International Covenant on Social, Economic and Cultural Rights*; and *International Covenant on Civil and Political Rights*.⁵⁰

3.2.3 STATUTES

Rule for Preventing Sale of Property to Persons not belonging to the Turkish Community, No. 6/1969

This is a consolidating law which dates to the period following the breakdown of the bi-communal government of the RoC. It incorporates Amendment Law Nos. 17/1970, 38/1970, 20/1973, 15/1975 and 18/1977. The main law was declared on 7 April 1969, during the period of the Assembly of the Provisional Cyprus Turkish Administration which operated according to the (applicable) provisions of the RoC Constitution.

⁴⁸ The law for ratification of the European Convention, Law No. 39/1962, prevails as part of the TRNC law. See Zaim M. Necatigil, *Kıbrıs Uyuşmazlığı ve AİHM Kısacasında Türkiye* [*The Cyprus Dispute and Turkey in the Grip of the ECtHR*] (Turhan Kitabevi, Ankara, 2005), pp. 1-2.

⁴⁹ This is due to Article 90 of the TRNC Constitution which states that: 'International treaties which have been duly put into operation shall have the force of law.'

⁵⁰ Ratification ensued through TRNC Law Nos. 26/2004, 27/2004, and 29/2004, respectively.

The purpose of the law is to prevent the sale of (Turkish Cypriot-owned) property to persons not belonging to the Turkish Community, or to legal entities consisting in such persons. The actual aim is to prohibit the transfer of property under Turkish Cypriot ownership to Greek Cypriot ownership.

In the rule, the term 'persons not belonging to the Turkish Community' is specified as 'persons other than those described in paragraph 2 of Article 2 of the RoC Constitution or legal persons comprising such persons'.

As amended by Law 15/1975, the rule stipulates that in case of property that is found by the court to have been sold in breach of the relevant legislation, land registry record of its transfer to persons not belonging to the Turkish Community shall be ignored and considered invalid. In such a situation, the vendor shall have no right or claim to ownership. Also, in cases which have not come before the court, if according to the land registry a property is discovered to have been sold to persons not belonging to the Turkish Community, the record of such transfer can be nullified by a decision of the Council of Ministers. The possession and administration of such property are given to the Evkaf Administration.

Also, as amended later by Law 18/1977, irrespective of the present law or any other legislation, the rule criminalises sale of property to persons not belonging to the Turkish Community after the date of 20th July 1974. According to the rule, such vendors shall be tried in court and shall be deprived of any right to equivalent property or compensation (see Law 41/1977) on the basis of the sold property.

This law is a very good example of legislation made based on conflict-related anxieties. It clearly reflects a concern for preservation of the amount of property belonging to Turkish Cypriots compared to that held by Greek Cypriots.

It is interesting to note that in the TRNC today, unlike in the past, sale of property to foreigners takes place as regular practice with the permission of the Government; albeit subject to restrictions as provided, until 2008, by the *Acquisition of Immovable Property (Aliens) Law*, Cap. 109 and, since 2008, by 52/2008 *Immovable Property Acquisition and Long-term Lease (Foreigners) Law* (see below), which replaced former.⁵¹

Rule for Provision of Aid to Turkish Displaced Persons, No. 8/1971

The law was declared on 12 March 1971, during the period of the Assembly of the Provisional Cyprus Turkish Administration which operated according to the (applicable) provisions of the RoC Constitution. Its purpose is to regulate the provision of aid to Turkish community members who were displaced as a result of the incidents that occurred from 21 December 1963 onwards.

⁵¹ See <http://www.prio-cyprus-displacement.net/default.asp?id=756>.

In the law, the term 'displaced person' (*göçmen*) is defined as Turkish community members who, following the incidents of 21 December 1963, had to leave their residences and take refuge in Turkish areas, or were evacuated from their residences by the relevant authorities in order to enable the defence of Turkish areas. According to the law, aid is provided to heads of family and family members not individually considered as displaced.

The law still prevails as it has not been revoked.

Law for Provision of Aid to Martyrs' Families and War Veterans, No. 7/1974

This is a piece of consolidating legislation, incorporating four amendment laws with the same title: Nos. 11/1975, 25/1984, 70/1989 and 33/2002.

The main law was passed on 15 February 1974 (i.e., before the 1974 division), during the period of the Assembly of the Cyprus Turkish Administration which operated according to the (applicable) provisions of the 1960 RoC Constitution.

This law is for provision of aid to families that have been affected by violence due to the inter-communal conflict from August 1958 onwards. Under this law those who are entitled to aid include families of martyrs, victims of incidents, and disabled war veterans. The law also stipulates the establishment of aid committees, their competences and other matters.

