The Turkish Cypriots:

The Excluded European Citizens

Turkish Cypriot Human Rights Foundation

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FOREWORD

'ISOLATION OF THE TURKISH CYPRIOTS' is an expression frequently repeated in the context of the Cyprus problem. But what does this terminology mean? What are the political and legal developments that led to the endless anomalies affecting the Turkish Cypriots? What are these anomalies when translated into everyday life? These are the questions that this book aims to answer because in the life of the Turkish Cypriots, "isolation" affects all sectors of society on every level. It affects the businessman trying to trade, the teenager trying to take part in an international cultural event, the young graduate or politician trying to pursue a career as a citizen of the EU, the human rights activist, the University students and also their Professors, and not least, the aspiring Turkish Cypriot athlete or footballer.

"Isolation" is not just about being excluded from the economic activities in which other European citizens can participate freely. It is also about individuals being subjected to exclusion from normal social and cultural events without any fault that can be attributed to them, and in a manner that injures their human dignity.

The Turkish Cypriot Human Rights Foundation (TCHRF) is an NGO set up over 3 years ago by a large group of human rights activists from all fields including academia, law, journalism, art and business, several of whom have contributed to this book. The aim was to establish a human rights organization that complies with contemporary international norms and gives priority to those issues that most affect the Turkish Cypriots both as individuals and as a community. The Foundation works to assist complainants with advice and legal support in all areas of human rights. As a Turkish Cypriot Human Rights NGO, we also place

great importance on the task of recording and reporting the full spectrum of how the continuation of the Cyprus problem has negative effects on human rights in general and on the Turkish Cypriots in particular.

In his report dated 28 May 2004 on his mission of good offices in Cyprus, the UN Secretary-General Kofi Annan called for individual states and international organisations to ***"eliminate unnecessary restrictions and barriers that have the effect of isolating the Turkish Cypriots"*.** Similarly, the European Council of Ministers made a statement dated 26 April 2004 that it was ***"determined to put an end to the isolation of the Turkish Cypriot community and to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community".*** Unfortunately, the isolation of the Turkish Cypriots referred to in these statements continues even though it is no longer justifiable as a sanction that will contribute to a solution of the Cyprus problem.

In this book, firstly we present a comprehensive study of the legal and political historical developments that form the basis of why the Turkish Cypriots are "excluded" from normal interaction with the rest of the world. Following this study is a compilation of some case-studies and comments that shed light on what living in "isolation" means. We have used as our source applications and complaints communicated to our Foundation as well as overriding observations by various esteemed contributors regarding these issues.

In the second chapter we present a collection of the oral interventions relevant to the subject of this book made by Turkish Cypriot NGO representatives at the OSCE's Human Dimension Implementation meeting held in Warsaw in autumn 2007.

As this second edition goes to publication in September 2008, and for the first time in several years, the leaders of the Turkish Cypriots and Greek Cypriots have begun full fledged negotiations aimed at reaching a proposal for a comprehensive solution to the Cyprus problem. This development makes the book even more relevant by reminding all concerned that a settlement is not just about reaching a written agreement on politically correct terms, but also is about taking brave steps to eliminate the hardships faced in the everyday life of ordinary people so long as the Cyprus problem remains unresolved.

Emine Erk

Chairperson of the Turkish Cypriot Human Rights Foundation
September 2008 - North Cyprus

PART ONE: ISOLATIONS OF THE TURKISH CYPRIOTS

Constitutional Legality of the Greek Cypriot Government of Republic of Cyprus

Introduction

Despite the de facto disappearance of the bi-communal legal government of the 1960 Republic of Cyprus (ROC) following the events of 1963, the international community believes that this legal entity and its government continue to exist. This approach is directly connected to the judgment of the Greek-Cypriot Supreme Court titled 'The Attorney General of the Republic v. Mustafa Ibrahim and Others' in 1964 (the Ibrahim Case). Notwithstanding the 'withdrawal' or 'ejection' of Turkish-Cypriot citizens of the ROC from the public services, the Greek-Cypriot court stated that the main concern must be the continuity (raison d'etat) of the state itself and created an opportunity for the erosion of the bi-communal structure guaranteed by the 1960 Constitution and treaties, by means of a reference to the concept of 'state necessity'. Thus, the political will of the international community, which favoured the approval of the Greek-Cypriot government as the single legitimate government in the Island, was justified by a 'legal' argument.

Cyprus, as an EU member state, is obliged to have a representative/democratic government and rule of law on its territory under the Charter of Fundamental Rights of the EU. However a close examination shows that there are serious deficiencies in Cyprus regarding these values/obligations, particularly in the context of its constitution. Significant numbers

of constitutional provisions have been suspended by the Greek Cypriot government through the excuse of 'state necessity' since 1963. In this study, we will try to reveal the source of this unconstitutional and illusory nature of the government of Cyprus.

I) Legal Structure of the ROC

The 1960 Cyprus Constitution was a unique internationalized legal document.[1] The 1959-1960 Cyprus Treaties set forth the Basic Articles of the Constitution. Article 182 provides that the basic articles of this Constitution, which were incorporated from the Zurich Agreement 'cannot, in any way, be amended, whether by way of variation, addition or repeal' (Article 182 (1)).[2] These articles are attached to the Constitution as an Annex. As a result of these references in the Constitution, provisions of an international treaty become part of the national legal system and contents of this treaty is guaranteed by the Constitution. Article 185 creates a further guarantee for the constitutive structure of the ROC by providing 'the Republic is one and indivisible' and the 'integral or partial union of Cyprus with any other state or the separatist independence is excluded' (Article 185 (1 & 2)). In addition to this internal guarantee, there is another guarantee at international level for these basic articles. The Basic Articles, including Article 182, which set forth the unamendable character, are recognized and guaranteed by the UK, Greece and Turkey

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[1] This idea has been supported by Lauterpacht. See, E. Lauterpacht, "Turkish Republic of Northern Cyprus-The Status of Two Communities in Cyprus", **Attachment to the Letter Dated 7 August 1990 from the Permanent Representative of Turkey to the United Nations Addressed to the Secretary-General,** A/44/968, S/21463, 1990, p. 6 and 7. The ROC was also defined as an 'international state' by Tamkoc. See M. Tamkoç, **Turkish-Cypriot State, The Embodiment of the Right of Self-determination,** London, Rustem and Brothers, 1988, p. 63 and 68.

[2] But it is provided by the paragraphs 2 and 3 of this article that articles other than the basic ones can be amended subject to a special process.

through the Treaty of Guarantee (Article II (1)). As a party to the Treaty of Guarantee, ROC itself undertakes to respect its constitutional order established on the basis of Basic Articles. Source of this international obligation is referred in the Constitution. According to Article 181 of the Constitution, the Treaty of Guarantee has a constitutional force and is attached to the Constitution as an Annex.

The unamendable Basic Articles of the Cypriot Constitution reflects the idea that the will of state can occur only if there exists a combination of the wills of two separate Communities. In many areas within the jurisdiction of the ROC decisions of the state organs should contain the consent of both Communities. This legal structure brings about the conclusion that the international legal personality of the ROC necessitates the existence of a representative government for both Greek and Turkish-Cypriot Communities. This formulation prohibits the imposition of one of these wills to be treated as the will of the ROC.

The bi-communal character of the ROC was integrated in the structure and functioning of the legislative, executive and judicial organs. The judicial structure has crucial importance for our study. There was a Supreme Constitutional Court composed of one Greek, one Turk and a neutral president who may not be a Cypriot, British, Greek or Turkish citizen (Articles. 133 (1) and 133 (3)). The High Court of Justice composed of two Greeks, one Turk and one neutral member (having two votes) was the highest appellate court of the ROC. It was accepted by Article 155 that the High Court would have the jurisdiction to hear and determine all appeals from any court, other than the Supreme Constitutional Court. In case where the plaintiff and the defendant belonged to the same community, the lower court exercising civil jurisdiction would be composed only of a judge

or judges belonging to that community (Article 159/1).[3] But where the parties belonged to different communities, the court would be composed of a judge or judges belonging to both communities who would be determined by the High Court (Article 159 (3&4)).

II) Necessity and Conditions of Application

Necessity is a common law doctrine providing a justification for illegal government conduct in cases of public emergency. It bridges the significant gap between the actual powers of government and the government's actual response to an emergency.[4] Possible illegal acts of government would no doubt destroy rights and obligations of various individuals and organs, and, at the same time could secure the society in general and the existence of state in particular. So reliance upon the state necessity brings about a necessity of choice between competing values (individual rights and values versus public rights and values of state itself) and it includes 'a choice of the lesser evil' as described by Williams.[5]

The doctrine has been referred to, in particular, in the US court decisions and gradually became an established legal principle subject to the fulfilment of certain criteria. Nevertheless, since 1950's national courts of several newly independent states have abused the doctrine by ignoring the implementation of the established criteria, by a mere reference to previous court decisions in the West. This misinterpretation departing from the

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[3] This rule also applies to criminal cases where the accused and the person injured belonged to the same community (Article 159 (2))

[4] M. M. Stavsky, 'The Doctrine of State Necessity in Pakistan", **Cornell Int'l L. J**., Vol. XVI, (1983), p. 342 and 343.

[5] G. Williams, "The Defence of Necessity", **Current Legal Problems,** Vol. VI, (1953), p. 224.

doctrine was seen in Cyprus, Nigeria, Rhodesia, Pakistan and elsewhere. Reference to the defence of necessity departing from the real meaning and criteria was frequently made in Pakistan and an expansive application of the doctrine created a legal basis for regime changes. The High Court of Pakistan examined the legitimacy of the new government in the Case Bhutto v. Chief of Army Staff in 1977, when the detention of the prime minister under martial law was challenged. The Court decided that the new regime was lawful. It also concluded that the coup d`etat had been dictated by the highest consideration of state necessity and welfare of the people. According to the Court, the constitution was still in force but deviations from it were justified under the doctrine of necessity except the purported suspension of judicial review by the new regime.[6]

What is common for the cases mentioned above? One can say that all these events were incompatible with the constitutions in force and intended to legalize regime changes (whether civil or military) by a reference to the doctrine. At this stage, conditions of its application, proper application of its criteria, the main principles and exceptions must be clarified. There are certain well established principles:

Existence of 'lawful regime' or 'lawful state organ criterion': Usual application of the doctrine of necessity includes emergency situations like wars, earthquakes, floods, epidemics or collapse of civil government. Emergency is something that does not permit a single definition.[7] When the doctrine is relied upon, violation of laws or constitution occurs because of an act done by legal organs of the state concerned, and, a court established in accordance with the constitution must carry out examination of the case. Normally, in case of emergencies an organ of a state or

[6] **Ibid.,** p. 377-379.

branch of a government, set up under the provisions of constitution, usurps the power of the other.

Necessity cannot be invoked where the emergency was caused by the fault of the demanding authority.[8] Some judges have approved this important principle for the application of the doctrine as well. For example, in 1968 in the Madzimbamuto Case the Rhodesian High Court judge Beadle refused to apply the doctrine of necessity on the ground that nobody may take advantage of a necessity of his own making.[9] Tayyap Mahmud defined these words as 'the fundamental principle of the doctrine of necessity.'[10]

An imperative and inevitable necessity or exceptional circumstances should exist and there should be no other remedy to apply. Or other remedies should be exhausted first.
The measure taken must be proportionate to the necessity and it must be of a temporary character limited to the duration of the exceptional circumstances.[11]

III) Application of the Doctrine of State Necessity in Cyprus

A) The Case of Attorney-General of the Republic v. Mustafa Ibrahim and Others

The 1960 bi-communal ROC continued until December 1963. The legal government, consisting of Greek-Cypriots and Turkish-

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[7] See Stavsky, **supra** note 4, p. 343.
[8] See Williams, **supra** note 5, p. 230-231 and 227.
[9] Madzimbamuto v. Lardner-Burke, **South African Law Reports,** Vol. II, (1968), p. 330.
[10] T. Mahmud, "Jurisprudence of Successful Treason: Coup D'etat & Common Law", **Cornell Int'l L. J.,** Vol. XXVII, (1994) p. 118.
[11] See Stavsky, **supra** note 18, p. 383.

