The Turkish Cypriot Legal System from a Historical Perspective*

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I. THE NECESSITY TO APPLY A HISTORICAL PERSPECTIVE AND A BRIEF HISTORY OF THE ISLAND

The Ottoman Empire conquered the island of Cyprus in 1571 and from 1571 to 1878, Cyprus was a part of the Ottoman Empire. In 1878, England, waiting for a chance to take over Cyprus because of its Far East and Indian policies, seized the opportunity, when the Russian-Ottoman war crumbled for the Ottomans, by promising to protect the Ottomans against the Russians and leased the island. With this lease, not the ownership but only the management of the island passed to England and the Ottoman Empire retained sovereignty over the island.[1] Close to the end of World War I, seeing the fact that the Ottoman Empire was siding with the Germans, and foreseeing the Germans would be losing the war, Britain announced its annexation of the island to the world with a unilateral decision on November 5, 1914. With the Treaty of Lausanne in 1923, the young Turkish Republic recognized this annexation and lost the ownership of Cyprus.[2] If the lease time in 1878 is taken as a basis, Turks had sovereignty over Cyprus for 307 years which is a considerable period. England's sovereignty over the island

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1 For further information regarding how Cyprus became under the British administration and the early British period in Cyprus see GAZİOĞLU, A.: *Enosis Çemberinde Türkler, Bugünlere Gelmek Kolay Olmadı, I*, Lefkoşa 2000, p. 19 et seq.; Nesim, Z.: *Kıbrıs'ın İngiltere'ye Geçişi ve Adada Kurulan İngiliz İdaresi*, Ankara 1975; Uçarol, R.: *Osmanlı Devleti'nin Kıbrıs'ı İngiltere'ye Devri (1878)*; AHMETBEYOĞLU, A. and AFYONCU, E.: *Dünden Bugüne Kıbrıs Meselesi*, İstanbul 2001, p. 121 et seq.

2 TOLUNER, S.: *Kıbrıs Uyuşmazlığı ve Milletlerarası Hukuk*, İstanbul 1997, p. 12, Gazioğlu, (*Enosis* Çemberi), pp. 130-131.

did not last as long as the sovereignty of the Turks, and England lost its control starting from 1878 when the island of Cyprus became an independent state by the Treaties of Zurich of 1958, London of 1959 and Nicosia of 1960.[3]

However, the Republic of Cyprus (RoC) was founded by the interested powers (Greece, Turkey and the UK) without asking the question "does the state form a nation or does the nation form a state?" Therefore, the RoC did not live long and the Turkish Cypriots left the administration of the RoC government for reasons I would not like to mention here.[4] After the withdrawal of the Turkish Cypriots from the RoC institutions, they have founded, respectively, the Turkish Cypriot Provisionary Administration on December 28, 1967; the Autonomous Turkish Cypriot Administration on September 3, 1974; the Turkish Federative State of Cyprus on February 13, 1975 and finally the Turkish Republic of Northern Cyprus on November 15, 1983.[5]

As could be seen from the brief history given above, the Cypriot legal system and its part, the Turkish Cypriot Legal System, have not emerged from a sole state's order because of the alternating sovereign powers on the island. Conversely, all sovereign states brought their own legal systems to the island so that the Turkish Cypriot legal system was influenced by each of them.[6] Thus, it becomes essential to handle the different legal systems in Cyprus in its historical stages. These historical stages are; (1) the Ottoman Empire Era between 1571-1878, (2) the Early British Era 1878-1915, (3) the Late British Era between 1914-1960, (4) the RoC Era between 1960-1967, (5) the Era of the Turkish Cypriots' Establishment of a State between 1967-1983, and finally (6) the Turkish Republic of Northern Cyprus Era after 1983 until present.