Amendment 33/2002 redefined those previously having the status of 'victim of incidents' as 'martyr' and abolished the former status.

Law for Collation and Control of Ownerless Movable Property, No. 17/1975

This law was passed after the division of 1974, on 26 June 1975, by the Constitutional Assembly of the TFSC.

In the law, 'ownerless movable property' is defined as movable property that has become ownerless as a result of its owner leaving the (TFSC, which later became) TRNC, due to the situation that emerged after 20 July 1974. Such property is said to belong to the Turkish Cypriot Community and that the (TFSC, which later became) TRNC is in charge of its possession and control.

According to the law, no one is allowed to have in their possession or control such property without a certificate of allocation issued by the relevant department of the (TFSC, which later became) TRNC. The law states that those identified to be trading in ownerless movable property will be prosecuted as those who have it (the property) in their possession and control without formal allocation. Other provisions of the law are as follows. All allocations made prior to the day the law enters into force shall be reviewed. Allocations made to those who are not family members of a martyr, war veteran or missing person, or who are not displaced shall be cancelled; and only after the above-mentioned families or displaced are provided with adequate movable properties necessary for normal life, can allocations be made to other citizens in accordance with their needs. Precious paintings and other items that have historical value shall not be allocated to anyone. They shall be put under care in the State museum.

Land Registry (Special Rules) Law, No. 19-1975

This law was passed on 3 July 1975 by the Constitutional Assembly of the TFSC. The law regulates the operation of the Land Registry Department. It defines the term ‘south zone’ as the zone outside the borders of the [TFSC which later became] TRNC.

Section 3 of the law pertains to the creation of land registry records for certain villages and quarters in the Turkish Cypriot-controlled areas (and the Sovereign British Base Areas), the original records of which are missing as they remained in the southern part of Cyprus. It states that records of such areas which are on ‘microfilms’ are transferred onto a Special Registry. Property in villages which cannot be found recorded on microfilm is recorded in the Special Registry on the basis of the title deed presented by the owner after authenticity of the document has been verified. The law also contains provisions for proving ownership in the absence of title deeds.

Law for Control and Management of Properties of Foreigners, No. 32-1975

This law was passed on 15 September 1975 by the Constitutional Assembly of the TFSC. It, together with Law 33/1975 which was passed at the same time (see immediately below), is significant as being the first legislative regulation for management, in effect, of Greek Cypriot property left in the northern part of Cyprus after the island’s *de facto* division in 1974. Its entering into force revoked the *Rule for Control of Property of Persons not belonging to the Turkish Community (Temporary Provisions)*, No. 08/1969.⁵²

The law defines the terms ‘foreigner’ or ‘foreign person’ as someone who is neither a citizen of the [TFSC which later became] TRNC nor a member of the Turkish Cypriot community and:

- (a) who is a citizen of the RoC or of the Greek Cypriot administration or of Cypriot origin; or
- (b) who is a citizen of Greece or of Greek origin; or
- (c) irrespective of whether or not it is a legal person, is a company, partnership, or any other kind of religious, social, cultural, etc., organization, partly or wholly established by persons such as the above.

In case of persons who are citizens of any other country or are of any other national origin, the Council of Ministers has the discretion to decide whether to consider them as ‘alien’.

Immovable properties that come under this law include ‘immovable properties of foreigners’ which are defined as properties located in the area under the control and administration of the [TFSC which later became] TRNC and belong to ‘foreign persons’ residing outside the above-mentioned area. The law also applies to immovable properties that are located within the above-mentioned area and are either abandoned or are owned by persons whose identity and whereabouts are unknown.

⁵² This law, which was originally declared on 7 May 1969 by the Legislative Assembly of the Provisional Cyprus Turkish Administration, brought all Greek Cypriot property in the then Turkish Cypriot-controlled areas under the management of an administrator appointed by the Executive Council of that Administration.

The law puts immovable properties described above in the care, control and management of the Ministry of Finance. The latter is also given the authority to deal with the property in the public interest in every way that its owner would be able to, except to sell it or perform any other land registry transaction that might prejudice property rights.

The Ministry of Finance is responsible for arrangements concerning leasing of properties to its occupants or to those who wish to occupy such property.

The law also contains sections on: (a) immovable properties partially or wholly under the control of the military; and (b) immovable properties which have been occupied for 'national purposes' by 'Fighters' (*Mücahids*)⁵³ or displaced persons.

Law for Allocation of and Investment in Properties of Foreigners, No. 33-1975

This law was passed on 15 September 1975 by the Assembly of the TFSC.

In this law, the terms 'foreigner' and 'foreign person' are defined as in Law 32/1975 described above. Also, immovable properties that come under this law are the same as those defined and covered by Law 32/1975.

