The Cyprus Problem and the Fenced-Off Varosha: An Analysis of the Judgments*

Meliz ERDEM**

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* The author has been a lawyer at the Immovable Property Commission at the time of the research. The author declares that any opinions in this article are personal and do not represent those of people or institutions that the author may be associated.

** Dr. Lecturer, Bahçeşehir Cyprus University, Faculty of Law. melizerdem@yahoo.com; meliz.erdem@baucyprus.edu.tr, **ORCID ID:** 0000-0001-7923-8430.

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ABSTRACT

Negotiations continuing for more than forty-five years under the auspices of the United Nations (UN) in resolving Cyprus problem have to date ended without agreement. The property dispute has been one of the aspects of the problem. The Immovable Property Commission (IPC) established in the north to examine claims of Greek Cypriots who abandoned their properties has been a development in this regard. In this respect, the properties remaining in the fenced-off area of Varosha deserve a separate analysis.

Fenced-off Varosha has been a military zone since the Turkish military intervention of 1974. The UN Security Council Resolutions 550 (1984) and 789 (1992) state that it should be transferred to the administration of the UN for resettlement of its inhabitants. Following the decision of the Turkish Republic of Northern Cyprus (TRNC) in 2020 to demilitarize and open the area up for its original inhabitants, which was also supported by calls from the Republic of Türkiye, the political implications of this move have been subject of various discussions.

However, this article attempts to shed light upon the domestic decisions and judgments in relation to properties remaining in this area, the claims by the *Evkaf* Administration of Cyprus and the implications these might have on the Greek Cypriots property rights. The issue has two dimensions: First is the question of what could the impact of the initiative by the Turkish authorities on the prospect of Greek Cypriot property claims be? Second is the question of how could the approach of the IPC affect the prospect of Greek Cypriot claims before the European Court of Human Rights (ECtHR)?

Keywords:

Cyprus | Varosha | European Convention on Human Rights | Immovable Property Commission | property

HAKEMLİ

KIBRIS SORUNU VE KAPALI MARAŞ: MAHKEME KARARLARININ ANALİZİ

ÖZ

Kıbrıs sorununun çözümü için Birleşmiş Milletler'in (BM) gözetimi altnda *kırk beş yıldan fazla bir süredir devam eden müzaker*eler bugüne değin sonuçsuz kalmıştır. M*ü*lkiyete dair uyuşmazlık sorunun sadece bir boyutu olarak varlığını sürdürmektedir. Bu bağlamda, Taşınmaz Mal Komisyonu'nun (TMK) Kıbrıslı Rumların adanın kuzey tarafında terketmiş oldukları mallara dair taleplerini ele almak üzere kurulması bugüne kadar gerçekleşen gelişmelerden biri olarak tanımlanabilir. Bu *çerçevenin bir parçası olarak,* Kapalı Maraş bölgesinde bulunan malların ayrıca ele alınması gerekmektedir.

Kapalı Maraş 1974'te gerçekleşen Türkiye müdahalesinden bu yana askeri bölge statüsündedir. BM Güvenlik Konseyi'nin 550 (1984) ve 789 (1992) no'lu kararları bölgenin BM idaresine devredilerek önceki mal sahiplerinin yerleşimine açılmasını öngörmektedir. 2020 yılında KKTC tarafından alınan ve Türkiye tarafından da desteklenen çağrılar sonucunda bölgenin askeri bölge olmaktan çıkarılarak açılması kararı birçok tartışmaya neden olmuş ve ağırlıklı olarak bu açılımın siyasi etkileri masaya yatırılmıştır.

Bununla birlikte, bu makale bölgede bulunan mallarla ilgili alınmış olan yerel karar ve mahkeme kararlarına *ışık tutmayı*, Kıbrıs Vakıflar İdaresi (*Evkaf*)*'ın* bu bölgedeki mallar üzerindeki hak iddialarını ve bu gelişmelerin Kıbrıslı Rumlar'*ın* mülkiyet hakları açısından olası sonuçlarının neler olabileceğini ele almayı amaçlamaktadır. Konunun iki boyutu bulunmaktadır: Birincisi, Türk tarafının açılıma dair aldığı bu inisiyatifin Kıbrıslı Rumlar'ın *mülkiyet hakları üzerinde nasıl bir etkisi olabileceği sorunsalıdır. İkincisi ise TMK tarafından izlenecek yolun Kıbrıslı* Rumlar'ın Avrupa İnsan Hakları Mahkemesi (AİHM) önündeki talepleri açısından doğuracağı etkinin ne olabileceğidir.

Anahtar kelimeler:

Kıbrıs | Maraş | Avrupa İnsan Hakları Sözleşmesi | Taşınmaz Mal Komisyonu | mülkiyet

INTRODUCTION

The island of Cyprus has been divided since 1974.[1] A UN buffer zone separates Turkish Cypriots in the north from Greek Cypriots in the south.[2] The background of the conflict lies with an ethnic struggle between the two major communities–the Greek and Turkish Cypriots.[3] It should be noted that the history illustrates the roots of the conflict began prior to a period before 1974, but the line which divides the island dates back to 1974.[4]

For over forty-five years, the efforts of the UN in finding a solution to the conflict in Cyprus have not been successful. Meanwhile, an innovative development has so far been the establishment of the IPC in the north to address Greek Cypriot property claims.[5] The IPC was established in 2005 following the European Court of Human Rights (ECtHR or the Court)

[1] Frank Hoffmeister, *Legal Aspects of the Cyprus Problem, Annan Plan and EU Accession* (Nijhoff, 2006), 34-38.

[2] Hoffmeister, *Legal Aspects of the Cyprus Problem,* 50.

[3] Zaim M. Necatigil, *The Cyprus Question and the Turkish Position in International Law*, 2nd ed (Oxford University Press, 1990), Chapter 1; Hoffmeister, *Legal Aspects of the Cyprus Problem*, Chapter 1; for a general evaluation of the conflict see also Niyazi Kızılyürek, *Milliyetçilik Kıskacında Kıbrıs* [Cyprus in the Claws of Nationalism], (İletişim Yayınları, 2002); Niyazi Kızılyürek, "Historical Grounds of a Federal State in Cyprus," in *The Cyprus Conflict: Looking Ahead*, ed. Ahmet Sözen (Eastern Mediterranean University Press, 2008); Niyazi Kızılyürek, *Bir Hınç ve Şiddet Tarihi: Kıbrıs'ta Statü Kavgası ve Etnik Çatışma* [A History of Vengeance and Violence: Battle of Status and Ethhic Conflict in Cyprus] (İstanbul Bilgi Üniversitesi Yayınları, 2016).

[4] Hoffmeister, *Legal Aspects of the Cyprus Problem*, Chapter 2.

[5] Meliz Erdem and Steven Greer, "Human Rights, the Cyprus Problem and the Immovable Property Commission," *ICLQ 67*, (2018): 721; Nasia Hadjigeorgiou, "Joannou v. Turkey: An Important Legal Development and a Missed Opportunity," *European Human Rights Law Review 2*, (2018): 168; Elena K. Proukaki, "The Right of Displaced Persons to Property and to Return Home after Demopoulos," *Human Rights Law Review 14*, no. 4, (2014): 701; Mustafa Erçakıca, *Kendi Kaderini Tayin Etme Hakkı ve Devletlerin Tanınması İlişkisi: Kuzey Kıbrıs Türk Cumhuriyeti Örneği Çerçevesinde Bir İnceleme* [The Relationship Between the Right to Self-Determination and the Recognition of States: An Examination within the Framework of the Turkish Republic of Northern Cyprus] (Oniki Levha Yayıncılık, 2020), 150.

decisions, namely *Xenides-Arestis v Turkey* and *Demopoulos and others v Turkey*,[6] to compensate, provide restitution or exchange of properties in question abandoned by Greek Cypriots when the island was divided.[7] However, the properties remaining in the fenced-off area of Varosha needs particular attention as this area has been a military zone since 1974. In addition, the UN stressed several times that any attempt to settle any part of Varosha by people other than its inhabitants is inadmissible and that no actions should be carried out in relation to this area that are not in accordance with its resolutions.[8] On the other hand, in line with the above stated ECtHR decisions, the properties remaining in the fenced-off zone falls under the IPC's jurisdiction regardless of its military status.[9] However, claims by *Evkaf* Administration of Cyprus over properties in fenced-off Varosha makes the issue even more complicated. In this regard, the future of the properties in the area is one of the most serious issues that the IPC and the ECtHR will have to rule on which also concerns the effectiveness of the IPC.