Cypriots, was destroyed as a result of bi-communal fighting. Main organs and institutions of the government were fully controlled by the Greek-Cypriot authorities.[12] On 25th April 1964, four young Turkish-Cypriots were arrested on the ground that they were carrying guns and bullets. However, they were released on bail. Accordingly, Attorney-General at that time (a Greek Cypriot), appealed against the order of these district courts. During the proceedings, before the new Supreme Court of Cyprus composed of three Greek-Cypriot judges only, respondents raised that this new Court had no jurisdiction to hear the appeal because the law (Law 33, 1964) establishing the Court was contrary to the 1960 Cyprus Constitution. It was also argued that the said Law was not duly promulgated and published in accordance with the provisions of the Constitution. The Court took its decision on the preliminary objections maintained by the respondents on 8th October 1964. In view of the Court, even though the said Law and existence of the new Supreme Court of Cyprus were contrary to the written Constitution, as a consequence of the abnormal situation in the Island and state of necessity they were justified. The Court allowed the appeal of the Attorney-General and set aside the order of the District Courts for bail.[13]

Following its overall explanation on the situation in Cyprus at that time, the Court pointed out that the 1960 Supreme Constitutional Court, as from August 1963 and the High Court of Justice, as from June, 1964, ceased to function. Judge Vassiliades claimed that the reasons of such a situation did not matter, because the fact remained and the system of administration of justice was in danger of collapse. According to judge Josephides,

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[12] See generally Z. M. Nedjatigil, **The Cyprus Question and the Turkish Position in International Law,** Oxford, Oxford University Press, 1990.

[13] The Attorney-General of the Republic v. Mustafa Ibrahim and Others (1964) **Cyprus Law Reports,** Vol. XVCC, (1964), p. 196-198.

Law 33, 1964 was enacted following the resignation of the President of the Supreme Constitutional Court, Prof. Forsthoff, and the outbreak of fighting in Cyprus. It was also indicated that the Supreme Constitutional Court had been unable to function and cases awaiting trial for a period of 14 months exceeded 400, at the time Law 33 was enacted.[14] It was also stated that the vacancies in the posts of Presidents of the High Court and the Supreme Constitutional Court were not filled, because the Vice-President had ceased to participate in the government.[15] The constitution stipulates that the presidents of these courts shall be appointed jointly by the President and the Vice-President of the ROC.[16] Therefore, effective preservation of rule of law, public order and administration of justice became impossible. Again, in view of the Court, since 21st December 1963, 'neither the Turkish Vice-President nor the Turkish Ministers or Members of the House of Representatives have participated in the affairs of the government'. And, Turkish-Cypriot civil servants have not returned to their duties in the Ministries and offices.[17]

The Court argued that despite the continuing emergency and constitutional deadlock in Cyprus, there is no question about the existence of the ROC as a state and about its government. Because the existence of a state does not depend on the operation of its constitution; instead it is a matter determined by the rules of international law and particularly related with the principle of recognition by other states. As long as a state and its government continue to exist, 'the responsibility for the maintenance and restoration of law and order remains within the competence of

[14] **Ibid.,** p. 207 and 249.
[15] **Ibid.,** p. 224 and 250.
[16] Art. 133 (1) and (2) and Art. 153 (1) and (2).
[17] See **supra** note 13, p. 225 and 249.

that government. This responsibility was confirmed by the Resolution 186 of the UN Security Council of 4 March 1964.[18]

B) Assessment of the Case

A brief analysis of the Ibrahim Case reveals that the Greek-Cypriot Supreme Court was aware of the conditions and criteria required by law for the application of the necessity principle, but refrained from inquiring their satisfaction for actual events before it. This statement can be clarified as follows:
The Court questioned the existence of only one condition (exceptional circumstances should exist), but omitted the others. The Greek-Cypriot judges emphasized prevailing armed conflict and disorder in the Island, and concluded that there were imperative and exceptional circumstances for the satisfaction of the first criterion. Despite the attitude of the Court to not to apply the other conditions and criteria, details of the events during 1963-1964 period prove that their fulfilment was lacking. We will analyze them below.

As mentioned earlier, in order to correctly apply the doctrine of necessity, exhaustion of all other means to respond to the abnormal situation is needed. Regarding this criterion, it is obvious that the Ibrahim Case contains certain deficiencies. First of all, the Court ignored the power of the Council of Ministers to issue a proclamation of emergency, in case of war or other dangers threatening the life of the ROC. The Court made use of the extent of this power as an excuse for disregarding the attitudes of the Greek-Cypriot officials on the subject of emergency and argued that it cannot meet the emergency at that time. Article 183 confines the power of the Council of Ministers by specifying certain articles as articles which can be suspended.

[18] **Ibid.,** p. 226-227, 248 and 267.

It is true that these articles were related with rights and liberties only, not with the unworkable courts. Nevertheless, regardless of the degree of its positive impacts for the elimination of the abnormal situation in the Island, omission of this available remedy, namely Article 183 of the Constitution, should be considered as a deficiency. Secondly, as emphasized by Stavsky, under the rules of necessity the Court was under duty to inquire, 'whether any reasonable efforts were made to persuade' the Vice-President to participate and to understand the nature of his recalcitrance. The Court did not consider this crucial point during the Ibrahim Case.[19] Moreover, the Court did not provide any reason for the failure to appoint non-Cypriot judges for the Supreme Constitutional Court and High Court of Justice, except the 'uncooperativeness of the Turkish-Cypriot Vice-President.[20] Nevertheless, even if it is accepted that there was uncooperativeness originating from Mr. Fazil Küçük, it must have been accepted that he was holding a legal right to take such a position. Because Article 183 provides that the Vice-President has a right of veto against a decision of the Council of Ministers on the proclamation of emergency in Cyprus.

The ICJ considered the continuing negotiations as 'other means' that should be exhausted before the application of defence necessity.[21] However, the Greek-Cypriot Supreme Court ignored

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[19] See Stavsky, **supra** note 4, p. 358, footnote 75.

[20] **Ibid.** Besides, Mr. Küçük never officially resigned his office. However, the Greek-Cypriot officials had stated that they no longer recognize Mr. Küçük in his capacity as Vice-President and articles of the Constitution relating to the Vice-President is inapplicable in practice. See UN Doc. S/6569 (29 July 1965), Para. 10.

[21] See **supra** note 49, Para. 57. 'What is more, negotiations were under way which might have led to a review of the Project and the extension of some of its time-limits, without there being need to abandon it. The Court infers from this that the respect by Hungary, in 1989, of its obligations under the terms of the 1977 Treaty would not have resulted in a situation 'characterized so aptly by the maxim sum mum jus summa injuria''.

the omission of the Greek-Cypriot state officials to conduct negotiations with the Guarantor States for changes in the Constitution. Archbishop Makarios described the purpose of his declaration to the Guarantor States on the proposed 13 constitutional amendments as an 'informing act' and maintained that he had not expected a positive or negative reply from them. Additionally, he raised the excuse of 'internal affairs' and abstained from negotiations with the Turkish-Cypriot officials and Guarantor Powers.[22] Although the Greek-Cypriot administration and the High Court did not mention these international legal obligations of the ROC, it must be assumed that defence of necessity is implicitly referred to for legalizing violations of the Basic Articles in the Constitution. Criteria for the application of state necessity in domestic law and international law are very similar. Though, acts of the Greek-Cypriot administration regarding the Basic Articles which are contrary to these criteria would create violation of rules of international law by the ROC.

Archbishop Makarios described the purpose of his declaration to the Guarantor States on the proposed 13 constitutional amendments as an 'informing act' and maintained that he had not expected a positive or negative reply from them. Additionally, he raised the excuse of 'internal affairs' and abstained from negotiations with the Turkish-Cypriot officials and Guarantor Powers.[23] Although the Greek-Cypriot administration and the High Court did not mention these international legal obligations of the ROC, it must be assumed that defence of necessity is implicitly referred to for legalizing violations of the Basic Articles in the Constitution. As explained above, criteria for the application of state necessity in domestic

[22] **Keesing's Contemporary Archives**, Vol. XIV, (1963-1964) p. 20113.
[23] **Ibid.**

law and international law are very similar. Though, acts of the Greek-Cypriot administration regarding the Basic Articles which are contrary to these criteria would create violation of rules of international law by the ROC. Likewise, the Greek-Cypriot officials rejected the opportunity, which included a high possibility to put an end to the imperative emergency situation in the Island. This was related with the demands of the Turkish-Cypriot MP's for going back to the House of Representatives. As summarized by the UN Secretary-General, the Turkish-Cypriot members asked from the UNFICYP (UN Force in Cyprus) to enable them to receive information and arrange necessary facilities to attend meetings of the House in safety. It was also emphasized by the Turkish-Cypriot members that in case of an official invitation and notification on matters to be considered at the House, they would be ready to attend the sessions. The special representative of the UN brought this demand to the President of the House at that time, namely to Mr. Clerides. The Greek-Cypriot reply was a kind of 'conditional acceptance' for the demand of the Turkish members to attend the sessions. According to Mr. Clerides, for the attendance of the Turkish-Cypriot members, agreements were needed in advance on certain points. There were two crucial conditions. First of all, it was demanded from the Turkish-Cypriot members to accept the laws enacted by the House and their application to the Turkish areas by the 'Government' (Greek-Cypriot officials). Nevertheless, most of these laws were enacted in the absence of the Turkish-Cypriot members and contrary to the provisions of the 1960 Constitution. Secondly, Mr. Clerides claimed, 'unless agreement was reached the provision in Article 78 of the Constitution concerning separate majorities had been abolished and every member of the House would have one vote for all decisions'. Consequently Mr. Clerides declared that it would be

meaningless to provide copies of the pending bills to the Turkish-Cypriot members, if they reject the conditions set by him.[24] On 22 July 1965, the Turkish-Cypriot members visited Mr. Clerides, but he upheld his position and declared that unless agreement was reached on these matters, he would not permit the Turkish-Cypriot members to attend the House and they had no legal standing any more in the House. Furthermore, he claimed that the constitutional provisions on the promulgation of laws by the President and Vice-President were no longer applicable.[25] Such an approach must be considered as an obvious rejection of the termination of the imperative situation occurred in the Island. As a result, it should be accepted that there was a contribution of the Greek-Cypriot state officials to the occurrence and maintenance of the state of necessity in the Island and thus, under these conditions rules of international and domestic law precludes the possibility of invocation of the defence necessity.

As indicated above, another criterion is connected with the requirement of 'legitimate state authority'. The doctrine of necessity must be invoked by a legitimate state authority established under the provisions of constitution or laws. However, in the Ibrahim Case this established rule was violated by the Greek-Cypriot Supreme Court judges. Because, in the said Case even the Court itself was not established compliant with the Constitution and it did not hold the title of 'legitimate state authority'. Nevertheless, in all other cases referred to within the Ibrahim Case as examples supporting the existence of the doctrine, competent authority or court that had invoked and applied the doctrine was established properly under the rules of relevant constitution and their legal status was not doubtful. This is why the Greek-Cypriot Supreme Court had to confirm the

[24] See UN Doc. S/6569 (29 July 1965), Paras. 7, 8/b-d and 9.
[25] **Ibid.,** Paras. 10 and 11.

conformity of Law 33/1964 with the Constitution. If it had rejected the application of the doctrine and declared the unconstitutionality of the said Law, it would have been a kind of statement accepting the illegal status of the Court itself. Such a situation would have deprived the Greek-Cypriot judges of their jobs.[26] There was no legal legislative organ of the ROC functioning in accordance with the Constitution and the violation committed by the Greek-Cypriot members and by the Court exceeded the limits of doctrine necessity. Stavsky evidently emphasized this point:[27]

In Ibrahim, the court misapplied the necessity doctrine to the issues before it … at the very least; the government must show that the country's legislative body passed the extra-constitutional measures. Since only the Greek members of the legislature passed the judicial reform bill, the government cannot make even this threshold claim. A measure passed by a Turkish or Greek majority acting alone does not constitute legislative action.