This law defines 'general allocation' as allocation by the Council of Ministers to other relevant ministries, authority, department or other public institutions of 'immovable properties of foreigners' for possession by private or public legal persons and public institutions. The law stipulates that control, management and allocation of foreigners' properties are carried out by the Council of Ministers.

The Council of Ministers may decide and make rules (to be approved by the Parliament) in order to transfer certain areas or certain properties to the control and management of another ministry or department, specifically allowing these properties to be allocated by the latter and in accordance with relevant rules for the purposes of rehabilitation and resettlement of the displaced, housing, tourism, industrial, business, farming, development, protection, etc.

Settlement, Land Distribution, and Equivalent Property (İTEM) Law, No. 41/1977

This is a very elaborate and important piece of legislation that lays down the rules regarding allocation of use, and eventually, ownership (1995) of property which Greek Cypriots left behind in the north to Turkish Cypriot citizens residing in that area. It is sometimes referred to as the 'İTEM Law'. Here *İTEM* is the acronym for the descriptive part of the law's title in Turkish: *İskan, Topraklandırma ve Eşdeğer Mal Yasası*.

The consolidating law incorporates 12 amendments from 1981 to 1998 (Amendment Law Nos. 5/1981, 27/1982, 23/1985, 3/1988, 12/1989, 44/1990, 24/1991, 53/1991, 17/1992, 6/1994, 52/1995 and 39/1998). The main law was passed on 3 August 1977 by the Assembly of the TFSC which operated under the TFSC Constitution. It is executed by the ministry that is responsible for matters of housing.

⁵³ See footnote 16.

The law's purpose comprises the following:

- regulation, in accordance with principles of productivity and social justice, of ownership, possession/tenure and management of properties that are located in the area controlled by the [TFSC which later became] TRNC and are 'abandoned by foreigners or by persons whose identity and whereabouts are unknown' (as defined in Law 32/1975). Properties relevant here are houses, small business premises/shops, farming land, building land, and similar;
- provision of land, equipment, livestock and loans to those in the agriculture sector, including displaced persons or residents who are farmers, so as to enable them to become producers;
- provision, in accordance with family size, of adequate social housing and essential household goods to families of martyrs, war veterans and displaced persons;
- provision of work places and equipment and operational loans to small businesses and artisans;
- provision of equivalent property and compensation to those whose properties are either outside the boundaries of the (TFSC, which later became) TRNC or whose properties are inside those boundaries but cannot be used for military reasons;
- in case of property which lies within the boundaries of the (TFSC, which later became) TRNC and is damaged either by Greek Cypriots or through being abandoned because of use of force by Greek Cypriots, provision for its repair or compensation for the damage it suffered;
- provision of financial aid and benefits in kind to displaced persons for a certain period in which they would become self-sufficient;

The law defines various categories of 'rightful persons' or persons eligible to benefit from certain provisions of the law. The overarching requirement for eligibility is to be a 'Turkish citizen' (sic). The categories are as follows:

- regarding land distribution: persons who are heads of family residing in land distribution areas and earning or having to earn their living from farming; persons who are employed in jobs other than as public servants with income below a certain level and who are capable as farmers;
- regarding allocation of housing: closest relatives of martyrs; war veterans; heads of family who are displaced or fall in the category of persons eligible for economic development support and who, family members' property included, own no more than half the share of a house or own a house that is not habitable for health reasons;
- regarding allocation of work place: with priority given to the displaced, persons who have the professional skills appropriate for the work place to be allocated;
- regarding equivalent property and compensation: persons whose properties lie either outside the boundaries of the (TFSC which later became) TRNC or whose properties are inside those boundaries but cannot be used for military reasons; persons whose properties lie within those boundaries and are damaged either by Greek Cypriots or through being abandoned because of use of force by Greek Cypriots; and private and legal persons in charge of Vakf properties;

- persons who served in the TMT or as a Fighter (*Mücahit*) between 1 August 1958 and 30 November 1976 (date of entry into force of the law establishing the Cyprus Turkish Security Forces – Law 29/1976); members of the Turkish army who fought in the 1974 war and who received citizenship of the (TFSC, which later became) TRNC and became a resident by 3 May 1985 (on condition that applications by such persons are dealt with only after completion of transactions concerning equivalent property provisions).

In the law, 'displaced person' is defined as

- Turkish Cypriots whose main residence was outside the borders of the (TFSC which later became) TRNC and who, after 20 July 1974, moved to the (TFSC, which later became) TRNC;
- persons who in support of or during the national resistance had to migrate within Cyprus;
- persons who were forced by Turkish authorities to change location;
- persons who are identified by the Council of Ministers to have had to leave the island in the past because of Greek Cypriot oppression;
- persons who were approved to be settled because their labour, know-how and capital could assist in overall development of the (TFSC which later became) TRNC, provided they became citizens or satisfied certain conditions to be determined by the Council of Ministers.