[6] ECHR, *Xenides-Arestis/Turkey* (Admissibility), App. No: 46347/99, 14 March 2005, ECHR, *Xenides-Arestis/Turkey* (Merits), App. No: 46347/99, 22 December 2005; *Xenides-Arestis/Turkey* (Just Satisfaction) App. No: 46347/99, 7 December 2006; ECHR *Demopoulos and others/Turkey* (Admissibility), Apps. Nos: 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04, 1 March 2010.

[7] Law No 67/2005, "Law for the Compensation, Exchange and Restitution of Immovable Properties which are within the Scope of Sub-Paragraph (b) of Paragraph 1 of Article 159 of the Constitution".

[8] Security Council Resolution 550 (1984), S/Res/550 (11 May 1984); Security Council Resolution 789 (1992), S/Res/789 (25 November 1992); UN Security Council, "Statement by the President of the Security Council," S/PRST/2021/13 (23 July 2021); in this statement it was stated *"The Security Council reaffirms the status of Varosha as set out in previous United Nations Security Council resolutions, including resolution 550 (1984) and resolution 789 (1992). The Security Council reiterates that any attempt to settle any part of Varosha by people other than its inhabitants is inadmissible and that no actions should be carried out in relation to Varosha that are not in accordance with its resolutions."*.

[9] See Article 3 (Purpose) of the Law No. 67/2005.

Upon recent developments with respect to the Turkish side's plan to demilitarize and open this particular area up, much has been said about the political implications of this initiative.[10] But, at the same time, it is necessary to address how the IPC has handled the applications in which the subject matter properties are situated in the fenced-off area.

With this in mind, this paper examines the domestic decisions and jurisprudence in relation to properties located in the area and the implications these might have on the Greek Cypriots property rights. The question is whether claims of *Evkaf* might have implications on the decisions and judgments of the ECtHR and whether these might undermine the principles set by the Court to date.

The next section starts with a brief overview on how the area relates to negotiations to solve the Cyprus problem in general. The paper then addresses the above-mentioned recent developments on the demilitarization and opening the area up. The following section sheds light on the domestic decisions and jurisprudence which concern properties located in the fenced-off Varosha. For easier follow-up, the section starts with an overview of proceedings before the IPC, before it turns to address the fenced-off Varosha more specifically. Finally, the main conclusions are drawn out.

I. THE NEGOTIATIONS TO SOLVE THE CYPRUS PROBLEM AND THE FENCED-OFF VAROSHA

Although a detailed exploration is beyond the scope of this article, a basic understanding of the negotiations to solve the Cyprus problem is necessary to understand the essence of the conflict. This is addressed in the subsequent sub-section. A general overview of the property dispute will be made in sub-section B. This will be followed by an examination of the attempts to open the area of fenced-off Varosha before elaborating on the issue further in Section II.

[10] The topic has been subject of a series of discussions which are available at https://cyprus-mail.com/tag/varosha/, accessed: 26 June 2022.

A) NEGOTIATIONS TO SOLVE THE CYPRUS PROBLEM

As noted above, negotiations to solve the "frozen conflict" of Cyprus has been ongoing for more than forty-five years.[11] The UN itself refers to the process as "peace talks"[12] and it acts as the mediator in this respect. In the last decade of the negotiations, the parties were expected to settle as envisaged by the Annan Plan V.[13] The Plan, revised five times to accommodate Greek and Turkish Cypriots demands, is the most comprehensive plan put forward so far for the resolution of the Cyprus problem. It was mainly built on the 1977-79 High Level Agreements, the Set of Ideas and the guidelines set out by the UN Security Council.[14] However, Greek Cypriots rejected the Plan with a 76% "No" vote when Turkish Cypriots accepted it with a 65% "Yes" in referendums held on both parts of the island on 24 April 2004.[15] Therefore, the process ended without success.

It was said that the Turkish Cypriot leader Mustafa Akıncı and the Greek Cypriot leader Nicos Anastasiades had made considerable progress in the chapters on "governance and power-sharing", "property", "territory", "EU

[11] Iosif Kovras, *Grassroots Activism and the Evolution of Transitional Justice: The Families of the Disappeared* (Cambridge University Press, 2017), 154; Constantinos Adamides and Costas M. Constantinou, "Comfortable Conflict and (Il)liberal Peace in Cyprus," in *Hybrid Forms of Peace: From Everyday Agency to Post-Liberalism*, eds. Oliver P. Richmond and Audra Mitchell (Palgrave Macmillan, 2012).

[12] Information on this is available at https://uncyprustalks.unmissions.org/about, accessed: 14 January 2022.

[13] Hoffmeister, *Legal Aspects of the Cyprus Problem,* 180.

[14] Ali Osman Karaoğlu, "Dispute over the Fenced Varosha in the light of International Law, United Nations Security Council Resolutions and Judgments of European Court of Human Rights," *Public and Private International Law Bulletin 42,* no. 1, (2022): 333-43.

[15] "Cyprus misses 'historic chance' as it rejects UN reunification plan, Annan says," *The UN News*, 24 April 2004, accessed: 19 July 2022, https://news.un.org/en/story/2004/04/101352-cyprus-misses-historic-chance-it-rejects-un-reunification-plan-annan-says.

and economy" in the years that followed. However, these efforts also ended without agreement in July 2017.[16]

On various occasions, the UN has had a significant position and/or considerable involvement in attempting to overcome the stalemate on the island.[17] For example, the UN operation in Cyprus was established with Resolution 186 (1964).[18] The Resolution stated that the goals of the UN mission for peacekeeping and peace-making were to find and/or promote a settlement and to prevent the recurrence of violence and/or war in Cyprus.[19] Having said this, some of the key phases of negotiations shall also be briefly addressed here.

Between 1963 and 1967, the main objective of the negotiations was to prevent a conflict between Greece and Türkiye, and most of the time, the two Cypriot community leaders had limited participation in the negotiation process. This led to substantial unrest and dissatisfaction.[20] However, the period between 1975 and 1979 can be referred to as the basis of future negotiations where Denktaş and Kyprianou (the then community leaders) settled the "Ten-Point Agreement" confirming the four guidelines and envisaging, among other things, the resettlement of the fenced-off area of Varosha under the auspices of the UN. In addition, the Agreement became the reference point for future negotiations culminating in the 1977- 79 "High Level

[16] "Cyprus talks end without agreement, says UN chief", *The Guardian*, 7 July 2017, accessed 13 July 2017, https://guardian.ng/news/cyprus-talks-end-without-agreement-says-un-chief/.

[17] Chrystalla Yakinthou, *Political Settlements in Divided Societies: Consociationalism and Cyprus* (Palgrave Macmillan 2009), 123.

[18] Security Council Resolution (1964) 186, S/5575 (4 March 1964).

[19] Security Council Resolution 186 (1964), § 5-7; Yakinthou, *Political Settlements,* 123.

[20] Ahmet Sözen, "The Cyprus Negotiations: From the 1963 Inter-communal Negotiations to the Annan Plan," in *Reflections on the Cyprus Problem: Compilation of Recent Academic Contributions,* ed. Ahmet Sözen (Cyprus Policy Center, 2004), 2; Jenna C. Borders, "Another Door Closed: Resort to the European Court of Human Rights for Relief from the Turkish Invasion of 1974 May No Longer Be Possible for Greek Cypriots", *NCJ Int.l & Com Reg 36,* (2010): 689 – 94.

