

# Human Rights Violations faced by Turkish Cypriots\*

■ *by Aslı Aksu\*\**

## The Question of Property

The right to hold property is considered to be of equal value as the “right to live” in the European Convention on Human Rights (hereinafter “ECHR”). Therefore, the violation of the right to hold property is deemed to be a violation of human rights. The property rights of Turkish Cypriots have been violated since 1975. There have been material and immaterial losses stemming from the violation of these rights. Turkish Cypriots, like other people, have the right to litigate these losses. However, a great majority of them are not informed of the extent of their litigation rights; material and immaterial compensation cases and accompanying restitution of property cases may be filed at the European Court of Human Rights (hereinafter “the Court”) by Turkish Cypriots having real property on the Greek (southern) part of Cyprus. They only need to be aware of which effective legal remedies to resort to.

Despite all obvious facts, it has been constantly questioned as to why no applications have been filed at the ECHR against the Greek Cypriot Administration for the violations of human rights against Turkish Cypriots between 1964 and 1974, including the right to life. These topics have been brought to the attention of the public, especially after Commission or Court decisions against Turkey were announced, and there have been complaints over the inaction of the Turkish side. The reasons for failure to file applications are discussed below.

The right to make a personal application at the European Human Rights Commission has been recognized by the Greek Administration on behalf of Cyprus since January 1, 1989. Therefore, prior to this date,

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persons did not have the right to resort to the Human Rights Commission against the Greek Administration. Furthermore, there is a 6 month statutory limitation for applications to the ECHR. An application may only be filed after all administrative and judicial remedies have been exhausted and within 6 months of the final verdict. This limitation may only be bypassed in case of an ongoing violation, where no statutory limitation is applicable.<sup>2</sup>

It may be inquired as to why there has not been any state application, since a signatory state may always file an application against another, on the grounds of treaty violation, despite the fact that Turkish Cypriots had been unable to file personal applications at the Commission until 1989 based on the grounds of violation of human rights to which they were subject between 1964-1974.

The difficulty here stems from the fact that Turkey had not recognized the Greek Administration. Turkey could not possibly face a country in a litigation process that she has not recognized. Therefore in my opinion, given the conditions of the period, the decision was a sound one.

Firstly, the difficulties should be addressed in making property, regarded as part of the human rights, subject to applications. The primary difficulty in filing an application is the prerequisite of the exhaustion of domestic remedies. In order for a complaint to be found meritorious (for both state and individual complaints), this condition is of primary priority in comparison to other conditions.<sup>3</sup> This is the fundamental prerequisite for an application under the provisions of the European Convention on Human Rights, which the Greek Administration has signed, ratified, and became a party to. The foremost issue in any application arises when domestic remedies are exhausted or cannot be – or need not be - exhausted.

**Application filed at the ECHR when domestic remedies cannot be – or need not be – exhausted:** In some cases, due to the Guardian Act in force in the Greek Administration, domestic remedies do not necessarily need to be exhausted.

According to the Guardian Act, the Greek Administration has not banned the Turkish Republic of Northern Cyprus (hereinafter “TRNC”) citizens from owning real properties on the South side since 1975 from using these properties on their own behalf, but has blocked the transfer or rental of such properties with a parliamentary decision based on the provisions of the Guardian Act. As a result of this Act, even if a TRNC citizen files an application with the judicial or administrative bodies for the return of his real property on the Greek side, any award issued at the end of the proceedings cannot be executed. Therefore, due to the non-functionality of the condition of the exhaustion of domestic remedies, any application for the return of property may directly be filed at the ECHR without having the obligation to exhaust domestic remedies.

<sup>2</sup> Zaim NECATİGİL, *Kıbrıs Uyuşmazlığı ve AİHM kaskacında Türkiye*, Turhan Kitabevi, Ankara, 2005, pp. 25–49.

<sup>3</sup> M.Sezgin TANRIKULU, *Bireysel Hak Arama Girişimleri*, 2. Basım, İstanbul Barosu CMK Uygulama Servisi, pp. 19-27.

**Application filed at the ECHR when domestic remedies need to be exhausted:** In these cases, applicants face a great number of issues.

In order to file a suit on the Greek side, a person foremost needs capacity to sue. In order to meet this criterion, one must work in cooperation with an attorney registered at the Greek Cypriot Bar Association. In this circumstance, a Greek Cypriot attorney will not be able to retain his/her neutrality under political pressure from the Greek Administration.