In 1982, Amendment Law No. 27/1982 established a 'points' system for assignment of tenure of properties (of foreigners, i.e., Greek Cypriots) to 'rightful persons' as defined above, either on the basis of properties that are left in the south (or are in the north but unusable for military reasons or because of violence-related destruction or abandonment) or in place of other forms of compensation again defined in the same law.

Within this system, 'point' is a unit of measure of value for:

- (a) 'properties of foreigners' within the (TFSC, which later became) TRNC;
- (b) properties left outside the boundaries of the (TFSC which later became) TRNC or properties that are inside those boundaries but cannot be used for military reasons, or are unusable for military reasons or because of violence-related destruction or abandonment;
- (c) compensation awarded to those who served in the TMT or as a Fighter (*Mücahit*) between 1 August 1958 and 30 November 1976 (date of entry into force of the law establishing the Cyprus Turkish Security Forces – Law 29/1976); and to members of the Turkish army who fought in the first and second peace operations (1974), and received citizenship of the (TFSC which later became) TRNC and became a resident by 3 May 1985 (Law 12/1989);
- (d) Compensation to relatives of martyrs and war veterans (Law 17/1992).

Amendment Law No. 27/1982 provides for points to be awarded in exchange for properties under (b) above in return for the owner's relinquishing of title in favour of the State. In exchange for points thus received it also stipulates rules for granting the 'definitive possession certificate' for properties under (a) above (equivalent property exchange). With these arrangements transfer or mortgaging of properties became possible.

Amendment Law No. 12/1989 provides for the award of points to persons mentioned in (c) above and, in exchange for such points, the 'definitive possession certificate' of properties under (a) above.

Amendment Law Nos. 24/1991, 53/1991, 17/1992 and 52/1995 provide for use of points under (c) and (d) to be exchanged for the 'definitive possession certificate' of properties under (a) allocated for purposes of housing and land distribution. Further, they allow for purchase of points (up to a certain amount) with permission of the relevant government department to make up for any deficiency in points. In addition, they provide for cases where, for the difference (up to a certain amount) measured in points, payment can be made to the state at a nominal price.

Crucially, Amendment Law No. 52/1995 elevates the status of 'definitive possession certificate' to the status of 'immovable property title deed' (*koçan*, pronounced as *kochan*). The latter term is said to carry the same meaning as in *Immovable Property (Tenure, Registration and Valuation) Law*, Cap. 224. According to the amendment, any 'definitive possession certificate' issued under this law (41/1977) shall be read and interpreted as 'immovable property title deed'.

Amendment Law No. 39/1998 provides for those who are renting to apply for title in exchange for points (awarded or bought) or payment to the State.

Law for Registration of Properties Bought from Foreigners, No. 7/1980

The law was passed on 20 March 1980, during the period of the Assembly of the TFSC which operated under the TFSC constitution. It was amended twice (Law Nos. 54/1987 and 8/2008).

The law concerns Turkish Cypriots who bought properties from foreigners (as defined in Law 32/1975) on contract before 20 July 1974 and who were unable to register such property in their name due to the circumstances in the country. The law regulates the registration of such property transfers, provided that the contract is in accordance with the conditions it stipulates.

Law Concerning Properties of the Treasury, 32/1983

The law was passed on 20 May 1983 by the Assembly of the TFSC which operated under the TFSC Constitution. It stipulates that the Ministry of Economy and Finance shall exercise on behalf of the State the rights and powers over the properties of the Treasury as well as the rights and powers to administer, maintain, protect, repair, lease and use these properties.

'Property of the Treasury' is defined as movable and immovable property belonging to the RoC or the (TFSC which later became) TRNC or belonging to an official department or organisation. The term also refers to foreigners' immovable properties which are not under the control and possession of the ministry responsible for settlement, land distribution and equivalent property (as defined in Law 41/1977) as well as ownerless properties.

Law for Provision of Land to Children of Martyrs, No. 21/1985

This law was passed on 16 April 1985, during the period of the TRNC Constitutional Assembly which operated under the TFSC Constitution.

It is for regulating the granting of building plots to children of martyrs and victims of incidents. To qualify for such ownership, such a child needs to have been under the age of 20 on the day of the demise of his/her parent as a martyr or victim of incidents. Exceptions to this rule are unmarried female children, male children under the age of 27 at the time and studying in a higher educational institute, and male children who are physically or mentally handicapped.