Agreements" and set forth a clearer policy for the future of negotiations.[21] During 1984-86, the UN resorted to a "comprehensive solution" but the lack of will by the two sides to solve the problem led to an unsuccessful end. Between 1988 and 1992, the efforts to find a solution were renewed where in August 1992, the UN Secretary General Boutros Ghali put forth a "Set of Ideas". This was a detailed plan elaborating on the bi-zonal, bi-communal federation model, with two politically equal federated states.[22] However, when the Set of Ideas was rejected, by 1992 the UN's attention turned instead to confidence building measures (CBMs). In other words, the idea of the CBMs was the result of a lack of trust between the two communities and was the most important aspect relevant for fenced-off Varosha.[23] Accordingly, the then UN Secretary-General put forth a number of confidence building measures (CBMs) to advance the goal of the forthcoming joint meetings for an overall settlement agreement.[24] On 24 November 1992, the proposed CBMs were endorsed by the UN Security Council.[25] These included humanitarian, social and economic measures including the opening of the fenced-off Varosha contemplated by both sides in detail.[26] According to the CBMs, Varosha would be controlled and administered by the UN, the claims of Greek Cypriots would be addressed and the area would reflect an objective to improve and enhance the relationship between

[21] Sözen, "The Cyprus Negotiations," 5; International Crisis Group, "Cyprus: Bridging the Property Divide," (Report No.210, 9 December 2010), 5; Necatigil, *The Cyprus Question*, 129.

[22] Kypros Chrysostomides, *The Republic of Cyprus: A Study in International Law* (Martinus Nijhoff Publishers, 2000), 405–406; "Set of Ideas" was later adopted by the UN Security Council Resolution 774 (1992), S/Res/774 (26 August 1992).

[23] Sözen, "The Cyprus Negotiations," 13.

[24] UN Security Council, "Report of the Secretary General on His Mission of Good Offices in Cyprus," S/24830, 19 November 1992, § 63; Meltem Müftüler-Bac, "The Cyprus Debacle: What the Future Holds," *Futures 31,* (1999)*:* 563 – 70.

[25] UN Security Council, "Report of the Secretary-General on His Mission of Good Offices in Cyprus," S/26026, 1 July 1993.

[26] Sözen, "The Cyprus Negotiations," 15.

the two communities.[27] Indeed, the Turkish Cypriot side put Varosha on the table several times, but their proposals were rejected by the Greek Cypriots.[28] To sum up, the negotiations with respect to the CBMs were also unsuccessful.[29] According to Sözen, CBMs were generally "politicized by both sides" where they were in fact solely considered a bargaining chip.[30]

The Greek Cypriot side similarly put forth CBMs which, again, included settlement of previous inhabitants of fenced-off Varosha under the UN administration. This was also prescribed under the UN Security Council Resolutions 550 (1984) and 789 (1992). These were categorically rejected by the Turkish Cypriot side with an emphasis on a two-state solution policy based on sovereign equality in Cyprus.[31]

B) THE ATTEMPTS TO OPEN THE FENCED-OFF VAROSHA

When the island of Cyprus was divided in 1974, Greek Cypriots who fled from the north left behind an estimated 1,350,000 donums (1 donum=1,338 square meters) of property and Turkish Cypriots about 400,000 donums of property in the south.[32] This meant that approximately 142,000 Greek Cypriots from the north fled south, and approximately 55,000 Turkish Cypriots fled north.[33] In this context, the fenced-off area of Varosha has been

[27] Karaoğlu, "Dispute over the Fenced Varosha," 343.

[28] Mete Hatay, "Varosha: Between Human Rights and Realpolitik," (FES Briefing, Prio, 2021).

[29] Sözen, "The Cyprus Negotiations," 14-15.

[30] Sözen, "The Cyprus Negotitaions," 15.

[31] Security Council Resolution 550 (1984), S/Res/550 (11 May 1984); Security Council Resolution 789 (1992), S/RES/789 (25 November 1992); Sarah Ktisti, "Spat continues over confidence building measures," *Cyprus Mail,* 1 June 2022. https://cyprus-mail.com/2022/06/01/spat-continues-over-confidence-building-measures/.

[32] Mensur Akgün, Ayla Gürel, Mete Hatay and Sylvia Tiryaki, "Quo Vadis Cyprus?," (Tesev Working Paper, April 2005).

[33] Ayla Gürel and Kudret Özersay, "The Politics of Property in Cyprus, Conflicting Appeals to 'Bizonality' and 'Human Rights' by the Two Cypriot Communities," (Prio Report, 3/2006); Ayla Gürel, Mete Hatay and Chrystalla Yakinthou, "Displacement

considered as a separate matter of disagreement, and was put forth as one of the CBMs as addressed above.[34] It should be noted that when it comes to the remedies to be made available for properties located therein, the IPC has jurisdiction to examine claims over these properties. Having said this, an overview of some statistics is necessary before addressing the domestic legal proceedings and the position of the ECtHR in the subsequent section.

In 1974, the population of the entire Famagusta city was approximately 40,000, 26,000 of which were Greek Cypriots, 4,000 of which were non-Cypriot residents and 8,500 of which were Turkish Cypriots.[35] It is estimated that the total closed area corresponds to 3,731,763 square meters.[36] Since 15 August 1974, only the western part of the town has been open to settlement, housing both Turkish Cypriots and settlers from Türkiye. The remaining parts, closed to civilians, have been under Turkish military control since then.[37] It is estimated that returning the entire Varosha to its lawful owners will mean that around 30,000 displaced persons will be able to access their properties.[38]

In August 2019, the TRNC government started a process to open the area up under its administration. For this, meetings have been held under the auspices of the TRNC Ministry of Foreign Affairs mainly with the objective of putting forth an analysis of inventory with regard to the infrastructure within the zone.[39] Another meeting was held in February 2020 in the

in Cyprus: Consequences of Civil and Military Strife Report 5," (Prio Cyprus Centre, 2012); see also Murat M. Hakkı, "Property Wars in Cyprus: The Turkish Position according to International Law," *Turkish Studies 12,* no.1, (2012): 79 – 80.

[34] Karaoğlu, "Dispute over the Fenced Varosha," 351-52.

[35] For numbers see Hatay, "Varosha".

[36] There is no public official record on this.

[37] Mete Hatay, "Maraş'ın 74 öncesi ve bugününe şöyle bir bakalım [Looking at Varosha prior to 74 and now]," *Havadis Gazetesi*, 24 January 2017. https://www.havadiskibris.com/marasin-74-oncesi-bugunune-soyle-bir-bakalim/.

[38] Hatay, "Maraş'ın 74 öncesi".

[39] "Kapalı Maraş'ta "Hukuki, Siyasi ve Ekonomik Yönleri ile Kapalı Maraş Açılımı başlıklı yuvarlak masa toplantısı yapılacak [A round table meeting called "Legal, Political

fenced-off Varosha in the presence of the Republic of Türkiye Vice-President, Turkish officials from the Republic of Türkiye, the TRNC government officials, the President of the Union of Turkish Bar Associations, the IPC President and several associations/unions.[40] The meeting was criticised by various NGOs, Greek Cypriots and left-wing Turkish Cypriot political parties referring to it a provocative step mainly for the sake of political gains for forthcoming presidential elections in the TRNC at that time.[41] The then TRNC President Akıncı who was not invited to the meeting also criticised this, stating that no steps should be taken that could be in contravention to the existing UN Resolutions. Main opposition Party *Cumhuriyetçi Türk Partisi* (CTP) has not attended the meeting either, emphasising, in particular, that the President Akıncı should have been invited to the meeting as the issue of fenced-off Varosha was undeniably among his duties as being the representative for the Turkish Cypriots at all levels in solving the Cyprus problem.[42] The nature of meetings illustrated that the process was not an

and Economic Aspects of the initiative for fenced-off Varosha" will be held in the fenced-off Varosha]," *BRT*, 13 February 2020, accessed: 1 July 2022, https://pio.mfa.gov.ct.tr/kapali-marasta-hukuki-siyasi-ve-ekonomik-yonleri-ile-kapali-maras-acilimi-baslikli-yuvarlak-masa-toplantisi-yapilacak/; Evi Andreaou, "Protest Planned as North Discusses Opening of Varosha," *Cyprus Mail*, 15 February 2020. https://cyprus-mail.com/2020/02/15/protest-planned-as-north-discusses-opening-of-varosha/; "Özersay: Rum Liderliğini Maraş sürecine dahil edecek yaklaşımlardan uzak durulmalı [Özersay: Any steps to include the Greek Leadership in the Varosha process should be avoided]," *BRT*, 13 February 2020, accessed: 1 July 2022, https://pio.mfa.gov.ct.tr/ozersay-rum-liderligini-maras-surecine-dahil-edecek-yaklasimlardan-uzak-durulmali/.