While 'lifting' the restrictions on the right to self-determination and 'reapplying' it, the Court abused the 1960 system in favor of the Greek-Cypriot Community, and, ignored the limited international legal status of the Republic and the obligation to exercise the right to self-determination conjointly by the two Communities within a single state, namely the ROC. Subsequent Greek-Cypriot modifications to the laws of the ROC by referring to the Ibrahim Case amounted to the creation of a new state.[28] The doctrine of necessity is a legitimate excuse, which can be utilized only for the purpose of preserving the society in general, not individuals or any other groups on a discriminatory basis. In

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[26] See Nedjatigil, **supra** note 12, p. 56.

[27] See Stavsky, **supra** note 4, p. 358, footnote 75.

[28] N. M. Ertekün, "Violations to the 1960 Constitution", A. Gazioglu and M. Moran (eds.), **Past-Masters of Illegality,** CYREP, 2000.

the Ibrahim Case the Court emphasized phrases 'People of Cyprus', 'society' or 'whole people', in order to hide its attitude aiming at securing the interests of the Greek-Cypriot Community alone. Reference to the defence necessity in the Ibrahim Case deviated from the normal application of this doctrine and amounted to a level of destruction of the bi-communal republic in support of the benefit of the Greek-Cypriots only.

IV) The "Annan Plan" and Its Implications on the 'State of Necessity"

Between 1999 and 2003 an intensified effort was spent for the achievement of a comprehensive settlement of Cyprus problem under the auspices of the UN Secretary-General. The reunification and accession of Cyprus to the European Union before 1st of May was aimed. This process included proximity and direct talks. Nevertheless, the parties were not able to reach an agreement and the Secretary-General submitted a comprehensive settlement proposal on 11 November 2002, a first revision of 10 December 2002 and a second revision on 26 February 2003. The plan required a referendum before 16 April 2003 to approve it and reunify Cyprus. At the end of the summit meeting in The Hague, parties could not achieve an agreement to conduct the referendum and the UN attempt has failed.[29]

Greek-Cypriot and Turkish-Cypriot leaders were invited to New York by the Secretary-General on 10 February to resume negotiations. Following intensive talks, the parties agreed on 13 February to resume negotiations on the basis of the Annan Plan to achieve a comprehensive settlement through separate and simultaneous referenda before 1 May 2004. They committed

[29] **Report of the Secretary-General on his Mission of Good Offices in Cyprus,** UN Security Council, S/2003/398, 1 April 2003.

themselves to seek to agree on changes and to complete the Plan so as to produce a finalized text. They further agreed that in the absence of such agreement, Secretary-General would convene a meeting of the two sides, with the participation of Greece and Turkey, in order to finalize the text by 29 March. Finally, in the event of a deadlock, the parties invited the Secretary-General to use his discretion to finalize the text to be submitted to separate and simultaneous referenda. Following negotiations until the end of March 2004, no agreement has been achieved and on 31 March 2004, UN Secretary-General finalized the text of the "Comprehensive Settlement of the Cyprus Problem".[30]

Not only the Greek-Cypriot leadership, but also main political parties and leaders in south Cyprus have invited the Greek-Cypriot community to vote against the Plan during the propaganda period of the referenda. Under the provisions of the Plan, acceptance in both referenda was a prerequisite to give effect to its provisions and to establish a new state of affairs in Cyprus.

Therefore, Greek-Cypriots and Turkish-Cypriots were aware that the rejection of the Plan by one side would have made it null and void and the status quo ante (abnormal situation) in the Island would have continued. Separate simultaneous referenda were held on 24 April 2004. The Turkish Cypriots have voted in favour of solution with 64.9 % yes votes in the referendum. Nevertheless, the Greek-Cypriots have voted against the Plan with 75.8 % no votes.[31] Thus, Turkish-Cypriots have given their consent and proved their readiness to form a "legal government" within a new federal state, which was proposed and fully

[30] **Report of the Secretary-General on Cyprus,** UN Security Council, S/2004/302, 16 April 2004, Para. 3-6.
[31] **Cyprus Mail**, 25 April 2004.

supported by the international community as a whole. Moreover, Turkey, who has been accused for keeping its troops in the Island and preventing the establishment of normal constitutional conditions, has committed herself to accept and recognize the result of the referenda and sign the Treaty as part of the UN Comprehensive Settlement which includes withdrawal of armed forces, establishment of a new federal state and a legal government.

Consequently, the result of referenda has proved and made it obvious that the Greek-Cypriot administration and its community have prevented the return to normal conditions in the Island. Greek-Cypriot's "state of necessity" argument has become highly questionable, since it is an internationally accepted principle that an institution/party cannot refer to this argument if it contributes to the continuation of the abnormal situation. With the refusal of the Greek Cypriot people as well as the Greek Cypriot Administration of the Plan in the referendum, they have prevented the establishment of a new state of affairs in the Island and the termination of the abnormal situation.

Asst. Prof. Dr. Kudret ÖZERSAY

Member of the Board of Trustees of
The Turkish Cypriot Human Rights Foundation

International Representation

A major disadvantage faced by the Turkish Cypriots is the infringement of their basic human right to have their voice fully heard through their democratically elected representatives. This point is well illustrated by the comments below of Mr. Özdil Nami who is currently a Member of Parliament in the TRNC Legislative Assembly from the ruling Turkish Republican Party. Mr. Nami is a young politician from the business community. Through the persistent efforts of the Turkish Cypriot political groups, in December 2004 he became the Elected Representative of the Turkish Cypriot Community at the Parliamentary Assembly of the Council of Europe. He also represents his political party as an observer at the Socialist Group in the European Parliament.

Statement of Mr. Özdil Nami, Member of the Parliament of the TRNC:

"There are comprehensive isolations on Turkish Cypriots' participation in international political platforms. In the European platform "Elected Representatives" of European countries have two major organizations which are available for them to be heard. Despite accepting a United Nations plan to reunify Cyprus, which had been strongly supported by Europe as well as the rest of the world, Turkish Cypriots are still denied voting rights in both of them.

The Council of Europe Parliamentary Assembly

In the Council of Europe Parliamentary Assembly (PACE) Turkish Cypriot Parliamentarians are invited to participate in the work of the Assembly as "Elected Representatives of the Turkish Cypriot Community". We are, however, denied the right to vote.

Özdil Nami with President of the European Parliament Josep Borrell Fontelles.

When it joined PACE "Cyprus" was allocated three seats, one of which had to be filled by a Turkish Cypriot. Since 1964 and the expulsion of Turkish Cypriots from the Parliament of Republic of Cyprus through use of arms by Greek Cypriots, this one seat with a right to vote remains empty to date.

The European Parliament

Turkish Cypriots are denied any representation in the European Parliament. The only platform where they can participate is the group meetings of the Socialist Group which invited its sister party in North Cyprus, Turkish Republican Party (CTP), to send an unofficial observer to its meetings. Unlike PACE, the EU Parliament does not allow Turkish Cypriots to have the right to speak either in the Assembly or in its numerous committees even

if the subject of discussion is Cyprus and the very interests of the Turkish Cypriot people.

A striking example of the effects of denying Turkish Cypriots political representation in the EU was seen during the discussions held at the Foreign Affairs Committee of the EU Parliament on the Report on Turkey prepared by the Dutch MEP Camille Eurlings. In his report, Mr. Eurlings called on Turkey to open her ports and airports to Greek Cypriots ships and planes, claiming that this was Turkey's legal obligation. Upon our request, a paragraph that also called for the implementation of the EU Council decision to end the isolation of the Turkish Cypriots was also inserted. However, after hard lobbying by Greeks and Greek Cypriots in it's second version, not only was this paragraph removed but also all reference to the UN Plan that was described by the EU as "the only chance to settle the problem". What made matters even worse was a last minute amendment proposed by a Greek Cypriot MEP to add the "Acquis" as a basis to settle the Cyprus issue. As Turkish Cypriots have no right to speak in the Committees, we could not explain to the members that this was contrary to the Accession Treaty of "Cyprus" which both in its preamble and in Article 4 clearly states that the EU will accommodate a settlement and decide on the modalities vis-à-vis the Turkish Cypriot community when the island is reunited, which meant the Accession Treaty of Cyprus. In other words the situation is that the Acquis will change in accordance with a Cyprus settlement **not** the other way around. By listening to only one of the parties to this conflict the EU Parliament not only produced a biased report but also ended up adopting a paragraph which was contrary to its primary law.

It is totally in contradiction to all concepts of human rights and democracy that decisions affecting the Turkish Cypriots should

be taken via a process that prevents their representatives from being heard."

Özdil NAMİ

Member of the Parliament of the Turkish Republic of Northern Cyprus (TRNC) and Special Representative of the President of TRNC Mehmet Ali Talat

Trade

The "isolation" of Turkish Cypriots through restrictions on trade is detrimental for two reasons. Firstly it stifles economic vitality which is the basic right of all individuals and communities. Secondly, it has a negative impact on the prospects for a comprehensive solution to the Cyprus problem. *Mualla Çıraklı* is the Brussels representative of the Turkish Cypriot Chamber of Commerce which has been working since its foundation in 1958 to support the economic and trading activities of the Turkish Cypriots. On behalf of her organization, Ms Çıraklı makes the following assessment of the present situation on this issue:

The Economic and Trade Embargoes on the Turkish Cypriot Community

Economic levelling, reciprocal equal treatment and the creation of mutual interdependency are essential for convergence and sustainable reunification in Cyprus. These can only be achieved through the lifting of all economic and trade embargoes on Turkish Cypriots and enabling their free trade with Europe and beyond as democratic citizens of the European Union and the world. It is necessary therefore to understand exactly what is meant by "economic and trade embargoes" on the Turkish Cypriot Community.

The Turkish Cypriot economy, which is mainly composed of Small and Medium Enterprises (SME's) is highly powered by the tourism, services and education sectors, while citrus and potatoes constitute the main agricultural products. Turkish Cypriot international trade has been conducted through the Famagusta port, which has been operating under Turkish Cypriot

management since 1974. A European Court of Justice ruling of a case put forward by the Greek Cypriot Administration in July 1994 questioned the validity of the documents issued by the Turkish Cypriot Authorities and held that Member States of the EU could only import fruits and vegetables carrying the certificates of origin from the "Republic of Cyprus". As it is not practically possible for Turkish Cypriot exporters to get certification from South Cyprus, the decision of the ECJ eliminated preferential access to the EU for Turkish Cypriot exports. Since then, all trade has been conducted via the ports in Turkey, substantially increasing the cost of trade for Turkish Cypriots.