II. THE TURKISH CYPRIOT LEGAL SYSTEM IN THE OTTOMAN EMPIRE ERA

The island of Cyprus was included in the Ottoman territories during the *classical period* in the Ottoman history, when all regions of the empire had the same legal system structure. The most prominent feature of this period was the wide application of Islamic Law to the state's central organization, society, economics and dispensation of justice.[7] In this context, the Turkish Cypriots were subject to Islamic

3 See SARICA, M., TEZİÇ, E. and ESKİYURT, Ö.: *Kıbrıs Sorunu*, İstanbul 1975, p. 11 et seq.; Aydoğdu, A.: *Kıbrıs Sorunu ve Çözüm Arayışları, Annan Planı ve Referandum Süreci*, Ankara 2005, p. 34 et seq.; İsmail, S.: *Kıbrıs Cumhuriyeti'nin Doğuşu – Çöküşü ve KKTC'nin Kuruluşu, (1960 – 1983)*, p. 13 et seq. for the establishment of the RoC.

4 For the reasons of the short-lived RoC's fall for the Turkish Cypriots see GAZİOĞLU, A.: *Kıbrısta Cumhuriyet Yılları ve Ortaklığın Sonu, 1960 – 1964, Bugünlere Gelmek Kolay Olmadı 4*, Lefkoşa 2003, p. 86 and especially p. 173 et seq.; İsmail, p. 68 et seq.; SARICA, TEZİÇ and ESKİYURT p. 39 et seq.

5 See further information about that era at TURHAN, T.: *Kıbrıslı Türklerin Vatandaşlığının Kısa Tarihi, 3-4. Kıbrıs Yazıları* (2006), p. 46 et seq.; AYDOĞDU, A.: *Tarihsel Süreçte Kıbrıs Türk Seçimleri ve Yönetimleri*, Ankara 2005.

6 See NEOCLEAUS, A. : Introduction to Cyprus Law, Limassol 2000, p. 13, 1-13.

7 See İNALCIK, H.: *Osmanlı İmparatorluğu, Klasik Çağ (1300-1600)*, İstanbul 2007, p. 71 and especially p. 76 et seq.; Timur, T. : *Kuruluş ve Yükseliş Dönemlerinde Osmanlı Toplumsal Yapısı*, Ankara 1979, pp. 117-118.

Law regardless of their ethnicity as were the other Muslims of the Empire.[8] All of them were simply called Muslims.

The Ottomans first founded an administrative body when they conquered new lands and then the place was inhabited; this was a well-known feature of the Ottomans' state concept.[9] The Ottomans implemented this policy in Cyprus as well. Indeed, the conquest of Cyrus was not completed when the *Beylerbeyi* (grand seignior) and the *Kadi* (Muslim judge) of Cyprus were appointed, Muzaffer Pasha and Ekmeleddin Efendi, respectively.[10] Truly, the Ottomans had well enough state experience to appoint a Kadi there immediately before the actual conquest.

From there on, a newly formed administrative body was connected to Istanbul, the capital city of the Ottoman Empire, and Islamic Law was applied by the judiciary on the island.[11] That is to say, Islamic law was implemented by the Kadis in Cyprus until the Hatt-i Sharif in 1839 (*Tanzimat Fermanı*). The Kadi was nominated by the Sheikhulislam and appointed by the *Kazasker* of Rumelia.[12] The Kadi also had the authority over financial matters, and he was the implementer of canonical and customary law at least for Muslims until the Ottoman rule ended on the island. Cyprus was divided into 15 districts, and each district had its own local Kadi.[13] The local Kadis worked in district courts, and the citizens could appeal their decisions to the Council of Cyprus in Nicosia. The president of the Council was the governor of Cyprus, and the prime Kadi was a member of the Council.[14]

In fact, the judiciary should be analyzed in three different categories in the Ottoman Empire as in all countries in which Islamic Law is applied: (1) disputes between Muslims, (2) disputes between Muslims and non-Muslims, and (3) disputes between non-Muslims. Interestingly, although the Ottoman Empire permitted all its non-Muslims citizens[15] to establish their own courts,[16] the non-Muslims mostly resorted to the Kadis for their disputes.[17] Admittedly, this outcome arose from