[40] "TBB'den KKTC'de "Kapalı Maraş" toplantısı [Fenced-off Varosha meeting by the TBA in the TRNC]," 18 February 2020, accessed: 1 July 2022, https://www.barobirlik.org.tr/Haberler/tbb-den-kktc-de-kapali-maras-toplantisi-81130; "Türkiye Barolar Birliği Kapalı Maraş Açılımı Toplantısı Sonuç Bildirisi [TBA Opening of Fenced-off Varosha Meeting Final Declaration]," 20 February 2020, accessed: 1 July 2022, https://www.barobirlik.org.tr/Haberler/turkiye-barolar-birligi-kapali-maras-acilimi-toplantisi-sonuc-bildirisi-81133.

[41] "Maraş'ın kısmen açılması Kuzey Kıbrıs'ta seçimi nasıl etkiler? [How will the opening of Varosha effect the Elections in North Cyprus?]," *BBC*, 9 October 2020, accessed: 10 October 2020, https://www.bbc.com/turkce/haberler-dunya-54482827.

[42] "Erhürman'dan Maraş Açıklaması: "Doğru Değil" [Varosha Statement by Erhürman: This is not Right]," *Yenidüzen*, 12 February 2020, accessed: 1 July 2022, http://www.

inclusive one excluding not only the right holders associations (i.e. Greek Cypriots) but also academics and NGOs from different backgrounds, as well as political parties having different positions on the issue.

The announcement by the President of the Republic of Türkiye in Ankara on 6 October 2020 to open the area, and the actual opening on 8 October 2020 have been among the developments noted above. President of the Republic of Türkiye further announced that he would celebrate the anniversary of the TRNC on one of Varosha's more recently opened beach front. The opened-up area currently corresponds to 3.5% of the entire zone.[43]

The impact of the initiative to open the area up on the IPC was expressed by the President of the IPC Növber Ferit Veçhi in an interview held on 30 November 2021.[44] Veçhi noted that the number of applications which stood at 280 in February 2020, reached to 228, to 410 by the end of November 2021 and increased further to 459 by the end of September 2022.[45] According to Veçhi, most of the applicants have so far claimed restitution, but it was not possible at that stage to clearly envisage how many of the properties subject to these applications remain in the opened-up area of

yeniduzen.com/erhurmandan-maras-aciklamasi-dogru-degil-123835h.htm.

[43] Hatay, "Maraş'ın 74 öncesi ve bugünü"; "Kıbrıs'ta Maraş bölgesinin yüzde 3,5'unun açılacak olması ne anlama geliyor? [What is the meaning of opening the 3.5% of fenced-off Varosha]," *BBC*, 21 July 2021, accessed: 1 July 2022, https://www.bbc.com/turkce/haberler-turkiye-579187581; Karaoğlu, "Dispute over the Fenced Varosha," 343. (It was noted by government officials that 3.5% of the whole area in the fenced-off Varosha was demilitarized by a TRNC Council of Ministers the details of which could not be found in the Official Gazette).

[44] "Maraş'taki mallarla ilgili başvurular arttı [The number of applications relating to fenced-off Varosha increased]," *Kıbrıs Postası*, 30 November 2021, accessed: 1 July 2022, https://www.kibrispostasi.com/c88-GAZIMAGUSA/n402032-novber-ferit-vechi-marastaki-mallarla-ilgili-basvurular-artti.

[45] "TMK Başkanı Veçhi: Maraş bölgesi için TMK'de toplamda 459 başvuru var [The IPC President Veçhi: There are 459 applications before the IPC for Varosha]," *Kıbrıs Postası*, 27 September 2022, accessed: 1 July 2022, https://www.kibrispostasi.com/c35-KIBRIS_HABERLERI/n440153-tmk-baskani-vechi-maras-bolgesi-icin-tmkde-toplamda-459-basvuru-var.

the fenced-off Varosha.[46] Having said this, the following section starts by addressing how the IPC has dealt with those applications in which the subject matter properties are located in the fenced-off Varsoha.

II. THE FENCED-OFF VAROSHA, DOMESTIC PROCEEDINGS AND THE EUROPEAN COURT OF HUMAN RIGHTS

The key questions arising with regard to the properties remaining in the fenced-off Varsoha concern how the applications before the IPC are processed and the problems faced in this regard including the length of proceedings and the claims by *Evkaf* over the properties remaining there. These will be addressed in turn below under sub-sections A and B.

Although the ECtHR became an important factor for Greek Cypriot property claims in 1990s especially with the landmark judgment in *Loizidou v Turkey* in 1996,[47] only those that are relevant to the fenced-off area of Varosha will be addressed here.

A) THE PROCESS BEFORE THE IPC

How the IPC was established and how it operates have been addressed in detail elsewhere in literature.[48] It would suffice to note here that the IPC has mainly been the result of the leading judgments of *Xenides-Arestis v Turkey* and *Demopoulos and others v Turkey* decided by the ECtHR.[49] In addition, how the IPC Law No. 67/2005 regulates the proceedings for applications before it will be briefly addressed.

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[46] It was emphasised by Veçhi that not all properties that are subject matter of these applications remain in the fenced-off Varosha. In other words, applicants may submit their applications for propeties situaed in the fenced-off Varosha or elsewhere in a single application.

[47] ECHR, *Loizidou/Turkey* (Merits), App. No: 15318/89, 18 December 1996; Robin White, "Tackling Political Disputes through Individual Applications," *EHRLR*, (1998): 61–71; see also Hakkı, "Property Wars," 80.

[48] Erdem and Greer, "Human rights," 725; Hadjigeorgiou, "Joannou v. Turkey," 170.

[49] ECHR, *Xenides-Arestis/Turkey* (Merits); ECHR, *Xenides-Arestis/Turkey* (Just Satisfaction); *Demopoulos and others/Turkey* (Admissibility); Murat M. Hakkı, "Property Wars," 81-82; Erçakıca, *Kendi Kaderini Tayin Etme,* 150.

The Law No. 67/2005 sets the conditions for Greek Cypriots claiming to have rights over abandoned movable and immovable properties, and remedies.[50] It refers to principles envisaged by the UN negotiation process (i.e., bizonal – bicommunal federation), as well as to a possible comprehensive settlement agreement in the future to overcome the conflict on the island, i.e. the resolution of the Cyprus problem.[51] With this in mind, the objective is to put forth that those who claim to have rights over these properties in the north can apply to the IPC or await a future political solution.[52]

The remedies the IPC can provide for are compensation, exchange and restitution.[53] Compensation is the most straightforward remedy and can be awarded for the value of the property and for the loss of use where applicable.[54] A second remedy provided by the IPC Law is "exchange of a property" in the south for one of equal value to that which the applicant claims in the north. On the other hand, as a third remedy, a property can be restituted "within a reasonable time" where its "ownership or use has not been transferred to any natural or legal person other than the State"[55] according to the legislation in force in the TRNC. In addition, the property must be outside military installations or areas defined as under military control.[56] This is a case in point for properties situated in the fenced-off Varosha as it has been a military area. At the same time "restitution following

[50] Article 3 (Purpose) of the Law No. 67/2005.

[51] Article 3 states that the Law regards "[…] *the principle of and the provisions regarding protection of bizonality, which is the main principle of 1977-1979 High level Agreements and of all the plans prepared by the United Nations on solving the Cyprus Problem and without prejudice to any property rights or the right to use property under the Turkish Republic of Northern Cyprus legislation or to any right of the Turkish Cypriot People which shall be provided by the comprehensive settlement of the Cyprus Problem*".

[52] This was addressed in ECHR *Demopoulos and others/Turkey (*Admissibility), § 128.

[53] Article 8 of the Law No. 67/2005.

[54] Compensation can also be awarded for non-pecuniary damages depending on the circumstances of each application.

[55] Article 8(1) of the Law No. 67/2005.

[56] Article 8(1) of the Law No. 67/2005.

the settlement of the Cyprus problem" as a remedy is an alternative if the property in question is in use by other persons in line with the legislation in force in the TRNC.[57]

Until 2013, the IPC has particularly received increasing number of applications, but, since 2014 a sharp decrease can be observed.[58] It should be noted that the IPC has faced several problems. These particularly include, excessive length and alleged unfairness of proceedings, and the execution of decisions awarding compensation.[59] For the purposes of this paper, length of proceedings are closely related with the applications for fenced-off Varosha.