Following the Greek Cypriot refusal of the UN comprehensive settlement plan presented to Greek and Turkish Cypriots in twin referenda on 23 April 2004, a divided Cyprus became a member of the European Union on 1st May 2004 with the sole participation of Greek Cypriots. Protocol 10 attached to the Accession Treaty declared the *acquis* was suspended in North Cyprus putting the latter outside the fiscal and customs area of the EU. For this reason, the European Council of Ministers adopted, on 29 April 2004, the Green Line Regulation[32] in order to regulate the movement of goods and people from North to South Cyprus. Following the bizarre outcome of the referenda where the Turkish Cypriot party who voted for the reunification of the island and EU membership was left out in the cold, the UN Secretary-General Kofi Annan called for individual states and international organizations to "eliminate unnecessary restrictions and barriers that have the effect of isolating the Turkish Cypriots." The European Council of Ministers stated in a resolution passed on 26 April 2004 that it was ***"determined to put an end to the isolation of the Turkish Cypriot community and to***

[32] Council Regulation (EC), No. 866/2004.

facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community".

In this respect the European Commission proposed, on 7 July 2004, a comprehensive package of aid and trade measures: the Financial Aid[33] and Direct Trade[34] Regulations.

The Green Line Regulation is a temporary instrument based on Protocol 10, covering only the movement of goods and people from North to South Cyprus while the services dimension remains underdeveloped. As an institutional partner of the European Commission in the implementation of the Regulation, the Turkish Cypriot Chamber of Commerce is fully aware of the serious technical, structural and psychological restrictions and difficulties that strain this intra-island trade which produces an average monthly trade volume of only €160,000. Limited in both scope and value, the Green Line trade, which the Greek Cypriot administration farcically claims to be an adequate tool for the Turkish Cypriot economy, is totally inadequate for reducing the economic disparity between the two sides and for progressing towards trade convergence and reunification.

The Financial Aid Regulation envisaged € 259 million in financial assistance to encourage the economic development of the Turkish Cypriot Community. It took the EU Committee of Permanent Representatives (COREPER) until February 2006 to reach a compromised decision on the Financial Aid Regulation, decoupled from direct trade, because the Greek Cypriot administration brought about numerous obstacles and

[33] Council Regulation (EC), No. 389/2006.

[34] "Proposal for a Council Regulation on special conditions for trade with those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control", European Commission, com (2004) 466 final, 2004/0148 (ACC), 2004.

Turkish Cypriot Chamber of Commerce building during mass rallies in favour of 'Solution and EU' during 2004.

conditions throughout the decision-making process. The Greek Cypriot obstacles continue even today as the technical PHARE committee tries to take decisions for the disbursement of the funds to be implemented through an EU office set up in North Cyprus in September 2006. While Turkish Cypriots, who were prevented from receiving any international assistance under embargoes for years, welcome the Financial Aid Regulation, financial aid alone can not establish the necessary economic climate in North Cyprus that will lead to stable economic development. Free and direct trade has to accompany aid.

The Direct Trade Regulation is a significant proposal that envisaged a system to facilitate trade between North Cyprus and the European Customs Territory. The Greek Cypriot side has strongly blocked the regulation in the Council for the last two years, wrongly claiming that this will result in recognition of North Cyprus and that Turkish Cypriots can export via Greek

Cypriot ports over the Green Line if they want to trade. This claim is totally unfounded. Direct trade does not aim to and will not automatically bring political recognition to North Cyprus, just as it did not before the 1994 ECJ judgement. Forcing Turkish Cypriots to trade only via the Greek Cypriot ports is a shameful discrimination in light of the European norms and values. It is no less unacceptable than the Flemish in Belgium forcing the Walloons to trade only via the ports in Flanders. Direct trade should be realized as a logical consequence of the current situation on the island and should not be treated as a concession subject to Greek Cypriot charity."

Mualla ÇIRAKLI

Representative of the Turkish Cypriot Chamber of Commerce in Brussels

Property

A founder and member of the Board of Trustees of the Turkish Cypriot Human Rights Foundation, Asst. Prof. Dr. Tufan Erhürman has been working intensively on the property issues arising from the unresolved Cyprus problem. Dealing with countless complaints to the Foundation and analyzing the legal intricacies on both sides of the Green Line, Tufan Erhürman summarizes his observations as follows:

"The property issue is one of the most controversial issues related to the Cyprus problem. Since 1963, Turkish and Greek Cypriot refugees, who had to leave their homes and other properties on "the other side" because of the conflict between the two communities, have been waiting for a solution to the Cyprus problem. It is evident to all that, after so many years, it is impossible to solve the problems related to property rights without finding a comprehensive solution to the Cyprus problem.

After 23rd April 2003 when it became possible to travel freely to each side, most of the Turkish Cypriot and Greek Cypriot refugees found a chance to see their properties for the first time since 1974. This was like a dream come true for the refugees and this historical event reinforced the hopes that a comprehensive settlement to the Cyprus dispute and a just solution to the problems related to property rights were possible. But unfortunately, with the outcome of the referenda of 24th April 2004, it was the end of the dream for many refugees on both sides. The Greek Cypriot Administration (GCA) which worked very hard to persuade the Greek Cypriots to vote "NO" in the referendum had to find a way to convince Greek Cypriot refugees that it would be more beneficial for them if the Annan Plan was rejected. According to the GCA, the only acceptable

Turkish Cypriot E.Durmus and the power station built on his property by the Republic of Cyprus.

solution to the property problem was to recognize the rights of all refugees to return to their homes. No other solution was acceptable. But one of the underlying principles of the Annan Plan was bi-zonality (which was the basic principle of all the agreements and plans since 1977 summit agreement between Makarios and Denktaş) and according to this principle, it would not be possible for every refugee to return to their homes after 30 years of partition (for people displaced in 1963, it had been 41 years). Because of this, not only restitution but also compensation was regulated as important tools by the Annan Plan to find just solutions to the property problems of the refugees.

Finally, the GCA managed to persuade the Greek Cypriots to vote "NO" in the referendum and all Cypriots lost a golden opportunity to find a comprehensive solution to the Cyprus problem. Losing the chance to solve the Cyprus problem has meant losing the chance to find a solution to the property

problem as well. It was then necessary for the GCA to find a way to reinforce the hopes of the Greek Cypriot refugees that their "NO" votes would be rewarded and every single Greek Cypriot will return to their homes. The way found by the GCA for this purpose was the way used since the Loizidou judgment of the ECHR. They kept stressing that all Greek Cypriot refugees would receive compensation for the loss of use of their properties and restitution if they bring suits against Turkey in the ECHR. But in reality this was not possible. Because, it was clear for everybody working and thinking for a just and permanent solution to the Cyprus problem that it is impossible to resolve the property problems of all Cypriot refugees on an individual basis in the ECHR in the absence of a comprehensive solution to the Cyprus problem. Realizing that the number of cases related to the property rights of the Greek Cypriots is increasing by the day, the ECHR, in its Xenides-Arestis judgment, declared that it would accept an effective and just mechanism in the north as a domestic remedy which must be exhausted before bringing a case to Strasbourg and for this purpose allowed a period of three months time for the Turkish side to establish such a mechanism. The ECHR stated in its decision that, to be accepted as a domestic remedy that must be exhausted before taking the case to Strasbourg, the mechanism that will be established in North Cyprus must have the authority not only for compensation but also the possibility of restitution as well. The criteria declared by the ECHR about the mechanism that would be established in North Cyprus were similar to the characteristics of the Property Commission of the Annan Plan. At first sight, it can be thought that for the Turkish Cypriots who had voted "YES" in the referendum, this solution was easily acceptable. But it should not be forgotten that this solution to the property problem was accepted as a part of a comprehensive solution to the Cyprus problem; a solution, which would also include an internationally recognized federated state and EU membership for the Turkish

Cypriots. Accepting the part of the Annan Plan related to property was the "give" part of a "give and take" and there was an expectation that the Turkish Cypriot community would gain something in response to accepting tens of thousands of Turkish Cypriots to be displaced once more. Besides that, the dominant nationalist idea related to property that "even a single pebble of the TRNC cannot be given up" was gaining support in the community again after the referenda because the Turkish Cypriots were deeply disappointed by their Greek Cypriot compatriots who voted "NO" in the referendum. Under these adverse conditions, the TRNC Assembly managed to enact the Property Law of 2006 and once more the Turkish Cypriots showed that they were still searching to find a way for a comprehensive solution in line with the basic principles of the Annan Plan. By means of this Law, the Turkish Cypriot side also managed to make a unilateral step for decreasing the distress of the Greek Cypriot refugees, because the GCA continues to deny compensation to the Turkish Cypriot refugees for the loss of use of their properties in the south and also compensation for expropriation saying that this must wait for the comprehensive solution of the Cyprus problem.

Two of the seven members of the Property Commission established under the Property Law 2006, are not citizens of the TRNC and the Commission has the power to order restitution. These regulations are in line with the "guidelines" declared by the ECHR in the Xenides-Arestis decision. To date, over 350 applications have been filed with the Property Commission and judgments were given in over 40 of these applications. The decision of the Commission has included restitution in 4 cases and exchange for property in the North for 2 cases. It must be noted that the Property Commission is doing its best to satisfy the applicants but certainly it must be stressed once more that this Commission cannot and shall not solve the controversial

problem of property in Cyprus. This issue is a part of the Cyprus problem and can only be settled after finding a comprehensive and permanent solution to that problem.

Asst. Prof. Dr. Tufan ERHÜRMAN

Member of the Board of Trustees of
The Turkish Cypriot Human Rights Foundation

Freedom of Press

In some of the implementations of the freedom of press comprising the right to receive news and acquire knowledge, certain violations in the South, as well as in the North of Cyprus, are being encountered. Although many of these violations have disappeared owing to reaction emanating from public opinion of both communities, non-governmental organisations, various states and international organisations, certain practices that are still ongoing in the south of Cyprus are violating the Turkish Cypriot's rights on freedom of press.

If we take up the subject from the 23rd April 2003, when free movement of people to and from both sides started, we shall witness the first of these violations in the form of refusal on the part of the Greek press to publish advertisements of the enterprises operating in the North. An investigation into the reason of this refusal, which was also reported in the human rights annual reports of the US Foreign Office between the years of 2004 to 2007,[35] the first that comes to one's mind will be the pressure exerted by the Greek Cypriot Administration on the Cyprus Greek press not to publish the advertisements. If one bears in mind that newspapers can only carry on their publications through sale and income derived from notices and advertisements, not to publish advertisements of Turkish Cypriot enterprises which would mean serious loss of income; it is not possible to attribute this to anything else other than the pressure exerted on the part of the Greek Cypriot Administration.

Another chronic problem is in the case of Turkish journalists operating in North Cyprus who are denied permission to cross over to the South. The case came up on the 26th July 2005. On that

[35] See, http://www.state.gov.

Photograph is taken from europa.eu.int

day there was a football match between the Turkish team Trabzonspor and the Greek Cypriot team Anorthosis. The Greek Cypriot Administration refused to accede to the request of the Turkish journalists to cross over to the South through the Green Line, which forms a border between North and South Cyprus, to cover the match.[36] Application for permission to cross to the South which is needed to be submitted two days in advance was duly submitted, but the request was refused on the 25th July. The reason given by the Greek Cypriot Administration was that the journalists had entered Cyprus "through prohibited ports" or by "unlawful means". This was protested by some international

[36] See, International Pres Institute, **World Pres Freedom Report, 2005 – Cyprus,** http://www.freemedia.at/ cms/ipi/freedom_detail.html,,16.09.2008.

non-governmental organisation like *Reporters without Borders* which in its report, said:

> "We are dismayed at this decision by Cyprus, a New European Union member since 1st May 2004, which is a clear violation of free Access to information. The Turkish Journalists were coming simply to cover a popular sports meeting between teams from Cyprus and Turkey. It is unacceptable for journalists to be targets of political blackmail, fomenting confrontation rather than reconciliation between the Greek and Turkish communities".[37]

Another important development in this aspect happened on the eve of the first round of the presidential elections that took place in South Cyprus on the 17th February 2008. In examining the applications of the Turkish journalists, the Press and Information Office of the Greek Cypriot Administration, stated that in accordance with the Green Line Regulation of 29th April 2008, they were bound to obtain visas of the "Republic of Cyprus" and that it was imperative for them to enter Cyprus through the ports in the South.[38] Consequently, the Turkish journalists' entry was blocked.