8 GAZİOĞLU, A.: *Kıbrıs'da Türkler, 1570-1878, 308 Yıllık Türk Dönemine Yeni Bir Bakış,* 2nd ed., Lefkoşa 2000, p. 119 et seq.; ÇEVİKEL, N. : *Kıbrıs Eyaleti, Yönetim, Kilise, Ayan ve Halk (1750-1800), Bir Değişim Döneminin Anatomisi,* Gazimağusa 2000, p. 61 and p. 213 et seq.; Turhan, p. 43.

9 ÇEVİKEL, N. : *Kıbrıs, Akdeniz'de Bir Osmanlı Adası (1570-1878)*, İstanbul 2006, p. 80; ERDOĞRU, A. : *Kıbrıs'ın Alınmasından Sonra Adaya Yapılan İskanlar ve Kıbrıs Türklerinin Menşei, Kıbrıs'da Osmanlılar*, Lefkoşa 2008, p. 30 et seq.; GAZİOĞLU, *Kıbrıs'da Türkler*, p. 100 et seq.

10 ÇEVİKEL, *Osmanlı Adası*, p. 76.

11 ÇEVİKEL, *Osmanlı Adası*, p. 76; GAZİOĞLU, *Kıbrıs'ta Türkler*, p. 123 et seq.

12 ALASYA, H.F.: *Kıbrıs Tarihi ve Kıbrıs'da Türk Eserleri*, 2nd ed., Ankara 1977, p. 87 et seq.; Çevikel, *Osmanlı Adası*, p. 172. For the legal status and operational methods of *kadis* see: ÖZKUL, A.E.: *Kıbrıs'ın Sosyo-Ekonomik Tarihi 1726-1750*, Istanbul 2005, p. 53 et seq.

13 See ÖZKUL, p. 55 et seq. for further information.

14 An, A.: *Kıbrıs'ta Türk Hukuk Kurumlarının Geçmişine Kısa Bir Bakış, Kıbrıs Türk Kültürü Üzerine Yazılar*, Lefkoşa 1999, p. 84; ÇEVİKEL, *Osmanlı Adası*, p. 173.

15 MAIER, F. G.: *Cyprus from Earliest Time to the Present Day*, London 1968, p. 112. See also ORTAYLI, İ.: *Osmanlı Kimliği, Osmanlı Barışı*, İstanbul 2007, p. 25 and especially p. 30 et seq. for the concept of the nations in the Ottomans.

16 ÇELİKEL, *Osmanlı Adası*, p. 173.

17 For instance, when seven registers from Nicosia judicial records between 1698 and 1726 are handled, it will be seen that there were 822 cases in which concerned the Greeks and the Armenians. See ÇİÇEK, K.: *İki Toplumlu Bir Şehirde Adalet Arayışları: Lefkoşa Mahkemesinde Rumlar ve Türkler (1698-1726), Dünden Bugüne Kıbrıs Meselesi* (Ed. Ahmetbeyoğlu, A. and Afyoncu, E.), İstanbul 2001, p. 59. See also Jennings, R. C.: Zımmis (non-Muslims) in Early 17th Century Ottoman Judicial Records: The Sharia Court of Ottoman Kayseri, 21. Journal of the Economics and Social History of the Orient, No. 3, (1978), p. 292.

the Kadis' impartial decisions; they pursued justice without considering people's ethnicity and religion.[18] The below given cases that are chosen from the Cyprus case history between 1725 and 1750 are good examples of the Turkish Cypriot legal system in the Ottoman Empire Era.