According to the legislation in force, the Ministry of Interior is the defendant in the proceedings before the IPC.[60] Accordingly, Attorney General's Office represents the Ministry, and it is required to file a defence/opinion[61] within thirty working days from the notice of the application.[62] However, this is not the case in practice.[63] In such circumstances, applicants have the right to file a "default application" against the defendant in line with the Civil Procedure Rules of the Law Courts.[64] This is to request for a decision

[57] Article 8 of the Law No. 67/2005.

[58] Numbers can be found at the web page of the IPC www.tamk.gov.ct.tr, accessed: 1 July 2022.

[59] Erdem and Greer, "Human rights," 728.

[60] Article 2 of the Law No. 67/2005.

[61] The defence/opinion by the defendant includes a summary of the facts and the value of the relevant property in 1974. It also consists of a statement of the current value of the property for the purposes of preliminary hearing.This is done by the Land Registry relevant for the property in question.

[62] Article 3(8) of the "Rules Made Under Sections 8(2)(A) And 22 Of the Law for The Compensation, Exchange and Restitution of Immovable Properties Which Are Within the Scope of Sub-Paragraph (B) of Paragraph 1 of Article 159 of The Constitution (Law No: 67/2005)"

[63] Emine Çolak, *Property Rights in North Cyprus*, (Turkish Cypriots Human Rights Foundation Publications No. 2, 2012), 62.

[64] Rules are applicable before the IPC as well. O.48 of the Rules available at https://www.mahkemeler.net/cgi-bin/hukukmuh.aspx, accessed: 1 July 2022.

to be made by the IPC. However, in practice, the IPC adjourns such applications, and thus, applicants have to await to prove their cases and obtain a decision until a defence is filed by the defendant.[65] In *Meleagrou and others v. Turkey,* the ECtHR has decided on the issue of "excessive length of proceedings".[66] The applicants claimed, among other things, that the length and unfairness of proceedings violated Article 6 (1)[67] of the ECHR.[68] The Court noted that a period of four years and eight months had passed since the applicant submitted the application as well as its resolution. It concluded this was not unreasonable. For this, the Court referred to the newness of the procedure, the number of claims raised, and the complicated technical character of the property disputes in question. The Court finally stated that the IPC proceedings were fair and there was no violation.[69]

However, in a more recent case, *Joannou v. Turkey,* it held that Article 1 of Protocol No 1 was violated.[70] The Court concluded that the procedure before the IPC lacked "coherence, diligence and appropriate expedition" as required by the Convention.[71] In other words, the IPC remained passive in the application before it.

[65] O. 26 rule 10 of Civil Procedure Rules states, "*If the Respondent fails to deliver statement of defence* […]*, the Plaintiff can apply* […] *for a judgment to be delivered* […]."

[66] ECHR, *Eleni Meleagrou and others/Turkey* (Admissibility), App. No: 14434/09, 2 April 2013.

[67] The article on the right to a fair trial by an independent and impartial tribunal. It reads "*1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.* […]".

[68] § 17 of the decision.

[69] § 18 – 22 of ECHR *Eleni Meleagrou and others/Turkey*.

[70] ECHR, *Joannou/Turkey* (Merits and Just Satisfaction), App. No: 53240/14, 12 December 2017.

[71] § 103.

There have been other claims with respect to "the delays and ineffectiveness of proceedings" and these were also brought before the ECtHR.[72] *K.V. Mediterranean Tours Limited v. Turkey* concerns properties situated in the fenced-off Varosha, and this will be addressed in turn below.[73]

B) THE PROPERTIES IN THE FENCED-OFF VAROSHA AND THE PROCEEDINGS

1- Length of Proceedings

Before the applicant *K.V. Mediterranean Tours Limited* brought its case before the ECtHR, the issue of length of proceedings was litigated at the High Administrative Court of the TRNC as domestic remedies should have been exhausted.[74] The case originated from the application no 167/2010 which was before the IPC where the applicant's lawyer filed a "default application". With the default application, the applicant has requested a final decision on the merits since the defendant had not filed its defence/opinion within the period of time prescribed by the applicable legislation relevant to the IPC.[75] The IPC rejected the request stating that Article 6 of Law No 67/2005 requires that, for a decision to be taken in applicant's favour, he must satisfy the Commission "beyond reasonable doubt" as to the conditions stated in the Law.[76] Among other things, the applicant claimed before the High Administrative Court that the IPC decision should be repealed. The applicant argued that the IPC unreasonably postponed the "default application" eleven times. It was also claimed that their rights

[72] For example, ECHR, *K.V. Mediterranean Tours Limited/Turkey* (Communicated Case), App. No: 41120/17, lodged on 25 May 2017; ECHR, *Theodora Panagi and Evdoxia Shiartou/Turkey* (Communicated Case), App. No: 6178/18, lodged on 19 January 2018.

[73] This is considered a test case before the ECtHR.

[74] YİM, *K.V. Mediterranean Tours Limited ile Taşınmaz Mal Komisyonu arasında,* YİM 262/2012, D. 32/2015, 6 November 2015.

[75] Filed by the applicant in line with O 26, r 2 of Civil Procedure Rules applied at the Law Courts of the TRNC, as well as the Article 3(8) of the Rules of the IPC.

[76] Article 6 reads *"In proceedings before the Commission the burden of proof shall rest with the applicant who must satisfy the Commission beyond any reasonable doubt as to the following in order for a decision to be taken in his favour".*

of fair trial had been violated. It was further put forth that the IPC decision was in violation of the right to property (Article 1 of Protocol 1) and the right to an effective remedy (Article 13) as protected under the ECHR – this was reflected by submitting that no remedy was available within a reasonable time for the applicant's property rights. The defendant referred to Article 6 of the Law No 67/2005 and argued that the applicant should prove the case beyond reasonable doubt and therefore, could not request a final decision on the merits from the IPC. The High Court addressed the provisions of the Civil Procedure Rules,[77] to examine whether the IPC has the authority to decide to postpone the default application, or to give a final decision on the merits. It concluded that the IPC has competence and the discretion in this respect for the purposes of administrative law principles. Therefore, although the applicant's "default application" of 1 November 2010 was postponed from 7 December 2010 until 23 October 2012, the Court rejected the applicant's claims under this head, and the decision was subsequently appealed.[78] The High Court of Appeal addressed the reasoning of the single judge and stated that the IPC has the authority and the discretion to adjourn the "default application". Accordingly, it approved the decision of the single judge.[79] Together with several other cases as noted above, the applicant's lawyer brought the case before the ECtHR complaining that there are no effective domestic remedies for pending cases, in particular for those concerning properties located in the fenced-off area of Varosha at the IPC. In *K.V. Mediterranean Tours Limited,* the ECtHR has asked the parties several questions which concern whether there has been a breach of the applicant company's rights under Article 6 (1) (fair

[77] Order 48, rule 6 "*Hearing of any petition can be adjourned from time to time depending on the conditions (if any) deemed suitable by the court or judge*"; Order 26, rule 10 "*If the Respondent fails to deliver statement of defence in all actions other than the actions specified in the aforementioned rules of this order, the Plaintiff can apply through application by summons in order for a judgment to be delivered and a decision which the plaintiff deserves can be delivered in accordance with the opinion of the court or judge".*

[78] YİM, *Vakıflar Örgütü ve Din İşleri Dairesi ve Taşınmaz Mal Komisyonu ile K.V. Mediterranean Tours Limited* YİM/İstinaf: 12-13-14/2015, D. 6/2016, 29 November 2016.