Moreover, Greek Cypriots attorneys will probably choose not to be in a situation of defending the Turkish side in such a case. As no similar situations have been recorded, it is unknown how an exit may be based on a state of necessity. In my opinion, in an application based on the violation of property rights, since the exhaustion of domestic remedies is not compulsory, a Turkish Cypriot applicant will not possibly face such a problem.

In light of the above explanations, the grounds of defense will vary depending on the status of the real properties, in applications and suits both with and without meeting the precondition of the exhaustion of domestic remedies. Therefore firstly, the land registry entries of the properties in question should be examined and their current status should be determined.

**Real properties unchanged since 1974:** It is highly important to determine whether these properties are being used as farmland, residences, or for business centers. Thereby, the amount of damages and the loss of value will be more easily determined.

**Expropriated properties:** Expropriations were irregular and improper, since no compensation for the expropriations was transferred. Therefore these expropriations will need to be annulled and indemnity will be in order.<sup>4</sup>

### **Occupied properties:**

#### **Properties occupied by the Greek Administration of Southern Cyprus:**

There may be properties used by state departments, hospitals, military institutions, or energy plants – such is the legal status of the property in a suit filed in January by a Turkish Cypriot resident in the Turkish Republic of Northern Cyprus, where there is an energy plant on the property.

#### **1- Properties occupied by Greek Cypriot citizens:**

Greek Cypriots may have constructed buildings on the properties, or if they are farmlands, they may be currently farmed by Greek Cypriots.

#### **2- Properties Confiscated without Expropriation:**

Two possibilities are immediately apparent:

1- The administration may be forced to formally expropriate the property (with an administrative application), or

<sup>4</sup> Zaim NECATİGİL, *Kıbrıs Uyuşmazlığı ve AİHM Kıskacında Türkiye*, Turhan Kitabevi, Ankara, 2005, pp. 82-83.

## 2- An action of trespass may be brought.

The statistical facts resulting from these legal assessments reveal that any action needs to be brought without delay.

There are 40.1 hectares of land in Southern Cyprus, belonging to Turkish Cypriots, that has been intentionally left inactive by the Greek Cypriot Administration since 1974. As can be seen, some parts of these lands were confiscated without expropriation and some parts have been occupied by Greek real persons.

Official registers show that 36 out of the 40.1 hectares of these lands are being used without the consent of Turkish Cypriots.<sup>5</sup> This consequence is obvious evidence of serious neglect of duty and failure to fulfill an obligation on the part of the Service for Management of Turkish Cypriot's Land Properties, established under the Greek Cypriot Ministry of Interior.

Due to the serious neglect of duty, the Greek Cypriot side should be required to pay enhanced compensation. Therefore it is imperative that Turkish Cypriots with real estate on the Greek Cypriot side who have not waived their rights should pursue their rights through lawsuit.

Each and every application to the Court filed after the exhaustion of domestic remedies or demonstration of the non-functionality thereof, will help the Court make objective rulings; as the number of applications increase, the Court will have to issue decisions more rapidly.

Applications at the Committee of Real Estate Compensation show that Greek Cypriot citizens have demanded 889,000 British Pounds compensation for 1 decare of real estate.<sup>6</sup> Hereafter, the applications of the Turkish side should be made urgently with an accurate strategy.

In light of those facts, an application was made to the Greek Cypriot Ministry of Interior's Service for Management of Cypriot Turk's Landed Property, on behalf of real estate owner Perican Bayar, which I deemed to be the most promising out of the requests made to me. This application was an administrative action and this administrative action had the purpose of questioning both the current situation and the possible actions in the event of a demand of disposition of 22 decares of vineyard and the office building, which contain 15 office and residences in the city center of Limasol. An application will be made to the Court following the recent receipt of the reply from the Greek Cypriot administration; the constitutional response period was 30 days for this application. As a matter of fact, the reply received indicated that the properties that are owned by Turkish Cypriots but which are in Greek Cyprus, are being administered by trustees appointed by the Service and this administration will continue until the resolution of the the real estate ownership rights for the property of Greek Cypriots that is located in Northern Cyprus. This situation is proof of the non-functionality of any domestic remedies that

<sup>5</sup> Sema SEZER, "KKTC'de Mülkiyet Sorunu" *Stratejik Analiz*, May 2006.