This action of the Greek Cypriot Administration is not only a hindrance put in the way of reaching the source of information, but also brings up the subject of wrong interpretation of the Green Line Regulation on the part of the Greek Cypriot Administration. According to this interpretation, access by the Turkish journalists to the South is conditional to their obtaining the necessary visa and entering Cyprus through ports in the

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[37] Reporters without Borders, **Some Turkish Journalists Banned from Covering Football Match,** http://www.rsf.org/print.php3?id_article= 14542, 16.09.2008.

[38] "Rum Yönetimi'nden Türk Gazetecilere Engelleme…"[Obstacle to Turkish Journalists from the Greek Administration], **Yeniduzen** (daily), 14 February 2008.

South. The mentality behind all these lies in equating entry from North Cyprus with "prohibited ports" or "unlawful means". There are no such conditions in article 2/3 of the Regulation that regulates entry from North to South Cyprus through the Green Line by European Union and third world country citizens.

The Turkish journalists are therefore, under no obligation to enter South Cyprus through ports in the South. Obstacles put to the journalists' entry to the South are based more on political rather than legal grounds and are discriminatory against them simply for being Turkish citizens.

Asst. Prof. Dr. Ali DAYIOĞLU

Member of the Board of Trustees of the
Turkish Cypriot Humans Rights Foundation

Art

During the summer of 2006, an opportunity arose for everyone living on the island of Cyprus, as well as their art-loving guests, to share an important international arts event. A great disappointment was suffered by all concerned when, instead of transcending barriers and implementing art as a tool for cooperation and unity, the entire event collapsed in a cloud of bitterness and litigation.

The European Biennale of Contemporary Art Manifesta 6 is an international event rated as one of the world's top three contemporary art events. In 2004 the host parties selected the Municipality of Nicosia as the location for the event of 2006. The divided city was selected specifically to contribute to reconciliation and cooperation and was to bring great prestige and attention to Nicosia and Cyprus. The conditions and contractual obligations were agreed in cooperation with the Greek Cypriot Ministry of Education and Culture and the Ministry of Commerce, Industry and Tourism who were the main sponsors of the event. A special company, Nicosia for Art (NFA) was established within the Nicosia Municipality to manage the whole event. The activities proposed were to be bi-communal and embrace both Turkish Cypriots and Greek Cypriots and to take place on both sides of the Green Line.

Two years after signing the contracts, the event failed to materialise because the NFA terminated the contracts and as a result all parties resorted to accusing each other of breaching the contracts. The cause of the dispute was that despite the structure of the project from the start, the sponsors objected strongly to activities taking place in the north of the city where the Turkish Cypriots live. The NFA's reasoning was as follows:

> "the establishment and operation on a permanent basis of an essential part of the school in the occupied part of Nicosia apart from being in conflict with certain aspects of Cyprus and International Law, was also outside the ambit of the terms of the respective agreements and in breach of NFA's contractual right to have autonomy in making decisions of this kind".

The International Foundation of Manifesta (IFM) and curators on the other hand insist that NFA and the Nicosia Municipality were well aware that the project included locations in North Nicosia and that in fact this potential for cultural partnerships and forming bridges of peace was a major factor in choosing this city.

The IFM expressed shock at the way the NFA had behaved and also declared that the legal steps taken against IFM and the curators was an illustration that NFA deliberately undermines the individuals' freedom of action which is in fact in flagrant breach of all international cultural conventions.[39] The curators accused NFA of breaching its contractual obligations as a result of the political pressure from the Greek Cypriot leadership and stated that: "The contractual agreement made with the local authorities clearly defined Manifesta 6 as a **'bi-communal project'**, therefore, we believed ourselves to be working within the parameters outlined and agreed upon at the outset of the project. Accordingly, we developed the project in the spirit of this **'bi-communality'**, and throughout the process, the Greek Cypriot Authorities not only agreed, but also encouraged this

[39] Press release by International Foundation of Manifesta (IFM) to explain why Manifesta 6 fell apart and respond to the allegations put forward by the NFA on 6 June 2006.

approach to working in both areas of the city and made numerous official public statements confirming their support".[40]

The outcome is that unfortunately Manifesta 6 could not take place in Nicosia. NFA is taking legal action against IFM and its Curators for breaching their contractual obligations and has even obtained a court order against the Curators forbidding them to even speak about the failure of Manifesta 6! The legal steps taken not only threaten the very existence of IFM, a highly prestigious international art and culture organization but also seriously curtail the curators' basic freedom of expression.

Works of Art from North Nicosia.

As a result, a politically motivated strategy of exclusion of the Turkish Cypriots has ruined what would have been a historical

[40] Press release by Mai Abu ElDahab on behalf of the curatorial team defending curatorial team against NFA's allegations, on 6 June 2006.

international event to be shared throughout the entire city and to include Turkish Cypriot artists and art-lovers. Not only has this incident shattered hopes for a joint display of cooperation and coexistence through the medium of art but has also caused severe damage to a reputable international organisation and its participants who are facing court action and possible bankruptcy.

Mustafa ABİTOĞLU

Coordinator of the Turkish Cypriot Human Rights Foundation

Isolation of Turkish Cypriot Community from International Sport Competitions: The Case Study: Football

Sport is not only competition between individuals, teams and peoples (nations). Sport is a means of communication and cooperation in the world. Therefore, sport activities should be understood as a kind of international cultural activity which increases interactivity and inter-cultural exchanges in the world.

In Cyprus, the Turkish Cypriot Community has not been able to participate in international sport activities and contacts since 1983 because of the declaration of the Turkish Republic of Northern Cyprus (TRNC) in replacement of the Turkish Cypriot Federated State as the new TRNC was interpreted as symbol of separatism by the international community. Turkish Cypriots have agreed to change this negative image with the Annan Plan, released in 2002 at the initiation of Kofi Annan, Secretary General of the United Nations. Hence, the Turkish Cypriot Community voted 'yes` to the Annan Plan on 23rd of April 2004 during the simultaneous referenda for reunification of the island under a federal structure. Although Turkish Cypriots proved with their 'yes' that they mostly had left secessionist policies, they were still not able to gain any right in relations with the international community. The community has not been able to find any opportunity to participate in sport events taking place worldwide. When, in the past, Turkish Cypriots had pursued secessionist policies, the sanctions imposed upon the Turkish Cypriot Community by the international community might have been understandable; but today the Turkish Cypriot Community and its leadership abandoned those secessionist policies, therefore the international community, in particular the

European Union, should take the initiative to end the isolation of Turkish Cypriots from international sport events.

Legal systems of international institutions and the Constitution of the Republic of Cyprus would also be appropriate tools to terminate these isolation policies. Football is the most popular sport in both sides of Cyprus as in the rest of the world. In this article we will discuss the possibility of ending the isolation of the Turkish Cypriot Community on football fields.

The Constitution of the Republic Cyprus and the FIFA-UEFA System Would Permit the Ending of the Isolations Turkish Cypriot Community's Isolations

The Turkish Cypriot Community has still the legal right to have its own sport associations under the Constitution of the Republic of Cyprus to which Greek Cypriot authorities always refer to articles 87, 88 and 108 of the constitution gives to the both sides the right to have their own religious, cultural and sport institutions.[41] Article 108 of the Constitution of the Republic of Cyprus gives a clear idea about the case. The first paragraph of the Article 108 emphasizes that:

> "The Greek and the Turkish Communities shall have the right to receive subsidies from the Greek or the Turkish Government respectively for the institutions of education, culture, sports and charity belonging to the Greek or the Turkish Community respectively".[42]

[41] For more details see,. Article 87, 89 and 108 of Republic of Cyprus which is in English version,
http://www.kypros.org/Constitution/English/appendix_d_part_v.html
[42] **Ibid.**

Of course, the Constitution of the Republic of Cyprus has not been properly applied in the rest of the island. In spite of this impediment, we can still refer to the rights of the Turkish Cypriot Community on education, culture and sport within the Constitution. Hence, this reality may not be against the nature of territorial integrity of the island and the recognition of one international sovereignty; it is also not against the characteristic features of federalism.

Such a similar case can be seen in the United Kingdom. Where, Great Britain is recognized and represented under the Great Britain and Northern Ireland denominations in the United Nations. In the Olympic Games, England, Northern Ireland, Scotland, and Wales compete together under one flag and name, the United Kingdom. In the competitions of UEFA and FIFA, we see that England, Northern Ireland, Scotland and Wales have their own 'national teams` playing international matches and their national clubs competing in the UEFA Champions League and UEFA Cup separately.[43]

Now, Let us come back to the case of Cyprus and the isolation of Turkish Cypriots who are European Union citizens as individuals-from participating in international football associations and events.

[43] English Football Association has been founded in 1863 and become the member of FIFA in 1905 and UEFA in 1954, Scottish Football Association has been founded in 1873 and become the member of FIFA in 1910 and UEFA in 1954, Whales Football Federation has been founded in 1876 and become the member of FIFA in 1910, and UEFA in 1954, and Northern Ireland has been founded in 1880 and become the member of FIFA in 1911 and UEFA in 1954. For more information see, UEFA official web page, http://www.uefa.com .

Photograph taken by Embargoed.org showing Turkish Cypriot football players 'kicking the balls' to Embargoes

When the Cyprus Football Association was established conjointly by Turkish and Greek Cypriots in 1934, they stood together until 1955s when the inter-communal clashes broke out. The Cyprus Football Association became a member of FIFA in 1948, and of UEFA in 1962; nonetheless, due to the inter-communal unrest amongst the two communities, the Association was solely represented by the Greek Cypriots. In the aftermath of this development, the Turkish Cypriot Community has tried to continue its football activities under the Cyprus Turkish Football Association which was founded in 1955. Today, there are almost 2.500 licensed football players, 33 football stadiums which are green pitch, Ataturk Stadium being the biggest stadium whose capacity accommodate approximately 20.000 persons.[44]

[44] http://www.ktffnet.org/indextarihce.php

The Cyprus problem remains unsolved to this day due to the rejection of the Annan plan by the Greek Cypriot Community. Of course it should be noted here that, one may have to respect the Greek Cypriot attitude towards the Plan. But on the other hand, some steps should be taken by the international community to ease if not end the isolation of Turkish Cypriots from international football organizations. There are two alternative ways to end the isolation of Turkish Cypriot citizens in the European Union. The first one would be to recognize the right to the representation of Turkish Cypriots in the Cyprus Football Association (It is a member of FIFA and UEFA and occupied only by Greek Cypriots). If this first option can be materialized, then Turkish and Greek Cypriot teams can compete in their respective leagues and then they can play in play off together. On the other hand they can participate in together at the international competitions under one flag. This is the best solution which can ultimately increase the senses of 'common home and common patriotism` and would then pave the road for reaching a Federal United Cyprus. But, until today, the members of the Cyprus Football Association (Greek Cypriots only have representation in this Association) demonstrated unwillingness to organize a common league and a common national team. Regarding this, the international community has to take some measures to pressurize the Cyprus Football Association to open up its body for the representation of Turkish Cypriot teams within the Association. On the other hand, if the international community fails to persuade Greek Cypriots for one common Association with Turkish Cypriots, the second alternative should be thought of; the separate membership of the Cyprus Turkish Association in the FIFA and UEFA as in the case of United Kingdom, where England, North Ireland, Scotland and Wales have separate representations in FIFA and UEFA. That alternative would not conflict with the constitution of the

Republic of Cyprus as we mentioned above. Therefore the international community and especially the European Union have to take some measures to end up the isolation of the European Union's Turkish Cypriot Citizens in international football competitions.