[79] Composed of three judges.

trial guarantees) and Article 1 of Protocol No. 1 (right to property) of the Convention. The Court's questions link the issue with the admission of the *Evkaf* Administration as a third party in the proceedings before the IPC, to enquire whether the applicant company have at its disposal an effective remedy for its complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in connection with Article 13 (the right to an effective remedy) of the Convention.[80] Republic of Türkiye was granted a series of extensions to submit its observations at the Court. These observations have not been publicised. Murat Hakkı, notes that the observations and documents by the parties have been submitted and the ECtHR it is expected to issue its judgment in 2022.[81]

2- Claims of *Evkaf* Foundation

It should be stressed that before the matter came to the IPC, *Evkaf* also claimed rights in cases before the ECtHR alleging that it was the owner of some of the properties claimed by the applicants, and that the latter had registered them in their own names according to the principles set out in the "Ahkâm-ül Evkaf Laws".[82] Türkiye, the respondent State before the ECtHR, had pointed out that the property allegedly owned by the applicant was listed in the books of the Turkish Muslim religious trust (*vakf*) and thus, following the registration of a deed of *vakf*, it could not be alienated or transferred.[83] The respondent maintained that the transfer of this property to the applicant was unlawful and therefore, null and void. However, the Court noted that the applicant Greek Cypriot *Xenides-Arestis* had provided the Court with official certificates of ownership from the Department of Lands and Surveys of the Republic of Cyprus which proved that she was

[80] See ECHR, *K.V. Mediterranean Tours Limited/Turkey* (Questions to the Parties).

[81] Murat Hakkı, "Vakıf Malları ve Maraş ile ilgili Karmaşa [Vakf Properties and the Chaos of Varosha]," *Yenidüzen*, 27 December 2021. https://www.yeniduzen.com/vakif-mallari-ve-maras-ile-ilgili-karmasa-147965h.htm.

[82] ECHR, *Xendies-Arestis/Turkey* (Admissibility), App. No: 46347/99, 14 March 2005, 18-19; Karaoğlu, "Dispute over the Fenced Varosha," 348.

[83] ECHR, *Xendies-Arestis/Turkey* (Admissibility), 18-19.

indeed the owner of the relevant property.[84] It had also been noted that the respondent Government had not substantiated its case against the applicant's victim status.[85] In *Lordos and others v Turkey* which was concluded after *Xenides-Arestis*, the claims with respect to *Evkaf* were once again rejected.[86]

It should be noted that the intervention as a third party is a matter also regulated under Law No. 67/2005. According to Article 7 of the Law, Commission allows an individual to participate in the proceedings, who, "according to the legislation of the Turkish Republic of Northern Cyprus, holds the property right or the right to use the property in respect to which a claim is made". *Evkaf* claims that the properties in the fenced-off Varosha which have belonged to Abdullah Paşa Religious Trust had been illegally transferred to individuals under the British Administration, back in 1900s. It is further noted by *Evkaf* that, since then, the said properties had belonged and been used by third persons other than *Evkaf* until 1974. Together with the laws regulating *Evkaf* and alleging that they hold the title deeds dated between 1571 and 1974 to those properties, it refers to a declaratory judgment of the Famagusta District Court of TRNC issued in 2005 to further substantiate its claims.[87] This declaratory judgment by the District Court states that the 1472 properties in fenced-off Varosha belong to Abdullah Paşa Religious Trust *(Vakf)*.[88] For several requests for

[84] ECHR, *Xendies-Arestis/Turkey* (Admissibility), 18-19.

[85] ECHR, *Xendies-Arestis/Turkey* (Admissibility), 18-19.

[86] ECHR, *Lordos and others/Turkey* (Merist), App. No: 15973/90, 2 November 2010, §116-117; ECHR, *Zavou and others/Turkey* (Just Satisfaction), App. No: 16654/90, 22 September 2009, § 58; ECHR, *Kyriakou/Turkey* (Just Satisfaction), App. No: 18407/91, 27 January 2009, § 56.

[87] These claims can be found at the offical website of Evkaf http://www.evkaf.org/site/sayfa.aspx?pkey=891, accessed: 16 July 2022.

[88] The judgment is declaratory. As a result, the Court did not order modification of the land registry records in its decision. Thus, it cannot be said that Evkaf is the registered 1974 owner of properties according to the present Land Registry Records. *1) Vakıflar Örgütü ve Din İşleri Daires, Abdullah Paşa Vakfının Emaneten İdarecisi ve Temsilcisi Sıffatıyle, Lefkoşa 2) Vakıflar Örgütü ve Din İşleri Dairesi, Lefkoşa ile KKTC Başsavcısı, Lefkoşa* Gazimağusa Kaza Mahkemesi Dava No: 271/2008, 27 December 2005.

intervention to claim rights, the IPC, referring to this declaratory judgment and Article 7 of the Law No. 67/2005, permitted *Evkaf* to be involved as a third party in its proceedings.[89]

In 2017,[90] lawyer Murat Hakkı challenged the said declaratory judgment of the Famagusta District Court stating, among other things, that his client has been the legal owner of Argo Hotel located in fenced-off Varosha as of 20 July 1974 according to land registry records. The High Court of a single judge rejected these requests and concluded that he had "no *locus standi* before the Court to ask for remedies other than those he might claim before the IPC under Law No 67/2005". Hakkı appealed and the High Administrative Court of a panel of three judges also rejected the claims. However, the Court made a note in its judgment, stating that the IPC, in examining the matter, could only take the title deeds belonging to 1974 to decide on the legal ownership of the properties at that time. Unsurprisingly, this reflected the fact that the IPC cannot change the Land Registry Records showing 1974 owners or to decide whether there had been fraudulent acts against *Evkaf* back in the 1900s with respect to transfer of relevant properties.[91] From this point of view, it may be argued that the declaratory judgment of Famagusta District Court might not have a negative impact on applicants' rights over their properties. Hakkı supports that the properties concerned should be returned to their lawful owners as shown by

[89] The issue has also been brought before the High Administrative Court; YİM, *Vakıflar Örgütü ve Din İşleri Dairesi ve Taşınmaz Mal Komisyonu ile K.V. Mediterranean Tours Limited arasında* YİM/İstinaf: 12-13-14/2015, D. 6/2016, 29 November 2016.

[90] Yargıtay/Asli Yetki, *Akinita I. Th. Ioannou & Yi Limited ile Vakıflar Örgütü ve Din İşleri Dairesi ve diğerleri arasında* Yargıtay/Asli Yetki/İstida No: 1/2017 (Gazimağusa Dava No: 271/2000) D. 1/2018, 13 March 2018; *Giagkos Filippou yetkili vekili Maria Philippou vasıtasıyla ile Vakıflar Örgütü ve Din İşleri Dairesi ve diğerleri arasında* Yargıtay/Asli Yetki/İstida No: 2/2017 (Gazimağusa Dava No: 271/2000) D. 2/2018, 13 March 2018.

[91] Yargıtay/Asli Yetki, *Akinita I. Th. Ioannou & Yi Limited ile Vakıflar Örgütü ve Din İşleri Dairesi ve diğerleri arasında* Yargıtay/Asli Yetki/İstinaf No: 1/2018 (Yargıtay/Asli Yetki İstida İstinaf No: 2/2018 ile konsolide (Yargıtay/Asli Yetki İstida No: 1/2017) D. 2/2019, 13 March 2018.

the 1974 land registry records.[92] Demetriades, also representing the *K.V. Mediterranean Tours Limited* before the ECtHR, stated previously that, under the circumstances, the IPC appears to be the only way to the ECtHR for Greek Cypriots to claim restitution of their properties.[93] He has noted that, "if they fail to exhaust this Turkish domestic remedy, then it is very likely that in the event of opening of Varosha – under Turkish rule – they will not be able to take possession of their property".[94]

It should be mentioned that, more recently, another application was decided via a hearing before the IPC in which *Evkaf* sought to intervene to be able to put forth its claims with regard to properties in the fenced-off Varosha. In December 2022, the IPC once again decided to leave *Evkaf* to participate in the proceedings as the third party. The details of the decision could not be provided as the decision is not public but was appealed before the High Administrative Court. The outcome of the judgment and how the IPC will decide on the merits of the application remains to be seen.

Although it can be argued that *Evkaf*'s intervention to these applications as a third-party does not mean that the final decision will be in their favour, this will have several implications. The final section addresses these to conclude.

[92] Murat Hakkı, "Vakıf Malları ve Maraş ile ilgili Karmaşa"; Ödül Aşık Ülker, "Maraş'ın Vakıf Malı olduğu İddiaları Gayrı Ciddi [Claims for Varosha belonging to Evkaf are Unserious]," *Yenidüzen,* 30 June 2019. http://www.yeniduzen.com/marasin-vakif-mali-oldugu-gayri-ciddi-116432h.htm.