The first given group of examples are chosen from family law. The first example is an annulment of a marriage. The case was decided in 1158 (Hegira Calendar) where Ali Aga, from the district Arab Ahmet of Nicosia and the son of Mustafa, went to the court to cancel his sister Serife Rabia's marriage because his permission was not obtained as her guardian. The Kadi nullified the marriage due to the absence of the required permission from her guardian.[19] Another case is about a marriage which was forcibly entered into in 1146. Ali, the son of Ramazan, made a complaint to the court that he and Emine, the sister of Abdulkerim, were unable to cohabit as husband and wife because Emine kept running away from him although Emine's consent was obtained at the marriage. However, Emine proved with witnesses in her plea that she never gave her consent to marry with Ali and rejected his brother's consent request and authorization. Consequently, the Kadi nullified the marriage[20].

Before providing some examples of divorce cases, another group of cases from family law, it may be useful to touch on an interesting point: most lawyers assume that Islamic Law consists of rules regulating a male-dominated society, and it only protects men's rights. When the court registers of Cyprus are analyzed, one can argue that it may not be so at least for the handling period's divorce cases in Cyprus. There are three types of divorces in Islamic Law: *talak, muhalaa* and *tefrik*[21]. *Talak* is a type of divorce where a man states his desire to get divorced by saying "I divorce you" three times to his wife; and subsequently the marriage ends. *Muhalaa* is a type of divorce where a woman renounces some of her marital rights and then gets divorced from her husband.[22] There were 278 divorce cases in the analyzed period in Cyprus, and 202 of those cases were *muhalaa* and only 73 of those were *talak*. Probably there is no other Muslim country during those days where the majority of the initiators of divorces were women.[23] Also, another set of divorce cases confirm that not only the Muslims appealed to the Kadis but also the non-Muslims did so too. Fesonzo, a non-Muslim living in Camlica, Giriniyye, divorced her husband through a proxy (appointed by herself in front of Muslim witnesses)

18 For instance, the Muslim judge of Kyrenia Ali Efendi-Zade Mehmet was convicted to the *kalebent* (the political prisoner confined to a fortress) for the offence of bribery and injustice decisions upon the Greeks citizens' complaints; see Çiçek, pp. 63-64. See also ERDOĞRU, A.: *Kıbrıs Ermenileri 1580-1640, Kıbrıs'da Osmanlılar*, Lefkoşa 2008, p. 61.
19 See ÖZKUL, p. 129.
20 See ÖZKUL, pp. 129-130.
21 See CİN, H.: *İslam ve Osmanlı Hukukunda Boşanma*, Konya 1988.
22 See CİN, p. 122 et seq. for *muhalla.*
23 See ÖZKUL p. 133.

due to the irretrievable breakdown of marriage[24].

Another interesting example of divorce law is "obtaining a divorce through a letter."[25] For instance, a Turkish Cypriot, Mehmet Bese, was married to Emine and went to the town of Kirman in Anatolia for some time. He divorced Emine in front of the Kadi of Kirman in Anatolia and sent a divorce letter to her through the Court's bailiff. Subsequently, Emine first got married to Dervis Aga and then she married to Ahmet Aga upon Dervis Aga's death. After 36 years of their divorce, Mehmet Bese had returned to the island and was displeased to see that his ex-wife was remarried to Ahmet Aga; he asked the Kadi in the island for the cancellation of the marriage between Emine and Ahmet Aga. However, the Kadi rejected Mehmet Bese's case when Emine proved with witnesses that Mehmet Bese divorced her through a divorce letter, and she obtained permission from the Kadi before her remarriage.[26]

One of the most important features of the Islamic Ottoman central administration was the citizens' right of petition. The citizens could appeal to the Sultan with a petition for compensation of their losses caused by state operations and justice actions. The Cypriots also used their right of petition as many times as the other Ottoman citizens.[27] In fact, Ms. Serife Emettullah, from Nicosia, went to a Kadi to complain about her husband Abdulgaffar's physical attacks against her and explained her fear for her life in 1150, but before the Kadi rendered his decision, her husband divorced Serife Emettullah with *talak* and did not give 15,000 *akce* (the Ottoman currency) as alimony. Finally, Serife Emettullah was able to send a complaint letter to the Sultan about the Kadi's inaction on her case. In 1157, the matter was discussed at the Palace and the Sultan ordered the Chief Kadi of Cyprus to collect money from Mr. Abdulgaffar to be given to Ms. Serife Emettullah, and despite the seven-year delay, Ms. Serife was able to receive justice from the Turkish Cypriot legal system.[28] As can be seen from the above sample cases, the Islamic legal organization of the Ottoman Empire was fully implemented in Cyprus as in other parts of the Empire.