Dr. Muhittin Tolga ÖZSAĞLAM

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Architecture

Isolation of Turkish Cypriot Community (TCC) still continues despite the fact that it voted in favour of the EU membership and reunification in the 2004 referendum. Since then the Greek Cypriot Administration's (GCA) aggressive attempts to exclude TCC from being part of the wider world, particularly the EU still continue with a growing extent to this day.

As a Human rights organisation that challenges to Turkish Cypriots' isolation, we received an application from the Turkish Cypriot Architecture Association (TCAA) which complained about the continual efforts of the Cyprus Architects Association not only to exclude the TCAA from being a member of the Union of Mediterranean Architects (UMAR) but even refuse the granting of an obstacle status. Below, you shall read a brief account of the process through which TCAA has gone and is still being going through in seeking membership through with UMAR and the International Architects Union.

TCAA has applied to become a full member of UMAR in Antalya where UMAR held its 11th General council meeting in 2005. The application came on the basis of the 1960 constitution which established the Republic of Cyprus (RoC) in which it says both Turkish and Greek communities are entitled to establish separate associations. (i.e. Cyprus Turkish and Greek architects associations).[45] The application was further encouraged by UMAR's constitution in which it says 'all Mediterranean architects regardless of their race, religion and nationality shall be embraced'.[46]

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[45] Chamber of Turkish Cypriot Architects Report, No. 40, p. 4.
[46] **Ibid.**

Photograph of the building of the Turkish Cypriot Chamber of Architects

The application was strongly opposed by the Greek and Greek Cypriot delegations claiming TRNC and all its institutions are illegal and must not be welcomed. Tsuris Charalambos, representative of the Cyprus Architects Union insisted that TRNC is an illegal, unrecognized state and its institutions must be recognized as the sole legitimate institutions.[47] Therefore the application must be rejected.

The application for full membership was opposed by the majority of UMAR later in the meetings. Isabelle Moreau, legal consultant to CIAF and ONAF argued that according to UMAR's constitution North Cyprus's application was impossible to be

[47] **Ibid.,** p. 6.

accepted. Nonetheless she adds, if asked they could be granted an 'observatory status'.[48] This view was supported by the spokesperson of the French delegation Patrice Nelli who pointed out that there is no obstacle according to the 18. article of UMAR's constitution for the observatory status to be granted but that UMAR's constitution strongly states that Turkish Cypriot architects can not be a full member.[49]

After a series of discussions it seemed that the majority of the delegates' views towards granting 'observatory status' would be weighed amongst the members of the general council of UMAR in Antalya. However, President of UMAR, Patrice Genet instead of making a decision regarding the observatory status of TCAA, sought to delay it to the next general council meeting of UMAR. This decision of UMAR created huge disappointment on the side of TCAA which was ultimately interpreted as the victory of Byzantine games of Greek Cypriots who politicised the matter, and yet sadly such attitudes found support amongst the majority of UMAR members. Unfortunately, this was the illustration that politics had once again triumphed over such a simple ethical matter!

That said, we have learnt from Mr. Turker Aktac, the man responsible for external affairs of TCAA, that the Cyprus Architects Union was only established in 1980, the TCAA was established in 1962! In other words, if we would be stuck in the discussions whether which one is more legitimate or legal whatsoever, as you might see TCAA is more legitimate because it was established in 1962, before the collapse of Republic of Cyprus. Therefore, the attempt of the Greek Cypriots to block the granting of the observatory status to TCAA is not only baseless in

[48] **Ibid.,** p. 4.
[49] **Ibid.,** p. 4.

accordance with the constitution of the RoC, but also flagrant breach of fundamental human rights and discrimination against Turkish Cypriot architects as listed in the charter of fundamental rights of the European Union.[50]

Voting of UMAR for TCAA to be granted observatory status was held in Montpellier in France in November 2006 where TCAA was not invited to take part. Voting resulted as draw-6 members of the UMAR general council voted in favour whereas the rest of the six voted in opposition to the membership. However, as the president has two votes in the situations where draw is present, and voted against it; the observer status was not granted.

Turker Aktac, summarizes his experiences, emotions and all the political games against Turkish Cypriot architects as follows:

> 'The reason why I took part in various activities, organizations of UMAR was because I believed UMAR belonged to all architects living in the Mediterranean region as it is listed in the constitution of UMAR. However, for the past years I have gone through, I realized that dirty political games have triumphed over architecture as we have been excluded from even having the observatory status! Unfortunately, various administrators, coordinators of UMAR for the sake of having Greek Cypriot support in the rallies for power in Umar gave in the Greek Cypriot pressures to exclude us. As a result of all attempts, and attitude of UMAR against Turkish Cypriot architects, I decided to quit from all the duties, jobs of UMAR which I was performing voluntarily."[51]

Turkish Cypriot architects' attempts to be part not just of UMAR but also of international as well as regional bodies continue on a

[50] Charter of Fundamental Rights of the European Union. Article 21.
[51] Turker Aktac, in a personal interview with me.

regular basis and the struggle for integrating with the wider world shall not end until it succeeds as Mr. Aktac concluded.

Mustafa ABİTOĞLU

Coordinator of the Turkish Cypriot Human Rights Foundation

Higher Education

An important aspect of the international isolation of North Cyprus is the severe limitations under which its higher education sector has been struggling. The obstacles that Turkish Cypriot universities, and therefore their academic staff and students, have been facing constitute a grave violation of the right to education, which is protected under article 26 (1) of the Universal Declaration of Human Rights (UDHR).[52] These obstacles also constitute a violation of their right to "share in scientific advancement and its benefits" (UDHR, article 27(1)).

The reason given for depriving Turkish Cypriots of these rights has been the political situation on the island, and the fact that the Greek Cypriot administration is recognized internationally as the Republic of Cyprus whereas the Turkish Republic of Northern Cyprus (TRNC) is not recognized. However, it is without question that the political/legal status of the TRNC and/or the division of the island cannot constitute grounds for denying the rights of Turkish Cypriots as protected under the UDHR. For the UDHR states explicitly that everyone is entitled to the rights set forth therein, and that "no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs" (article 2).[53] The attempts to prevent Turkish Cypriots from enjoying these rights on

[52] Article 26 (1) makes it clear that the right to education covers higher education as well: "higher education shall be equally accessible to all on the basis of merit".

[53] Along similar lines, UNESCO's Convention against Discrimination in Education proscribes any form of discrimination in education, which includes "depriving any person or group of persons access to education of any type or at any level" or "limiting any person or group of persons to education of an inferior standard" (article 1).

political grounds thus reveal a brazen contempt for the fundamental human rights of Turkish Cypriots, and for the UDHR.

To illustrate the variety of restrictions that the Turkish Cypriot higher education sector faces, we may describe the restrictions experienced at Eastern Mediterranean University (EMU), the oldest and largest university in Cyprus. EMU has been struggling primarily against difficulties in four areas:

I) Joining International Academic Organizations/Programs

A) The SOCRATES/ERASMUS Programs

EMU applied for an Erasmus Charter in November 2004. However, a precondition for receiving a Charter was that the "national authority for education" should confirm EMU's status as an institution of higher education. A letter was sent to what Brussels considers the "national authority" -i.e. the Ministry of Education in the Republic of Cyprus -which refuses to give EMU eligibility status. EMU's application for a Charter has thus been suspended unfairly for two years. As a result, EMU students and staff cannot enjoy the benefits of the SOCRATES/ERASMUS programs. This will have a devastating effect in the long run, since EMU will be unable to compete with the hundreds of universities that offer these benefits to their students and staff. This exclusion of Turkish Cypriot universities is completely unjustified, since the 1960 constitution of the Republic of Cyprus provides that the Turkish and Greek Cypriot communities are separately responsible for their educational, cultural and religious affairs. Considering the Greek Cypriot Ministry of Education as the "national authority" over a Turkish Cypriot university is

therefore a violation of the constitution, in addition to being a violation of the human rights of Turkish Cypriots.

B) The Bologna Process

EMU, along with all other Turkish Cypriot universities, is currently excluded from the Bologna Process (BP). The BP is open to all of the 48 countries party to the Cultural Convention of the Council of Europe. Universities in these 48 countries make up the "European Higher Education Area" (EHEA). Although Turkish Cypriot universities are in the EHEA, they are discriminated against and excluded from the BP on the grounds that they do not have a "national" educational system affiliation. As a result, when the BP ends in 2010, diplomas from EMU and other Turkish Cypriot universities will not be granted automatic recognition in countries participating in the BP. This constitutes a serious problem for the students of Turkish Cypriot universities, as their diplomas may not be recognized in the participating countries.

C) UNESCO's World Higher Education Database

EMU is a full institutional member of the UNESCO-affiliated International Association of Universities (IAU), and it is listed on IAU's website. However, EMU has not been listed in UNESCO's World Higher Education Database, or in its Directory of Higher Educational Institutions. As a result, some universities and Ministries of Education are now refusing to recognize the diplomas of EMU students.

D) European University Association

EMU is currently a full institutional member of the European University Association (EUA). However, this has been achieved through great effort against the attempts by the Greek Cypriot administration to block EMU's membership.[54]

II) Conducting Archaeological Research

The archaeological work conducted by a faculty member of EMU's Department of Archaeology and Art History, in collaboration with two archaeologists from Germany, has faced fierce objections from Greek Cypriot archaeologists. The newly discovered Late Bronze Age site near the village of Kaleburnu (Galinoporni) was found to be in need of salvage, and the archaeological work there is thus in accordance with international law. Nonetheless, the archaeologists working on the site have received threatening emails from their Greek

[54] The Greek Cypriot administration has been open about its efforts to block EMU's membership. The Greek Cypriot daily newspaper *Filelefθheros* thus published an article on February 19, 2006 entitled "Finally they got what they wanted: Illegal University Becomes EUA Member Despite All Objections".

Cypriot colleagues, and the German Fritz Thyssen Foundation, which had agreed to fund the project, has been forced to suspend the funding until "the situation is clarified".[55]

III) Collaboration with Universities in other Countries

EMU currently has cultural and educational exchange agreements with two US universities, Central Connecticut State University and San Diego State University. Both of these agreements, however, have come under severe attack by the Greek Cypriot administration's "Embassy of Cyprus in Washington D.C." and Greek Cypriot lobbyists. The presidents of both universities have had to struggle, together with EMU, against this assault on academic freedom.

IV) Collaboration with Greek Cypriot Universities

Even though Turkish and Greek Cypriots share a small island where it would be mutually beneficial for all institutions of higher education to collaborate to the fullest extent possible, Greek Cypriot universities refuse to collaborate with EMU or other Turkish Cypriot universities at an institutional level. This makes joint projects, programs and conferences impossible, depriving both Turkish and Greek Cypriot students and academics of significant educational and scientific benefits.

Such politically based restrictions on the Turkish Cypriot higher education sector have had serious consequences: They have prevented the free movement of students and staff, deprived them of academic freedom, the free exchange of

[55] More details on this matter can be found in *Archaeology*, January/February 2007.

ideas, international competition and intercultural experience, and obstructed research and development projects. Apart from the obvious impact on the quality of education and scientific research, these restrictions also pose a threat to the general community because of the particularly significant role of the higher education sector in North Cyprus: the higher education sector makes up 40 % of the economy in North Cyprus. The annual financial contribution of this sector to the Turkish Cypriot economy, together with tourism, has been the primary force behind the economic development of Turkish Cypriots. Furthermore, the Turkish Cypriot universities are important contributors to the cultural life of North Cyprus, organizing a wide variety of cultural events as well as providing venues for events organized by others. The restrictions on the higher education sector have therefore been harming Turkish Cypriots not only academically but also economically and culturally.