[93] Achilleas Demetriades, "ECHR to judge value of Varosha properties," *Cyprus Mail*, 17 June 2020. https://cyprus-mail.com/2020/06/17/echr-to-judge-value-of-varosha-properties/.

[94] Demetriades, "ECHR to judge".

CONCLUSION

As indicated in this article, the opening the fenced-off Varosha has been of the CBMs put forth by the UN Secretary General in 1992.[95] Both sides discussed these under the UN auspices as addressed in this article. In addition, the UN Security Council called various times for the area to be handed over to the UN prior to its resettlement by its inhabitants as expressed previously.[96]

The Turkish move to open the 3.5% of the area up under the TRNC administration has caused serious discussions at all levels. Under the given circumstances, it can be argued that the area will remain a challenge for the IPC. First, despite the political will to open the area up and to demilitarize it, the situation remains at odds with the UN Security Council Resolutions. Second, the issue remains pending with the case *K.V. Mediterranean* before the ECtHR, the result of which remains to be seen. The third challenge lies behind the claims by *Evkaf* Foundation which has been a third party in several proceedings before the IPC. This third challenge can be addressed under two heads. One is that if *Evkaf* can participate as a third party as the current owner of the properties, then there is no prospect for Greek Cypriot claims for restitution within a reasonable time as the applicable Law does not allow for it if the property in question currently belongs to other persons as addressed previously in this article.[97] Second, if the alleged claims by *Evkaf* were accepted, this would contradict with the principles set forth by the *Demopoulos and others v Turkey* case where the Court accepted the IPC as an effective remedy. Because in *Demopoulos* the precedent was based on the fact that:

> [……] many decades after the loss of possession by the then owners, property has in many cases changed hands, by gift, succession or otherwise; those claiming title may have never seen, or ever used the property in question … The losses thus claimed become increasingly speculative and hypothetical. There has, it may be recalled, always been a strong legal and factual link between ownership

[95] As expressed in the "Report of the Secretary General 1992," § 63.

[96] For example, UN Security Council Resolution 550.

[97] See Article 8 of Law No. 67/2005.

> and possession … and it must be recognised that with the passage of time the holding of a title may be emptied of any practical consequences.[98]

In other words, accepting *Evkaf*'s claims would result in a setback for current users of Greek Cypriot properties in general in the north as recognised by the ECtHR in *Demopoulos and others*.

On the other hand, demilitarization of the fenced-off Varosha might enable the IPC to award "restitution after the solution of the Cyprus problem" as noted, again, above. However, even if this is the case, awarding compensation for loss of use for the income generating from 1974 to date would be necessary. Considering the extensive need for financial resources, this burden might be impossible to carry out. It should also be recalled that the members of the Security Council reminded, in October 2019, the previous UN Security Council resolutions, including Resolution 550 (1984) and Resolution 789 (1992), reiterating that no actions should be carried out in relation to Varosha that are not in accordance with these resolutions.[99] It can be said under these circumstances that the future for the fenced-off Varosha still remains bleak and the outcome of the initiative remains to be seen, but should be carefully planned.

[98] § 111 of the decision.

[99] See https://www.un.org/press/en/2019/sc13980.doc.htm, accessed: 1 July 2022.

BIBLIOGRAPHY

Books, Journal Articles and Reports

Adamides Constantinos and Constantinou Costas. "Comfortable Conflict and (Il)liberal Peace in Cyprus." in *Hybrid Forms of Peace: From Everyday Agency to Post-Liberalism,* Editors Oliver P. Richmond and Audra Mitchell, 242—59. Palgrave Macmillan, 2012.

Akgün, Mensur, Gürel, Ayla, Hatay, Mete and Tiryaki, Sylvia. *Quo Vadis Cyprus?* Tesev Working Paper, April 2005.

Jenna C, Borders. "Another Door Closed: Resort to the European Court of Human Rights for Relief from the Turkish Invasion of 1974 May No Longer Be Possible for Greek Cypriots." *NCJ Int.l & Com Reg 36*, (2010): 689-749

Chrysostomides, Kypros. *The Republic of Cyprus: A Study in International Law*. Martinus Nijhoff Publishers, 2000.

Çolak, Emine. *Property Rights in North Cyprus*. Turkish Cypriots Human Rights Foundation Publications No.2, 2012.

Erçakıca, Mustafa. *Kendi Kaderini Tayin Etme Hakkı ve Devletlerin Tanınması İlişkisi: Kuzey Kıbrıs Türk Cumhuriyeti Örneği Çerçevesinde Bir İnceleme*. Oniki Levha Yayıncılık, 2020.

Erdem, Meliz and Greer, Steven. "Human Rights, the Cyprus Problem and the Immovable Property Commission." *ICLQ 67*, (2018): 721-732.

Evanthis, Hatzivassilou. "The Red Line: Pressure and Persuasion in Greek Diplomatic Strategies on Cyprus, 1945 to 2004." *Mediterranean Quarterly 20*, no. 1, (2009): 52:68

Gürel, Ayla, Hatay, Mete and Yakinthou, Chrystalla. *Displacement in Cyprus: Consequences of Civil and Military Strife Report 5*. Prio Cyprus Centre, Nicosia 2012.

Gürel, Ayla and Özersay, Kudret. *The Politics of Property in Cyprus, Conflicting Appeals to 'Bizonality' and 'Human Rights' by the Two Cypriot Communities*. Prio Report, 3/2006.

Hadjigeorgiou, Nasia. "Joannou v. Turkey: An Important Legal Development and a Missed Opportunity." *European Human Rights Law Review 2*, (2018):168-174.

Hakkı, Murat M. "Property Wars in Cyprus: The Turkish Position according to International Law." *Turkish Studies 12,* no. 1, (2012): 79-90.

Hatay, Mete. *Varosha: Between Human Rights and Realpolitik*. FES Briefing, Prio 2021.

Hoffmeister, Frank. *Legal Aspects of the Cyprus Problem, Annan Plan and EU Accession.* Nijhoff, 2006.

International Crisis Group. *Cyprus: Bridging the Property Divide*. Report No. 210, 9 December 2010.

Karaoğlu, Ali O. "Dispute over the Fenced Varosha in the light of International Law, United Nations Security Council Resolutions and Judgments of European Court of Human Rights." *Public and Private International Law Bulletin 42,* no. 1, (2022): 333-356.

Kızılyürek, Niyazi. *Milliyetçilik Kıskacında Kıbrıs*. İletişim Yayınları, 2002.

Kızılyürek, Niyazi. "Historical Grounds of a Federal State in Cyprus." in *The Cyprus Conflict: Looking Ahead,* editör Ahmet Sözen, 95-102. Eastern Mediterranean University Press, 2008.

Kızılyürek, Niyazi. *Bir Hınç ve Şiddet Tarihi: Kıbrıs'ta Statü Kavgası ve Etnik Çatışma*. İstanbul Bilgi Üniversitesi Yayınları, 2016.

Kovras, Iosif. *Grassroots Activism and the Evolution of Transitional Justice: The Families of the Disappeared.* Cambridge University Press, 2017.

Müftüler-Bac, Meltem. "The Cyprus Debacle: What the Future Holds." *Futures 31,* (1999)*:* 559-575.

Necatigil, Zaim M. *The Cyprus Question and the Turkish Position in International Law.* 2nd edition. Oxford University Press, 1990.

Proukaki, Elena K. "The Right of Displaced Persons to Property and to Return Home after Demopoulos." *Human Rights Law Review 14,* no. 4, (2014): 701- 732.

Sözen, Ahmet. "The Cyprus Negotiations: From the 1963 Inter-communal Negotiations to the Annan Plan." in *Reflections on the Cyprus Problem: Compilation of Recent Academic Contributions,* editor Ahmet Sözen*,* 1-22, Cyprus Policy Center 2004.

White, Robin. "Tackling Political Disputes through Individual Applications." *European Human Rights Law Review*, (1998): 61-72.

Yakinthou, Chrystalla. *Political Settlements in Divided Societies: Consociationalism and Cyprus*. Palgrave Macmillan, 2009.

Cases

ECtHR

Demopoulos and others/Turkey (Admissibility), Apps. Nos: 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04, 1 March 2010.

Eleni Meleagrou and others/Turkey (Admissibility), App. No: 14434/09, 2 April 2013.