Law for Regulation of Sales and Transfers during 1963-1974, No. 27-1987

This law was passed on 15 May 1987 by the TRNC Assembly operating under the TRNC Constitution. It concerns legal transactions relating to immovable property completed with the 'Greek Cypriot Administration of Southern Cyprus'⁵⁴ between 21 December 1963 and 20 July 1974. Its purpose is to regulate the verification of those transactions after which they would be regarded as having been completed with the TRNC and thus as being legally valid.

Settlement and Rehabilitation Department Law, No. 43-1989

The law was passed on 16 June 1989 by the Assembly of the TRNC. It concerns the establishment and operation of the Department of Settlement and Rehabilitation, entrusted with the responsibility for implementing 41/1977 Settlement, Land Distribution and Equivalent Property Law.

Law Regulating Lease of and Investment in Properties of the Treasury (Leasing and Investment), No. 63-1993

The law was passed on 9 November 1993 by the Assembly of the TRNC. The law defines 'Immovable property of the Treasury' as immovable property which was located in the Turkish Republic of Northern Cyprus on 15 November 1983, and which includes:

- (a) immovable properties registered in the name of the Cyprus Government before 16 August 1960 as well as those transferred to or registered in the name of the Republic of Cyprus after that date;
- (b) immovable property that was abandoned on 13 February 1975 or after that date regarded as abandoned or ownerless by Laws 32/1975, 33/1975 or 41/1977, or immovable property whose owner could not be determined but which ought to be under public control and possession;
- (c) Immovable property located in military installations, docks, camps and other training fields as determined by the 1960 Treaty of Establishment and its annexes.

⁵⁴ This is the official term used by Turkish Cypriots and Turkey for what the rest of the world recognizes as the RoC either as the State or its government.

The purpose of the law is to regulate the lease of and investment in such properties in accordance with the principle of 'public benefit'. The term 'public benefit' is specified in the law as encompassing:

- rise in living standards through increase in production, employment, services and hence in gross national product and revenues as a result of new big investment projects or of large-scale renovation and development of existing projects on leased immovable property of the Treasury;
- citizens' ability to enter and use freely coastal areas and beaches;
- protection of the natural environment, prevention of environmental pollution and preservation of ecological equilibrium.

Law Regulating Compensation, Exchange and Restitution of Properties, No. 67-2005

This is a consolidating law incorporating four amendments (Law Nos. 59/2006, 85/2007 and 74/2009, 56/2011). The main law was passed on 19 December 2005 by the Legislative Assembly of the TRNC.

The title of the law in full is 'Law for the Compensation, Exchange and Restitution of Immovable Properties, which are within the scope of sub-paragraph (b) of paragraph 1 of Article 159 of the Constitution'. It implements paragraph 4 of Article 159 which provides for a law to regulate payment of compensation to (Greek Cypriot) persons claiming legal rights in connection with the immovable properties which they left behind within the boundaries of the TRNC.

Its purpose is described as the regulation of procedures for claims to movable and immovable properties which are within the scope of this law – i.e., the properties of Greek Cypriot dispossessed owners – as well as 'the principles relating to restitution, exchange of properties and compensation payable in respect thereof, having regard to the principle of and the provisions regarding protection of bizonality, which is the main principle of 1977-1979 High Level Agreements⁵⁵ and of all the plans prepared by the United Nations on solving the Cyprus Problem and without prejudice to any property rights or the right to use property under the Turkish Republic of Northern Cyprus legislation or to any right of the Turkish Cypriot People which shall be provided by the comprehensive settlement of the Cyprus Problem'.

This legislation provides for the establishment of an 'Immovable Property Commission' (IPC) authorised to decide on three alternative forms of redress: restitution – under certain circumstances – of the immovable property; exchange of properties; or payment of compensation. Under the Law, compensation is available for the total of the market value of the immovable

⁵⁵ These are two landmark agreements between the Greek Cypriot and Turkish Cypriot leaders (the first being between Archbishop Makarios and Rauf Denktaş and the second between Spyros Kyprianou and Rauf Denktaş) which in effect laid down that the federal Cyprus they were negotiating would be bicommunal and bizonal. The texts of these agreements are available at <http://www.prio-cyprus-displacement.net/default.asp?id=752>.

property on 20 July 1974, together with compensation for loss of use. Compensation is also payable for non-pecuniary damages in relation to immovable property used as a dwelling home prior to that date, and in relation to movable properties.

As to the composition of the Commission, the Law prohibits the appointment of persons who directly or indirectly benefit from property owned by displaced Greek Cypriots. The Commission is composed of at least five, at most seven members, with at least two members who are not Turkish Cypriot, Greek Cypriot or nationals of Turkey, Greece, or United Kingdom.