Kaya ARSLAN

Advocate

Dr. Mehmet M. ERGİNEL

Eastern Mediterranean University
Department of English Literature and Humanities

PART TWO: STATEMENTS BY THE TURKISH CYPRIOT NGO REPRESENTATIVES MADE AT THE OSCE HUMAN DIMENSION IMPLEMENTATION MEETING IN WARSAW, 2007

The Organization for Security and Co-operation in Europe (OSCE)'s Human Dimension Implementation Meeting (HDIM) is the largest human rights conference in Europe where representatives of civil society sit with governments on an equal footing. For two weeks, Organization for Security and Cooperation in Europe (OSCE) delegations, intergovernmental agencies, and NGOs come together to discuss the implementation of OSCE commitments on the protection of human rights, the rule of law, and democracy. In last year's HDIM for the first time ever, a number of Turkish Cypriot NGOs including the Turkish Cypriot Human Rights Foundation (TCHRF) participated in the meeting and seized the opportunity to address HDIM and OSCE Representatives as well as NGOs in order to express human rights problems in their respective areas of activity.

Below, are the oral interventions that were made by Turkish Cypriot NGO representatives during the HDIM.

The Right to Education of the Turkish Cypriots Living in Southern Cyprus

The Turkish Cypriots living in Southern Cyprus, along with other matters, are being seriously confronted with discrimination in the field of education. While the Greek Cypriots living in the Karpas region in North Cyprus are receiving their education in their mother tongue and enjoying the right to choose their teachers and curriculum in primary and secondary schools, none of these amenities are recognised to the Turkish Cypriots living in the South even at primary school level. This is contrary to the Cyprus Constitution, Article 3 which foresees the official languages of the Republic to be Greek and Turkish and articles 20 and 87 which regulate the educational rights of the Turkish Cypriots. The said articles provide that the Turkish Cypriots will have the right to receive education in their mother tongue and administer their own schools. Despite these clear provisions of the Constitution of the Republic of Cyprus, the Greek Cypriot Administration continuously hindered the opening of a Turkish primary school and even alleged that there was no such a demand on the part of the Turkish Cypriots. In furtherance of this allegation, the Greek Cypriot Administration, through the Ministry of Education and Culture established, in violation of the Constitution, proceeded to solve the matter by opening, in a normal Greek Cypriot school in Limassol, where there is a concentration of Turkish Cypriots, a class in which a few lessons are conducted in Turkish. Furthermore, these lessons conducted in Turkish, are being given by people without the help of a textbook and whose profession is unrelated to elementary education. Thus, the Turkish Cypriots are being made to receive education, apart from a few hours, in the Greek language which they do not understand. By this arrangement, the Greek Cypriot Administration is preventing the Turkish Cypriot pupils from

receiving education on the same standards as the Greek Cypriot pupils and thus, the Turkish Cypriot pupils are being faced with a lower standard of education.

This arrangement is in fact, indicative of the Greek Cypriot Administration's denial of Turkish Cypriot status as equal co-founder of the Republic of Cyprus. The Greek Cypriot Administration does not even view the Turkish Cypriots as a minority, because according to international covenants regarding minority rights, minorities have the right to education in their mother tongues and parties to these covenants are obliged to take the necessary steps in the realisation of this right. Despite the above, the Greek Cypriot Administration denies to the Turkish Cypriots not only the right which emanates from the Constitution, but even the international rights recognised to minorities in the world.

Today, the denial of the Turkish Cypriots' constitutional right to receive education in their mother tongue by the Republic of Cyprus which is a member of the European Union is a situation the like of which does not exist in the world. The recognition of this right by putting an end to this arrangement is not only a legal requirement, but also an obligation on the part of a member of the European Union where human rights are most highly valued.

Asst. Prof. Dr. Ali DAYIOĞLU

Member of the Board of Trustees of the
Turkish Cypriot Humans Rights Foundation

Unconstitutional, Anti-Democratic and Illegitimate "Republic of Cyprus"

The main principle that the 1960 Constitution of the Republic of Cyprus is based on is power-sharing between the two communities. According to this principle, the president of the Republic would be a Greek Cypriot, while the vice-president would be a Turkish Cypriot and they would be elected by the Greek and Turkish communities of Cyprus respectively. 30% of the members of the House of Representatives and of the Council of Ministers would be Turkish. The High Court of Justice would be composed of two Greek, one Turkish and one neutral judge. 30% of all civil servants, 40% of the police force and 40% of the army would be Turkish.

As it is clearly seen from the percentages, according to the Constitution, it was intended that the power in the Republic of Cyprus should be shared between the two communities. But since 1964, those regulations in the Constitution haven't been exercised at all. Since that date, the Turkish Community has not been represented in any of these organs.

The negotiations for a settlement of the Cyprus problem started in 1968 between the leaders of the two communities but there was no solution until 1974. After 1974, the negotiations continued and in 1977 and 1979, two summit agreements were signed by the leaders. According to these agreements, the new settlement in Cyprus would be based on a bi-communal and bi-zonal solution and this new state would be a federation. But the leaders of the two communities couldn't reach this aim and the status quo was preserved.

Since 1974 the status quo in Cyprus is based on two states. Today, one of these states is the "Republic of Cyprus" where the Turkish Cypriots have no representation whatsoever in any organ in spite of the regulations in the Constitution and the other state is the Turkish Republic of Northern Cyprus. The composition of the legislative, executive, judiciary and administrative organs of the "Republic of Cyprus" is completely unconstitutional. But this de facto state is recognized by the United Nations and other international organizations and it is a member of the European Union while the TRNC is recognized only by Turkey.

Until 2004, the propaganda line of the Greek Cypriot Administration was that the abnormal situation in Cyprus which forced the state to act unconstitutionally wasn't their fault, so although this state was unconstitutional it had to be accepted as legitimate. But after the referenda in 2004 which were held to find a comprehensive settlement in Cyprus, this so called legitimacy must also be discussed. 65% of the Turkish Cypriots said "yes" in the referendum while over 75% of the Greek Cypriots said "no". So, now the Greek Cypriot Administration who encouraged the Greek Cypriots to reject the Annan Plan is an unconstitutional administration where the Turkish Cypriots aren't represented at all although they strongly supported the comprehensive settlement. Even though the Greek Cypriot Administration was unconstitutional, it was accepted as legitimate because everyone thought that it was the Turkish Cypriots and their Leadership who don't want a comprehensive settlement and who want to preserve the status quo in Cyprus. But after the referenda, it is now clear that it is the Greek Cypriots who said "no" to the Plan and it is their Leadership who doesn't propose any alternative for a comprehensive settlement in line with the principles designated by the United Nations. It is also clear that the leaders of the Greek Cypriot Community called on

their citizens to say "no" in the referendum. Under these circumstances, it can easily be argued that since April 2004 the administration in South Cyprus which isn't showing any effort to prevent the exclusion of the Turkish Cypriots from the legislative, executive, judiciary and administrative organs is not only unconstitutional but also illegitimate.

Today, the Greek Cypriot Administration, by encouraging its citizens to reject the chance of a comprehensive settlement in Cyprus and by failing to propose an alternative to the Annan Plan in line with the principles designated by the United Nations is clearly the only side which is responsible for the abnormal situation on the island. So, since 2004, it is not possible to argue that the abnormal situation on the island can justify the unconstitutionality of the Greek Cypriot Administration.

The so called Republic of Cyprus today, based on the principle of complete exclusion of the Turkish Cypriots from the state organs is not only unconstitutional, but anti-democratic and illegitimate as well.

Asst. Prof. Dr. Tufan ERHÜRMAN

Member of the Board of Trustees of
The Turkish Cypriot Human Rights Foundation

Unconstitutional and Unfair Trial in Cyprus

The island of Cyprus has been divided into two parts as north and south since 1963 and because of this division, Turkish Cypriot refugees who moved to the north and Greek Cypriot refugees who moved to the south had to leave their homes and other immovable properties. All these refugees certainly look forward to a comprehensive settlement which will give them the chance to either return to their old places or at least receive compensation instead.

The Annan Plan was a chance for a comprehensive settlement in Cyprus but after the simultaneous referenda on the 24th of April 2004, although 65 % of the Turkish Cypriots said "yes", it was rejected by the Greek Cypriots.

After the referenda, the Greek Cypriot leaders who encouraged their citizens to say "no" in the referendum in South Cyprus had to find some other ways to show their citizens that to reject the Annan Plan had brought them to a more powerful position especially in the property issue.

The alternative way found was to bring suits against Turkish Cypriots and foreigner individuals living in North Cyprus and using old Greek Cypriot properties. One of the most popular cases of this sort was the "Hurma" case. This case was about the old property of a Greek Cypriot situated in the north which was used as a restaurant by a Turkish Cypriot citizen. Although the immovable property was situated in North Cyprus, the suit was brought to the courts of the Greek Cypriot Administration in the South.

The Greek Cypriot Administration is a member of the European Union representing the whole island and the constitution which is said to be in force in the south is the 1960 Constitution of the Republic of Cyprus. According to article 159 sub section 3, "where in a civil case the plaintiff and the defendant belong to different Communities the court shall be composed of such judges belonging to both Communities as the High Court shall determine". But in the "Hurma" case, because there was only one judge who was a Greek Cypriot, the composition of the court was a clear breach of this article. Article 159 of the Constitution is a very important article because it not only regulates the composition of the courts in the Republic of Cyprus but it also formulates the basis of fair trial in this country. According to the main principles of the Constitution, without having two judges who belong to two different communities, a fair trial will be impossible in civil cases where the plaintiff is a Greek Cypriot and the defendant is a Turkish Cypriot.

The justification of the Greek Cypriot Administration for this unconstitutionality is the "extra ordinary" conditions in Cyprus. According to the Administration, because of the extra ordinary conditions in Cyprus it is impossible to employ Turkish Cypriot judges in the courts. But it must be stressed that these conditions that "force" the Administration to act unconstitutionally are just the same for the Turkish Cypriots who said "yes" in the referendum for a comprehensive settlement and who continue to use old Greek Cypriot immovable properties after the referendum. It is completely lawful for a Turkish Cypriot to use old Greek Cypriot properties in the North just as it is lawful for a Greek Cypriot to use old Turkish Cypriot properties in the South. We must never forget that this is an outcome of the unsolved Cyprus problem and neither the plaintiff nor the defendant can be held responsible for what has happened on the island.

But if the Greek Cypriot Administration is ready to try Turkish Cypriots in its courts then surely the same Administration must be ready to act in accordance with its own constitution and especially the principle of fair trial. We mustn't forget that unfair and unconstitutional trial of the Turkish Cypriots is not only a breach of the Constitution of the Republic of Cyprus but is also a breach of the European Convention of Human Rights; and as a member of the European Union the Greek Cypriot Administration is under the obligation of applying the Convention in the areas under its effective control without any discrimination.

Asst. Prof. Dr. Tufan ERHÜRMAN

Member of the Board of Trustees of
The Turkish Cypriot Human Rights Foundation

Women in North Cyprus

Adoption of the OSCE Action Plan for the promotion of Gender Equality in 2004 and putting pressure on countries to take vigorous steps in their national jurisdictions to promote equality of rights and opportunities among women and men in all areas of public and private life, is not too simple in practical life.