<sup>6</sup> *Ibid.*

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could be pursued on the Greek Cypriot side. Henceforth, the limitation period for an application is 6 months for applying directly to the Court on the grounds of non-functionality of exhaustion of domestic remedies. All application documents for Perican Bayar have been completed; both the material indemnity for the loss of use since the year of 1975 and the symbolic moral indemnity for discomfort and grief have been determined. As of now, all work is in the final stage and the application will be directly made to the Court.

Public opinion research and protests related with the issues of ownership and breach of human rights, which will be done before or after the application is filed, will have a significant impact on the application to the Court. On a relevant note, the support of the Greek Government and Greek media for the Loizidou decision should be highlighted, which was decided against the Turkish side.

Initially, the Loizidou case was not brought before the Court solely as a property case. Titina Loizidou and her friends had been going regularly to a church in Kyrenia over the years, and on the day of the incident, they started to conduct protest activities with hand signs after the worship services. They claimed that they were manhandled and maltreated by unarmed Turkish Soldiers as well as being illegally detained. Then, an application was filed at the Court due to alleged breaches of the related provisions of European Convention of Human Rights based on the incident, where the claim of ownership was added to the application. The other alleged breaches were rejected but the claim of ownership was accepted by the Court and the claim of ownership passed the stage of admissibility.<sup>7</sup>

During all legal processes, Greek media never left the Loizidou case alone; the material and moral difficulties, which Titana had had since 1975, were overstated by the printed and visual media and were used to influence the Court. When the assumed value of the real estate and claimed (and awarded) compensation are taken into consideration, it is obvious that the awarded compensation was unconscionably high in comparison with the true value of the real estate. However, efficient legal advocacy and accompanying efficient public support set the stage for this result in the case.

Moreover, it should not be forgotten that the TRNC was treated as an entity – subordinate local administration – of Turkey by the Court and Turkey has been held responsible for the breaches of international treaties regarding property rights in the TRNC.<sup>8</sup>As an extension of this judicial opinion, the ECHR tends to legitimize, as part of the Turkish domestic legal mechanism, any structure that is formed within the Turkish Cypriot legal system, which itself is based on an unsound foundation. The aim of this view is to allow for the enforcement of a property right in specific and development of an effective legal mechanism to prevent

<sup>7</sup> Zaim NECATİGİL, *Kıbrıs Uyuşmazlığı ve AİHM Kısacasında Türkiye*, Turhan Kitabevi, Ankara, 2005, pp. 28-29.

<sup>8</sup> Kudret ÖZERSAY, *Avrupa Birliği Normları ve AİHM Kararları Çerçevesinde Kuzey Kıbrıs*, p. 13.

treaty breaches regarding property rights in general. In terms of law, all of our arguments about Cyprus are extremely strong, including the one on ownership. However, heretofore, all operations have been aimed at the political platform of the Cyprus issue. The only grounds for discussions of a political nature should be political platforms, not legal ones. These circumstances have constrained the remedies for the related issue on the legal platform and these circumstances pushed the legal remedies into the background. Due to the abandonment of this area of the law to the Greeks, many consecutive decisions against Turkey were made by the Court, since no legal progress have been made on that issue. The Cyprus issue, which is only discussed now in the political arena, and has not been addressed in legal arena, has become a diplomatic failure for Turkey. However, each and every political issue has four different dimensions: political, operational, economic, and legal.<sup>9</sup> At the present time, there is no other open question in the world with a more justifiable case than that of the Turkish Cypriots. Turkish Cypriots, having been subject to all sorts of human rights abuses in Cyprus from 1950 to 1974 have not been able to bring these abuses to the Court. This situation cannot be justified henceforth.

It is possible that this first application that would be made will not pass the admissibility criteria. However, if subsequent applications are made, the Court will come under pressure to accept some. Due to the fact that the Court would have to reconsider its decisions and begin to accept applications, the legal basis for the Turkish view of the Cyprus issue would be strengthened.

In addition to the all these explanations, it should be indicated that, should my application fail to pass the admissibility stage, this result would not be a deterrent but should result in an increase of other applications. It is obvious that if the European Court of Human Right rejects one of the applications due their acceptability criteria, the Court will have to accept another application eventually. Otherwise, the Court will encounter the difficulty of explaining such bias to the international public opinion. On that point, the importance of Turkish public opinion will again gain currency. Therefore, with each and every rejection of the European Court of Human Right of a case on the breach of the property rights of Turkish Cypriots, the difficulty that the Court will face in explaining such bias to the international public opinion needs to be pointed out.

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9 Halkın Sesi Gazetesi, 22 October 2005, [www.halkinsesi.org](http://www.halkinsesi.org).