Another considerable practice of Ottoman law in Cyprus during this period that I provide examples of is tort law. The crime of "şetm" in Islamic law covered the torts of assault, battery, false light, slander, defamation, and the unique Islamic torts of the crime of drinking al-

24 See ÖZKUL, p. 153.
25 See ÖZKUL, p. 152.
26 See ÖZKUL, p. 153.
27 For further information regarding this system, see ORTAYLI, İ.: *Osmanlıyı Yeniden Kesfetmek*, İstanbul 2006, p. 115. This system was available for all citizens including the non-Muslims. In the practise of Sharia Courts, it is known that the citizens who was not able to obtain a favourable result from the local courts could forward their petitions to Istanbul. See ÇİÇEK, p. 63.
28 See ÖZKUL, p. 150.

coholic beverages and cursing at God (Allah), Prophet Mohammed and Sahabah (the companions of the Islamic Prophet Muhammed).[29] Muslims who committed the crime of *şetm*, apart from those who cursed at God (Allah), Prophet Mohammed and Sahabah, would be given a punishment of *falanga (*a form of torture wherein the human feet are beaten*)* by *Kadi*s (Kadis), especially by the Nicosian *Kadi*. It was possible to convert *falanga* into a fine.[30] Those who cursed at God, Prophet Mohammed and Sahabah, irrespective of whether they were Muslims or not, would be sentenced to death not only in Cyprus but in other parts of the Ottoman territories as well.[31] A case handled in 1635, in which the accused was a *Kadi*, constitutes a clear example of how the crime of *şetm* and punishments imposed for it were taken seriously and implemented carefully in Cyprus during this period. In the case at hand, Governor Halil Aga's deputy, Ali Aga (one of the *Kadis* of Cyprus), brought a law suit against Halil Bey, the *Kadi* of Kukla on the grounds that he called Prophet Mohammed as the "son of concubine," that he did not consider him to be the last prophet and thus he explicitly denied Koran and Mir'aj (Muhammad's miraculous ascension from Jerusalem, through the seven heavens, to the throne of God). Allegedly, Halil Bey said all these accusatory words to Mehmet Efendi's face, the *Kadi* of Baf, who gave written testimony stating what Halil Bey had told him. During the investigations carried out by the court (*Kadi*), Halil Bey also confessed his defamatory language, which in the end caused him to be sentenced to death.[32]

It can be observed that the criminal cases between a Muslim on the one hand and a non-Muslim on the other concerned offenses with relatively lighter penalties. For example (and probably the most important example) was a theft involving mutual accusations of the parties. As an example of such cases, once Ebubekir Aga, resident of Nicosia, resorted to *Kadi* with allegations that the five non-Muslims he employed to pick cotton wools in his farm stole cotton, oil, honey and rice belonging to him. After the investigation, it was found that those belongings were hidden inside the houses of the employees, and so the non-Muslims had to agree to pay 50 *kurus* (cents) *diyet* (compensation) to Ebubekir Aga. [33] In a similar case held in 1151, two Muslims, Mehmed and Dervis were accused by the bishop of Ayro Monastery of stealing various belongings of the Monastery. However, the accused ones were acquitted after they took an oath that they did not commit the crime; moreover the findings that said the bishop was a notorious "slanderer" (*müfteri*) also contributed to this acquittal. [34]

29 ERDOĞRU, M.A.: *Osmanlı Kıbrıs'ında Şetm*, 1580-1640, *Kıbrıs'ta Osmanlılar*, Lefkoşa 2008, p. 226 et seq.
30 ERDOĞRU, (Şetm), *supra* note 1, p. 229.
31 ERDOĞRU, (Şetm), *supra* note 2, p. 229.
32 For more details regarding the case see ERDOĞRU, (Şetm), p. 230.
33 For more details regarding the case see ÖZKUL, p. 233.
34 For more details regarding the case see ÖZKUL, p. 234.