1) Women are still core of the family by culture and by nature. With the 2004 OSCE Action Plan, for the gender equality the position of the women is targeted to have work and life balance & enjoy full partnership in the political and economical life. This promotion of gender equality is definitely an issue, in exchanging with the healthy family structure. This is why in order to eliminate this trade off, it is vital and it has to be strategically planned by government policies in order to have effective solution to the matter. For centuries women worked at home and served as unpaid labour to keep a happy and stable family. So we must answer the question "are families and societies ready to trade in already existing family structure for the women equality and participation of social economical and political life or is it possible to have both?" The trick here is to have BOTH. Women are representing half of the society. If we want an equal representation in the parliament, and in all areas of the social life, successful change in the representation of the women can only done by creating infrastructure to support a healthy family structure. Therefore women should not feel guilty and responsible. Women need to feel free and not obligated to her children, family structure and elderly members of the family in order to have clear mind and conscious to contribute to the policy making levels. Government policies and strategic planning should focus on that and this can done by building

more child care facilities by providing night and day cares, by developing different rules and laws.

2) Women for centuries were assigned to certain role models such as being school teachers, nurses, bank clerks, or work for the family as unpaid labour. This kind of culture could only change by education that starts from childhood. This cannot be achieved overnight by changing laws. This should be a long term government policy in order to be successful.

3) To implement a project which will make an impact and create a change in the cultural perception, infrastructure, and social life and share the decision powers with women of the country needs a great commitment a big budget and good strategic planning. As I can understand this is an EU strategy but it needs to have commitment by the states as well.

4) If member states agree to support this change and create the necessary funds for the project further monitoring, reporting and facilitating the member states can help to have parallel change

5) Since equal participation of women is to be ensured by member states and we know that women need a starting point quotas are needed for them to catch up with the already on going race.

Turkish Cypriot Women

Turkish Cypriot women, like all the citizens of North Cyprus, are individually members of the EU. Even though the EU Acquis Communautaire is not applicable to the Northern Part of Cyprus we have the legal rights, human rights and need to demand everything that the EU citizens enjoy.

All kinds of Turkish Cypriot NGOs are suffering in raising their voices in the EU arenas. NGOs which are registered to "Cyprus Government" have all the representation rights and benefits of the EU Action Plan to institutionalize. Whereas Turkish Cypriot NGOs that are representing the needs, culture, social variety of North Cyprus are being isolated due to recognition problem of the Turkish Cypriots.

Turkish Cypriot women have a great potential to take part in this inevitable change of representation in the decision making mechanisms. Turkish Cypriot women are ready to set up an organization–wide network to ensure gender mainstreaming in order to meet the overall aims of the Action Plan.

Turkish Cypriot women believe that they have the same rights to take part in senior level in the OSCE positions even though they aren't represented by any participant states.
Turkish Cypriot women have the infrastructure and human power and tools to take full participation in this change.

Turkish Cypriot women's profile of educational and employment development is not any different than the developments of the European women. Turkish Cypriot women are equally under-represented in the parliament of the country.

Gender awareness and equal representation in the parliament and decision mechanisms are very important and key elements of change in this matter.

Funds are needed to launch governmental policies to promote gender equality. Most of all monitoring and reporting is essential to have feed back and create commitment to Turkish Cypriots. We already have EU offices in North Cyprus. EU also gave

Turkish Cypriots 259 million Euros for the economical and social development. I know that some of this money is for the gender equality. Being a part of the EU as well as exchanging information, know-how and strategies are very important in creating the necessary change.

Gülden PLÜMER KÜÇÜK

President
Association of the Turkish Cypriot University Graduate Women

Role of Women in Peace

In armed conflicts everywhere women and children are not mere "collateral casualties", but remain deliberate targets. They are often victims of sexual assault, rape, sex slavery, trafficking, forced prostitution, torture, abduction, etc. The remote history of Cyprus is no exception to this. The greatest victims of the 1963-64 and 1974 tragic events in Cyprus were mostly women and children. Therefore, there is a clear need for women to play a positive role in peace-building and conflict resolution, and efforts must continue to ensure that the gender dimension is built into these processes.

But women must be empowered socially and economically in order to play that role. Women should not be treated merely as victims of conflict, but must be treated as resourceful actors in all areas of peace building, negotiations, and conflict management. Countries often do not provide women and young persons with the opportunities to participate in peace agreements, negotiations and post-conflict reconstruction and ignore issues that affect women and children such as lack of basic services, education, shelter, food security, gender justice, and reconciliation.

In order to ensure that women play their rightful role in conflict resolution, the two sides in Cyprus should sit down and develop an integrated approach which involves men, women, and young persons of both sides in Cyprus in order to promote a culture of peace, resolve conflicts and increase women's representation at all levels of peace building processes. Women must be provided with the necessary spaces for their voices to be heard and their contributions must be acknowledged. Having said that, I believe it is important to acknowledge the fact that women and youth were the driving force of the democratic changes in North

Cyprus and the Turkish Cypriot 'yes' vote of the referendum for the Annan Peace Plan. They were at the forefront of the peace fires and the pro-peace demonstrations that brought about a democratic change in the northern part of the island. Mobilisation of Turkish Cypriot women has influenced the changes in the north towards European values and mobilisation of all Cypriot women can influence a more comprehensive change in the whole island towards a political solution. We no longer want to see crying Cypriot mothers with the pictures of their missing sons in their hands. Instead, we want to see mothers with peace plans in their hands. Women are not warlords… They are in fact peacemakers, and the floor should be theirs to prove that this is the case.

The challenge we face is how do we hold the two sides in Cyprus and the UN accountable in a way that combines the strength of different approaches? For this, we need the help of the international community. We have to keep engaging and combining the call for change through support and collaboration with insiders and outsiders...

The UNSCR 1325 is an international law obligation and the important thing is to find ways to make the resolution meaningful. It is a tool to give our work added force and impact, not a replacement for that work. It is all in UN language but we can change that and translate it directly into our everyday languages…

The Security Council Resolution 1325 specifically urges the Secretary-General to appoint more women as special representatives and envoys to pursue good offices on his behalf. Hence, I would like to use this opportunity to make a call to the UNSG to use his authority to appoint a woman as a Special

Envoy to Cyprus in order to restart the peace negotiations as soon as possible.

Deniz BİRİNCİ

Head of Foreign Relations Department
Nicosia Turkish Municipality

Media and Press Freedom in North Cyprus

Distinguished organizers and guests,

I have brought you sincere love and regards from Cyprus, the beautiful but problematic island of Mediterranean. The word Cyprus is thought together with disagreement since 1960s. Since 1964, in other words, for 43 years, in Cyprus where the UN Peace Forces are present, there is also a life other than intercommunal disagreement. Primarily there are two different communities living in the island of Cyprus: One is the Greek Cypriot Community, the other is the Turkish Cypriot Community. The common state established in 1960 does not last, a war experience and then a separate life starts... This is the current picture in Cyprus...

Certainly this picture reflects on all the aspects of life of both communities and, for sure also reflects on the media known as the "fourth force" and shapes it. In this meeting which is held under the main topic Human Rights, I believe that it is necessary to brief you about the media in North Cyprus where the Turkish Cypriots live. In North Cyprus where around 250 thousand people live, 12 Turkish and 3 English, a total of 15 daily newspapers are published. Besides many weekly and monthly magazines and newspapers that are trilingual (Turkish-Greek-English) are published as well. Then again, other than the official radio and TV, around 20 private radio stations and 8 private TVs broadcast. Also there are news agencies and websites.

Why have I felt the need to provide this information? The reason is that an internationally isolated community lives in North Cyprus and the international public opinion receives wrong information about this community. Even with the brief

information I provided with giving numbers, it is clear that a free media, one of the most important pillars of democracy, exists in North Cyprus. By saying free media, I do not say that the media in North Cyprus serves within democratic rules in its full sense. On the contrary there are problems in many subjects and the CTJU and other civil society organizations struggle to overcome the obstacles in front of the freedom of press and expression.

In this context I am glad to express that, many positive steps have been taken in recent years with regards to the freedom of press in North Cyprus. Journalists are no longer judged in military courts, press cards are no longer issued by the state but by the civil society organizations, editorial independence now has a legal base with the Press-Labour Law, the articles stipulating restrictions in the freedom of expression in the Criminal Code are constrained. Other than these, I would like to take your attention to the issue of discrimination that is applied by the authorities of the "Republic of Cyprus", an EU member state since 2004 that represents the Greek Cypriot Community living in South Cyprus only however pretending to represent the whole of the island because of international political reasons.

"Republic of Cyprus", other than being a member of the EU, a member of the Council of Europe and OSCE, prevents the "right to have access to information" which is an important element of press freedom. It prevents the journalists who come to North Cyprus, even the journalists who live in North Cyprus from crossing to South Cyprus and gathering information. It contravenes to the freedom of press by not allowing journalists who bear International Press Cards, even journalists who are directors of International Press Organizations to cross to South Cyprus. This practice is against all international rules including the Green Line Regulation adopted by the European Council in 2004.

I would like the human rights organizations to carefully monitor this situation and that all related organizations including the Council of Europe react to this situation in order to stop the violation of right that is faced. Thank you.

Osman KURT

President
Cyprus Turkish Journalist's Union

VII) Displaced Persons in Cyprus

Mr Chairman, ladies and gentlemen,

First of all, I would like to thank the OSCE and ODIHR to make such a big organization where NGOs and Government representatives can come together and discuss how to better improve democracy and human rights all around Europe.

Before beginning my presentation, I would like to give you a little bit background information with regard to the identity of TCHRF which I have the honor to represent today. TCHRF was established by a group of human rights activists who were amongst the leaders of mass rallies in favour of comprehensive settlement to the Cyprus conflict and thereafter the European Union membership of an expected United Republic. As Turkish Cypriots overwhelmingly embraced the Annan Plan-prepared by former UN Secretary General Kofi Annan with the hope that it woud have settled the long standing conflict- it was unfortunately rejected by a resounding 'NO' vote of Greek Cypriots in 2004 Referendum. The TCHRF was established primarily to deal with the human rights problems of Turkish Cypriots who have been left outside the EU even though they have accepted the Plan which was highly welcomed and embraced by the International Society chiefly amongst them the EU, that would have reunited the island.

Ladies and gentlemen,

The issue of 'Displaced persons' continues to be the bleeding wound in the history of Cyprus today. Unlike the Greek Cypriot official propaganda which advocates that the so-called Cyprus problem has started in 1974 with the invasion and occupation of

Turkey which deprived Greek Cypriots of their homes and property; its roots lie in the 1950s when EOKA-Greek Cypriot paramilitary organization initiated an armed struggle against Turkish Cypriots with the aim of annexing Cyprus with Greece. Confronted by the Turkish Cypriot resistance afterwards, the conflict seemed to have come to an end with the establishment of Republic of Cyprus of which both Turkish and Greek Cypriots are the co-founders. However, 3 years after the establishment, as a result of the rejection by the Turkish Cypriots of the 13 amendments issued by the Greek Cypriot President of then Republic of Cyprus Archbishop Makarios, inter-communal conflict broke out. Turkish Cypriots have been displaced their homes and forced to live in ghettos, tents until 1974. As Turkey, one of the guarantors of RoC, militarily intervened to restore the Constitutional order and preserve the territorial intergrity of RoC, several Greek Cypriots have also been displaced from their homes and properties.

Ladies and gentlemen,

My purpose in taking you back to the recent history of Cyprus was not to try to teach you the political history of Cyprus of course. But instead, I wanted to emphasize that there has not only been Greek Cypriot displaced persons in the past of Cyprus, but there have also been Turkish Cypriots too who have been displaced from their properties even before the Greek Cypriots. And unless this reality is understood, the problem of displaced persons will continue to be the bleeding wound for the generations to come.

I will have only one recommendation to share with you today and that is a comprehensive settlement to the Cyprus problem that would not only solve the problem of displaced persons but

all the other crtitical aspects of the problem of which I do not have time to discuss now.

Thank you very much for the opportunity provided here and for listening to me.

Mustafa ABİTOĞLU

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