Originally the Law stipulated that claimants might submit their applications to the IPC within two years starting from the Law's date of entry into force. This period has since been extended three times, each time by two years (Law Nos. 85/2007 and 74/2009, 56/2011). Currently, the deadline for applying to the IPC is 21 December 2013.

Law Concerning Transfer and Registration of Rights over Immovable Properties, No. 13-2008

The law was passed on 3 March 2008 by the Assembly of the TRNC.

Its title in full is: 'Law for Transfer and Registration of Rights to Immovable Properties that are within the scope of Article 159 of the Constitution, and which, under the Turkish Republic of Northern Cyprus Law, are not owned by any real person or legal person apart from the State, and which are currently in the possession of a real or legal person or the State'

The law relates to persons who can prove that an immovable property under the scope of this law was registered in their name on 20 July 1974, or was legally inherited by them, or was legally purchased from the owner or his/her legal heir by 20 July 1974. It regulates the procedure and conditions enabling such persons to transfer all their legal rights to the property to other real or legal persons. It does this in accordance with 'the principle of and the provisions regarding protection of bizonality, which is the main principle of the 1977-1979 High Level Agreements and of all the plans prepared by the United Nations on solving the Cyprus Problem and without prejudice to any property rights or the right to use property under the Turkish Republic of Northern Cyprus legislation or to any right of the Turkish Cypriot People which shall be provided by the comprehensive settlement of the Cyprus Problem'.

Law Concerning Immovable Property Acquisition and Long-term Lease (Foreigners), No. 52/2008

The law was passed on 10 November 2008 by the Assembly of the TRNC. It revoked the 1936 *Acquisition of Immovable Property (Aliens) Law*, Cap. 109.

It stipulates the rules that apply to acquisition of immovable property in the TRNC by foreigners through purchase or long-term lease. The law defines 'foreigner' as someone who is not a citizen of the TRNC. The term 'foreigner' refers to real or legal persons. In the law, 'foreign legal person' is defined as:

- (a) a company with foreigners comprising more than half of its directors and/or shareholders;
- (b) an institution, organisation, society, foundation, club or other similar non-governmental establishment in which the majority of the votes belong to foreigners, or which is in some way controlled by foreigners.

Long-term lease is for a minimum period of ten and a maximum period of 99 years. Based on the terms of contract, construction may be permitted on an immovable property leased under this law. The legal interest in the leased property may be transferred, mortgaged, leased again for the remaining period of lease, and bequeathed to heirs of the leasing person.

4. INTERNATIONAL VALIDITY OF THE LEGAL ACTS OF THE TRNC

As can be seen from the legislation introduced in the previous section, several legal acts of the TRNC involve and impinge on the property rights of many Greek Cypriots, none of whom are resident in the TRNC. These individuals are those who have, after 1974, lost access to – and thus became dispossessed of – their properties located in the northern part of the island which is now the TRNC territory. Since 1975 they have come to be considered as ‘foreigners’ and their properties have been taken over by the Turkish Cypriot state. Under the TRNC property regime and other legal provisions for rehabilitation of Turkish Cypriots affected by the conflict, ownership of most of these properties has been transferred to other ‘real and legal persons’.

Initially, all this was carried out without any mechanism being in place for compensating or otherwise addressing claims of legal interest in these properties by their dispossessed Greek Cypriot owners. Starting in the mid-1990s, however, many Greek Cypriot individuals as well as their government (the *de facto* Greek Cypriot-controlled RoC) applied to the ECtHR claiming that their human rights were being violated by Turkey. The cases were brought against Turkey rather than the TRNC because (a) the TRNC is not a party to the European Convention on Human Rights; (b) Turkey is a party to the European Convention on Human Rights; and (c) Turkey has a certain degree of control in the TRNC not least because of the presence of its armed forces there. The ECtHR, attributing the responsibility to Turkey, found that the TRNC’s acquisition of Greek Cypriot properties is not valid under the Convention; therefore the Greek Cypriot dispossessed owners retain their title; and their prevention from accessing the properties violates their rights to property and to the home (under Article 1 of Protocol 1 to the Convention and Article 8 of the Convention, respectively). Further rulings of the Court accepted the requirement of exhaustion of local remedies in northern Cyprus prior to bringing a case before it (under Article 35 of the Convention) provided that such remedies are effective, and ordered the introduction of such a local mechanism. These rulings eventually led to the establishment in the TRNC of the so-called Immovable Property Commission (IPC) under Law No. 67/2005. Now the IPC, recognized by the ECtHR as an effective domestic remedy, is dealing with applications from Greek Cypriots claiming legal interest in properties in northern Cyprus.