For criminal cases, non-Muslims had a tendency to resort to their own community courts.[35] However, they too had applied to the *Kadi*, albeit rarely. For instance, in an event in 1139 (Islamic year), Milo, a non-Muslim woman, was shot dead in Bodamya, Nicosia. The *Kadi* sent his aide Mevlana Mustafa Efendi, and following his investigation it was found that she was killed by her son from Petro and criminal proceedings were initiated against the murderer.[36]

Another curiosity of Turkish Cypriot law during the Ottoman era was the fact that *Kadis* would report to Istanbul any criminal cases which they had difficulty resolving and would request assistance.[37] Usually, *Kadi*s would resort to this method especially in sexual assault and or rape cases. A rape case held in 1159 before the *Kadi* of Psikobu can be given as an example to this matter. The subject matter of the case concerned a complaint filed to Yusuf Efendi, the *Kadi* of Leymesun, by Saliha, an Arabian woman residing in Psikopu against Mustafa Aga. She alleged that she was raped by him and she got pregnant. In this context, *Kadi* Yusuf Efendi informed the authorities in Istanbul and asked for their assistance. The authorities ruled for the renewal of the case before a "bailiff"*(mübaşir)* appointed by the central administration.[38] In another case in 1159, in which the daughter of Yorgi, resident of Çakmaklı, Nicosia was reported to the *Kadi* of Nicosia on claims of pregnancy due to adultery by the neighborhood residents. The residents resorted to the *Kadi*s in Istanbul, because the *Kadi* of Nicosia did not pay any attention to their claims. Thereupon, the judicial authorities in Istanbul wrote to the local *Kadi* of Nicosia, requesting that the claims of "neighborhood subjects" be investigated and resolved.[39] It is evident that the central judicial authorities assisted and guided *Kadi*s, and almost constantly made *Kadis* feel they were being supervised on their practices. [40]

There is no doubt that the types of cases that *Kadi*s would handle and conclude during the Ottoman era in Cyprus were not only limited to family law, or criminal cases. They would also deal with "commercial disputes" stemming from the sale and purchase of goods and services. [41] Those would include not only the relationships established between Muslims but also between Muslims and non-Muslims. For example, an action of debt, to which Mehmed, a Muslim resident at Gammadi-

35 ÇEVİKEL, *Osmanlı Adası*, p. 175; Özkul, pp. 212-213.
36 For the case, see ÖZKUL p. 232
37 ÖZKUL, p. 235.
38 For more information regarding the case see ÖZKUL, p. 235.
39 For the case see ÖZKUL, p. 235.
40 Please note that scope of the judicial asisstance would not only be limited to the criminal cases but would also include civil law cases. A case held in 1163 shows us that the central judicial authorities would also assist *Kadi*s in solving civil law cases, if requested so. In the case, the two villages, (Meniko and Akça) had a dispute over who would use the water of the river flowing nearby the two villages. The delegated *Kadi* submitted the case to Istanbul and asked for their advice. In the end, it was decided that for 36 hours per week one village, and for the rest , the other village would be entitled to use the water. For more details see ÖZKUL, p. 218.
41 For more information on the economical structure and the kind of relationships in the Ottoman community see ÖZKUL, p. 204 et seq. and p. 304 et seq.