Joannou/Turkey (Merits and Just Satisfaction), App. No: 53240/14, 12 December 2017.

K.V. Mediterranean Tours Limited/Turkey (Communicated Case), App. No: 41120/17, lodged on 25 May 2017.

Kyriakou/Turkey (Just Satisfaction), App. No: 18407/91, 27 January2009.

Loizidou/Turkey (Merits), App. No: 15318/89, 18 December 1996.

Lordos and others/Turkey (Merits), App. No: 15973/90, 2 November 2010.

Theodora Panagi and Evdoxia Shiartou/Turkey (Communicated Case), App. No: 6178/18, lodged on 19 January 2018.

Xenides-Arestis/Turkey (Admissibility), App. No: 46347/99, 14 March 2005.

Xenides-Arestis/Turkey (Merits), App. No: 46347/99, 22 December 2005.

Xenides-Arestis/Turkey (Just Satisfaction), App. No: 46347/99, 7 December 2006.

Zavou and others/Turkey (Just Satisfaction), App. No: 16654/90, 22 September 2009.

Domestic Judgments

Yargıtay/Asli Yetki, *Akinita I. Th. Ioannou & Yi Limited ile Vakıflar Örgütü Ve Din İşleri Dairesi ve diğerleri arasında* Yargıtay/Asli Yetki/İstida No: 1/2017 (Gazimağusa Dava No: 271/2000) D. 1/2018, 13 March 2018.

Akinita I. Th. Ioannou & Yi Limited ile Vakıflar Örgütü Ve Din İşleri Dairesi ve diğerleri arasında Yargıtay/Asli Yetki/İstinaf No: 1/2018 (Yargıtay/Asli Yetki İstida İstinaf No: 2/2018 ile konsolide (Yargıtay/Asli Yetki İstida No: 1/2017) D. 2/2019, 13 March 2018.

Giagkos Filippou yetkili vekili Maria Philippou vasıtasıyla ile Vakıflar Örgütü Ve Din İşleri Dairesi ve diğerleri arasında Yargıtay/Asli Yetki/İstida No: 2/2017 (Gazimağusa Dava No: 271/2000) D. 2/2018, 13 March 2018.

K.V. Mediterranean Tours Limited ile Taşınmaz Mal Komisyonu arasında YİM 262/2012, D. 32/2015, 6 November 2015.

Vakıflar Örgütü ve Din İşleri Dairesi ve Taşınmaz Mal Komisyonu ile K.V. Mediterranean Tours Limited YİM/İstinaf: 12-13-14/2015, D. 6/2016, 29 November 2016.

1) Vakıflar Örgütü ve Din İşleri Daires, Abdullah Paşa Vakfının Emaneten İdarecisi ve Temsilcisi Sıffatıyle, Lefkoşa 2) Vakıflar Örgütü ve Din İşleri Dairesi, Lefkoşa ile KKTC Başsavcısı, Lefkoşa Gazimağusa Kaza Mahkemesi Dava No: 271/2008, 27 December 2005.

UN Documents

UN Security Council, "Statement by the President of the Security Council." S/PRST/2021/13, 23 July 2021.

UN Security Council, "Report of the Secretary-General on His Mission of Good Offices in Cyprus". S/26026, 1 July 1993.

Security Council Resolution 774 (1992). S/Res/774, 26 August 1992.

Security Council Resolution 789 (1992). S/RES/789, 25 November 1992.

UN Security Council, "Report of the Secretary General on His Mission of Good Offices in Cyprus." S/24830, 19 November 1992.

Security Council Resolution 550 (1984). S/Res/550, 11 May 1984.

Security Council Resolution 186 (1964). S/5575, 4 March 1964.

Newspaper and Web Articles

Andreaou, Evi. "Protest Planned as North Discusses Opening of Varosha." *Cyprus Mail*, 15 February 2020.

https://cyprus-mail.com/2020/02/15/protest-planned-as-north-discusses-opening-of-varosha/

"Cyprus misses 'historic chance' as it rejects UN reunification plan, Annan says." *The UN News*, 24 April 2004.

https://news.un.org/en/story/2004/04/101352-cyprus-misses-historic-chance-it-rejects-un-reunification-plan-annan-says

"Cyprus talks end without agreement, says UN chief." *The Guardian*, 7 July 2017.

https://guardian.ng/news/cyprus-talks-end-without-agreement-says-un-chief/

Demetriades, Achilleas "ECHR to judge value of Varosha properties." *Cyprus Mail*, 17 June 2020.

https://cyprus-mail.com/2020/06/17/echr-to-judge-value-of-varosha-properties/

"Erhürman'dan Maraş Açıklaması: 'Doğru Değil'." *Yenidüzen*, 12 February 2020.

http://www.yeniduzen.com/erhurmandan-maras-aciklamasi-dogru-degil-123835h.htm

Hakkı, Murat "Vakıf Malları ve Maraş ile ilgili Karmaşa." *Yenidüzen*, 27 December 2021. https://www.yeniduzen.com/vakif-mallari-ve-maras-ile-ilgili-karmasa-147965h.htm

Hatay, Mete. "Maraş'ın 74 öncesi ve bugününe şöyle bir bakalım." *Havadis*, 24 January 2017. https://www.havadiskibris.com/marasin-74-oncesi-bugunune-soyle-bir-bakalim/

"Kıbrıs'ta Maraş bölgesinin yüzde 3,5'unun açılacak olması ne anlama geliyor?" *BBC*, 21 July 2021.

https://www.bbc.com/turkce/haberler-turkiye-579187581

"Maraş'ın kısmen açılması Kuzey Kıbrıs'ta seçimi nasıl etkiler?" *BBC*, 9 October 2020.

https://www.bbc.com/turkce/haberler-dunya-54482827

"Maraş'taki mallarla ilgili başvurular arttı." *Kıbrıs Postası*, 30 November 2021.

https://www.kibrispostasi.com/c88-GAZIMAGUSA/n402032-novber-ferit-vechi-marastaki-mallarla-ilgili-basvurular-artti

"Kapalı Maraş'ta "Hukuki, Siyasi ve Ekonomik Yönleri ile Kapalı Maraş Açılımı başlıklı yuvarlak masa toplantısı yapılacak." *BRT*, 13 February 2020.

https://pio.mfa.gov.ct.tr/kapali-marasta-hukuki-siyasi-ve-ekonomik-yonleri-ile-kapali-maras-acilimi-baslikli-yuvarlak-masa-toplantisi-yapilacak/

Ktisti, Sarah. "Spat continues over confidence building measures." *Cyprus Mail,* 1 June 2022.

https://cyprus-mail.com/2022/06/01/spat-continues-over-confidence-building-measures/

"Özersay: Rum Liderliğini Maraş sürecine dahil edecek yaklaşımlardan uzak durulmalı." *BRT* , 13 February 2020.

https://pio.mfa.gov.ct.tr/ozersay-rum-liderligini-maras-surecine-dahil-edecek-yaklasimlardan-uzak-durulmali/

"TBB'den KKTC'de "Kapalı Maraş" toplantısı." 18 February 2020.

https://www.barobirlik.org.tr/Haberler/tbb-den-kktc-de-kapali-maras-toplantisi-81130

"TMK Başkanı Veçhi: Maraş bölgesi için TMK'de toplamda 459 başvuru var." *Kıbrıs Postası*, 27 September 2022.

https://www.kibrispostasi.com/c35-KIBRIS_HABERLERI/n440153-tmk-baskani-vechi-maras-bolgesi-icin-tmkde-toplamda-459-basvuru-var

Türkiye Barolar Birliği. "Türkiye Barolar Birliği Kapalı Maraş Açılımı Toplantısı Sonuç Bildirisi." 20 February 2020.

https://www.barobirlik.org.tr/Haberler/turkiye-barolar-birligi-kapali-maras-acilimi-toplantisi-sonuc-bildirisi-81133

Ülker, Ödül Aşık. "Maraş'ın Vakıf Malı olduğu İddiaları Gayrı Ciddi." *Yenidüzen,* 30 June 2019.

http://www.yeniduzen.com/marasin-vakif-mali-oldugu-gayri-ciddi-116432h.htm

Web sites

uncyprustalks.unmissions.org

www.evkaf.org

www.mahkemeler.net

www.tamk.gov.ct.tr

www.un.org