One important consequence of these proceedings was that the legal acts of the TRNC came under the scrutiny of international law in terms of their validity, given the TRNC’s lack

of international recognition as an independent state. A pertinent question in this inquiry, of course, is this: 'where does the TRNC stand under international law?'

The TRNC's status under international law has been described as a '*de facto* state' in the sense which is close to the following definition by Pegg:⁵⁶

'a *de facto* state exists where there is an organized political leadership which has risen to power through some degree of indigenous capability; receives popular support; and has achieved sufficient capacity to provide governmental services to a given population in a defined territorial area, over which effective control is maintained for an extended period of time. The *de facto* state views itself as capable of entering into relations with other states and it seeks full constitutional independence and widespread international recognition as a sovereign state. It is, however, unable to achieve any degree of substantive recognition and therefore remains illegitimate in the eyes of international society.'

The fact that the TRNC has remained unrecognized (except by Turkey) and hence 'illegitimate in the eyes of the international society' is generally linked to two United Nations Security Council (UNSC) resolutions: no. 541 (1983) and no. 550 (1984). These resolutions have in turn determined the international community's attitude towards the TRNC, including that of the ECtHR where, as mentioned above, the question of the validity of the TRNC's legal acts has been considered in detail. In the following, these UNSC resolutions are described first. Next is an account of the findings of the ECtHR that relate to the question of the validity of the legal acts of the TRNC under the European Convention of Human Rights.

4.1 UN SECURITY COUNCIL RESOLUTIONS AND THE TRNC

The United Nations Security Council (UNSC) responded to the declaration of the TRNC on 15 November 1983 with its Resolution 541 (18 November 1983), which said that the Turkish Cypriot move to create an independent state was 'incompatible with the 1960 Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee'.⁵⁷ The resolution deemed the Turkish Cypriot declaration as 'legally invalid', called for its withdrawal, and also appealed to 'all States not to recognise any Cypriot state other than the Republic of Cyprus'.

Resolution 550 (11 May 1984) was the UNSC's reaction mainly to the exchange of ambassadors between Turkey and the TRNC and plans about holding a constitutional referendum and elections in the TRNC. In this strongly worded resolution, the UNSC condemned 'all

⁵⁶ See Scott Pegg, 'De Facto States in the International System', Working Paper No. 21 (Institute of International Relations, The University of British Columbia, 1998). For a detailed discussion about the TRNC as a *de facto* state, see Kudret Özersay, *Yeni Uluslararası Mahkeme Kararları Işığında Kıbrıs'ı Yeniden Okumak (Re-reading Cyprus in the Light of Recent International Court Decisions)* (İmaj Yayınevi, Ankara, 2009), chapter 1.

⁵⁷ The so-called Treaty of Establishment and the Treaty of Guarantee, together with the Treaty of Alliance, constitute the 1960 Cyprus Accords that created the RoC.

secessionist actions, including the purported exchange of Ambassadors between Turkey and the Turkish Cypriot leadership', declared them 'illegal and invalid', and called 'for their immediate withdrawal'. Moreover, the UNSC reiterated its 'call upon all States not to recognise the purported state of the "Turkish Republic of Northern Cyprus" set up by secessionist acts', and called upon them 'not to facilitate or in any way assist the aforesaid secessionist entity'.

Whether these UNSC resolutions are legally binding on States or not has been a matter of debate.⁵⁸ Irrespective of this uncertainty, however, the international community, with the exception of Turkey, so far seems to have subscribed to these resolutions and denied recognition to the TRNC. Consequently, the TRNC is distinguished from other '*de facto* states' by being one on which a 'sanction of non-recognition' is imposed by the international community.⁵⁹

4.2 THE ECtHR RULINGS REGARDING THE LEGAL ACTS OF THE TRNC

The ECtHR's established stance towards the legal acts of the TRNC can be derived from its decisions in the following four landmark cases:⁶⁰

- *Loizidou v. Turkey* (Preliminary Objections, 1995; Merits, 1996; Just Satisfaction, 1998) App. No. 40/1993/435/514
- *Cyprus v. Turkey*, Application no. 25781/94
- *Xenides-Arestis v. Turkey* (Admissibility, 2005; Merit, 2005; Just Satisfaction, 2006) App. No. 46347/99
- *Demopoulos v. Turkey and 7 other cases* (Admissibility, 2010), App. Nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04.

The main elements of the Court's decisions in these cases can be summarized as follows:

- Owing to its overall military control over the Turkish Cypriot-administered northern Cyprus, Turkey has jurisdiction and responsibility for the acts of the TRNC which exercises *de facto* authority there. Therefore any violation in northern Cyprus of human rights guaranteed under the European Convention on Human Rights is imputable to Turkey.
- The TRNC is not regarded as a state under international law. Therefore, provisions such as those under Article 159 of the TRNC Constitution, which relate to transfer of ownership of all Greek Cypriot property in northern Cyprus to the State, cannot be held to have any legal validity for the purposes of the Convention (which involve human rights protection).⁶¹

⁵⁸ See Özersay, *Yeni Uluslararası Mahkeme Kararları Işığında Kıbrıs'ı Yeniden Okumak*, pp. 24-27.