ye, Nicosia and doing sericultural business, was one party. The other party was a non-Muslim resident Nicola in Kafesli. In this case, Mehmet Efendi resorted to the local *Kadi* of Nicosia on the grounds that he had 36 *kurus* receivables from Nikola in consideration for the goods Mehmet Efendi sold to him (22 *kurus* for a mule, 10 *kurus* for two silk thread, 4 *kurus* as cash credit). Nikola denied Mehmet Efendi's allegations and claimed that he performed his debt fully. However, this case was dismissed because Mehmet could neither prove his allegations nor accepted to take an oath before the *Kadi*.[42]

It is known that the Cypriots also established a sort of "partnerships" on sericulture, leather trade, salt, sugar, dye and carpentry industries during the Ottoman era.[43] Inevitably some disputes arose from these commercial relationships. One of them concerns a partnership engaged in dyeing industry in Nicosia. One of the partners left the partnership after four years of its establishment and moved to Egypt. He then returned to the island and demanded of his "right/share" of eight years of receivables from the remaining partners. Upon the other partners' rejection of his claim, he brought a lawsuit against the partners. The *Kadi* dismissed the case on the grounds that the plaintiff did not have any receivables due from the partners as he had left and dissolved the partnership in line with the other partners' request.[44]

In another interesting case in 1709, El Hac Receb Aga, resident at Debbaghane, Nicosia brought an action of debt against Batino Loyizi, the priest of Istevaraoz Monastery. The plaintiff claimed that he lent 160 *kurus* to Gavrayil, another priest of the same monastery, however the priest had died without paying his debt. When Receb applied to his heirs, i.e. the monastery, to collect his money, he was given a payable bill signed by Yankulu, the old priest of the monastery, to be paid to the monastery. However, Yankulu also died before clearing the bill, and that he had to take a legal action against Batino to collect his money. Batino acknowledged the debt, and asked for one year to pay it. After one year, Recep Aga again went before the *Kadi* asserting that he had only received cotton valuing 47 *kurus* in consideration for the debt, however he still had an outstanding amount. The defendant again acknowledged his debt, but rejected this claim and argued that the value of the cotton he gave to Recep Aga was not 47 *kurus* but 65 *kurus,* he gave 35 *kurus* worth of silk, and 127 *kurus* in cash. Thus in total he claimed that he already paid 227 *kurus* which was 38 *kurus* more than the total amount of his debt; thus he requested in the excess amount to be repaid to him. Recep Aga denied these claims. To prove his argu-

42 For more details regarding the case see ÖZKUL, p. 219.
43 For more infirmation see ERDOĞRU,A.: *Kıbrıs'ta İlk Osmanlı Esnaf ve Zanaatkarları, Kıbrıs'ta Osmanlılar*, Lefkoşa 2008, p. 106 et seq.; ÖZKUL, p. 328 et seq.
44 For more details see ÖZKUL, p. 208.

ments, Batino brought two witnesses to the *Kadi*, and they confirmed that Batino had paid the stated amount in cash, but had not seen him give any cotton. Thereupon, *Kadi* asked for Recep Aga to take an oath that the actual cost of the cotton was indeed 65 *kurus*, and he failed to do so. The *Kadi* made Recep Aga pay 38 *kurus* back to Batino. As a result, Batino, having Greek nationality, won the case with the help of the statements of the two Muslim witnesses.[45]

The last but not least example that should be mentioned here concerns a case held in 1153. [46] In this case, Yani, resident at Aya Kesano, Nicosia sold cotton and wool to Safiri, resident at Tuzla. At the time of the sale, since Safiri did not have any cash, the parties agreed that the sale price would be paid by Safiri after he would sell the goods that he bought from Yani. However, after the sales were effectuated, Yani wanted Safiri to pay 200 *kurus* more than the agreed price by contravening the mutual agreement, and he took the case before the *Kadi*. In the end, the *Kadi* rejected the case by virtue of the fact that the parties did not agree upon such kind of special provision beforehand. [47]