⁵⁹ *Ibid.*, p.27.

⁶⁰ In numerous other similar Greek Cypriot property applications against Turkey, the ECtHR ruled in a way that followed from its decisions in these four landmark cases. These decisions can be accessed at <http://www.prio-cyprus-displacement.net/default.asp?id=784>.

⁶¹ ECtHR, *Loizidou v. Turkey* (Merits), para. 44.

- Therefore Greek Cypriot dispossessed owners of property in northern Cyprus remain legal owners of such property.
- Arbitrary denial of access to such property constitutes a violation of the right to property and, under relevant circumstances, the right to respect for the home for which Turkey is held to be responsible.
- Validity can be attributed to certain legal acts of the TRNC as a *de facto* state, provided they are compatible with the objective and purpose of the Convention.⁶²
- The Convention requirement of the exhaustion of domestic remedies (Article 35 on admissibility criteria) covers legal acts and decisions of the judicial organs of the TRNC. Thus, a TRNC legal measure that can be shown to offer individuals reasonable prospects of success in preventing and/or redressing violations of the Convention should be regarded as an efficient domestic remedy that should be made use of.
- The IPC established under TRNC Law 67/2005 constitutes an effective domestic remedy for violation of Greek Cypriot dispossessed owners rights to property and to the home.
- As a result, in accordance with the Court's admissibility rule requiring applicants first to exhaust all available domestic remedies (Article 35), Greek Cypriot complaints regarding violations of the right to property or of the right to the home will no longer be heard by the Court unless the claimant has first sought redress through the IPC.

⁶² The Court based its stance on the so-called Namibia principle. See paras. 89-91 and 96-98 of its *Cyprus v. Turkey* judgement.

5. CONCLUSIONS

This report provides a concise summary of Turkish Cypriot legal arrangements concerning displaced persons and immovable properties of dispossessed persons. This is presented together with a description of the political and socio-economic context within which these arrangements came to be devised.

The above account of legal measures the Turkish Cypriots have felt the need to enact since 1964, and especially since the proclamation of the TRNC in 1983, lends credence to what has now become a cliché: namely that the 'property issue' is probably the main stumbling block for those seeking a compromise solution to the Cyprus problem. Any similar account of Greek Cypriot legislation in this area enacted since 1964 would merely reinforce the same conclusion. A compromise agreement would require changes to the property regimes now in force on both sides, particularly in the north.

Of course, the property issue, though perhaps the most difficult to resolve, is just *one* obstacle to the creation of a federal Cyprus. As mentioned in the Introduction, the meaning of practically all the key terms in the 'UN parameters' for a Cyprus solution – 'reunification', 'federation', 'bizonality', 'political equality' and so on – are still contested by the two Cypriot sides. And, looking at the not so promising results of their lengthy negotiations so far, one can surely be forgiven for feeling that the Cypriot interlocutors are not really seeking a compromise solution under the aegis of the UN at all; but that the two communities are simply carrying on their wars (which erupted in 1963 and 1974) 'by other means'. We can only hope that this is not so and that some significant progress in all these areas will emerge soon. An agreement about property issues should be at the top of the list.

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After 1974, Turkish Cypriots had to deal with their displaced persons (some of whom had been displaced since 1963), build up a new social and economic environment in their new territory in the north, and generally put to proper economic use the immovable properties left behind by the Greek Cypriot inhabitants of the north who had nearly all fled to the south. Over the many years that have passed since 1974, Turkish Cypriots have put in place a whole body of complex legal measures. These reflect not only the peculiarities of the socio-economic circumstances but also the political and strategic anxieties of Turkish Cypriots connected with their ongoing conflict with Greek Cypriots. What makes these measures even more complex, of course, is the fact that they have created a property regime in the north which is in some respects highly incompatible with the one in the south and quite problematic with regard to international law.

It is clear that in any process of reconciliation and/or normalization of relations between the two communities, property issues will prove to be the most challenging area. The incongruity of the property regimes operating in the two parts of the island only adds to this challenge. A sound understanding of the nature of these regimes is therefore crucial in any effort to grasp the intricacies of the Cyprus problem. This report provides a concise summary of the Turkish Cypriot legal arrangements concerned with displaced persons and immovable properties, with a particular focus on those that have been motivated by conflict-related anxieties and/or political goals.

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