The above mentioned Ottoman legal system was implemented in Cyprus until the "Rescript of the Rose Chamber / Reorganization Edict*"(Tanzimat Fermanı)* of 1839. After this date, regular courts *(Nizamiye Mahkemeleri)* replaced the local *Kadis*.[48] A Muslim president judge and both Turkish and Greek associate judges, being equal in number, were assigned to these courts. Moreover, a commercial court was established in Larnaka. As a result of these reforms, *Divan-ı Temyiz,* court of the second instance *(Istinaf Mahkemesi)* and *Meclis-i Temyiz*, court of appeal were established in Nicosia by wholly abolishing the power of Islamic Council of Cyprus *(Divan)*. [49] With these reforms, parties were entitled to appeal against the "unlawful" decisions of the regular courts to these higher courts.

III. THE TURKISH CYPRIOT LEGAL SYSTEM IN THE BRITISH ERA

As stated above, the British leased and received control on the island of Cyprus for the period between 1878-1914. In 1915, Great Britain unilaterally annexed Cyprus, the act which then was accepted and recognized by the Turkish Republic in 1923 with the Treaty of Lausanne. The period in which Cyprus was under the British control will be handled here in two separate sections, one covering the years between 1878-1914, the period which is called the "Early British Era" and the other covering the years between 1914-1960, the " Late British Era."

45 For more details regarding the case see ÇİÇEK, pp. 70-71.
46 For some other case studies and practices regarding commercial relationships and the law of obligations see Çiçek, p. 64 et seq. and ÖZKUL, p. 319 et seq.
47 For more details regarding the case see ÖZKUL, p. 326.
48 ÇELİKEL, *Osmanlı Adası*, p. 173; An, p. 84.
49 GAZİOĞLU,(*Enosis* Çemberi), p. 134; An, pp. 84-85 ; ÇEVİKEL, *Osmanlı Adası*, p. 173.

1. The Turkish Cypriot Legal System in the Early British Era (1878-1914)

The Early British Era in Cyprus refers to the period in which the island was governed by Britain, but was still owned by the Ottoman Empire, per the enabling convention signed between the two countries. Therefore in theory, it may be expected that the Ottoman legal system would still be still in force on the island. But history disagrees. Although the island was still considered as an Ottoman property; the British authorities, after taking over the governance of the island, started to effectuate some legislative activities which slowly caused the Ottoman legal system to be replaced by British law.[50] These compulsory legislative activities, aimed in essence at administering the island, caused the Ottoman law to slowly begin to fade, and British law began to take its place as the legal system to which Turkish Cypriots were subjected. It is difficult to make a case for the presence of "Turkish Cypriot Law" in this period. However Turkish Cypriot Law did indeed exist nonetheless, as the British administration did not, for a while, abolish the competency of the Islamic courts (*Şer'iye mahkemeleri)* with regard to cases between Muslims as well as of those special courts for non-Muslims, also the British Administration did not cancel the Ottoman Code of Civil Law *(Mecelle)*.[51]

In fact, the British Administration established a new legal system when they arrived at the island.[52] Criminal disputes were of great importance for the British in order to establish public order on the island when they first arrived. For instance, the Penal Code which was introduced during the Ottoman Reforms of 1858, and was largely modeled after the criminal code of France and was in force in all parts of the Ottoman Empire, was kept in force in order to maintain the criminal law system on the island. On the other hand, the competence of the Islamic courts with regard to cases between Muslims, and that of Community Courts with regard to family law cases of non-Muslims remained valid.[53] The Ottoman Code of Civil Law, regulating civil law and property law of the Ottoman Empire, was applicable as well. The British kept this division and only limited it with respect to family law disputes and kept the Penal Code in force.[54] However, "itinerant tribunals"*(Gezici Mahkeme),* "regional courts" and "high courts" as courts of appeal were established by the British administrators shortly after receiving control of the island – probably in 1879 – which were envisaged to have jurisdiction over all other sorts of disputes.[55] Those high courts would be regarded as the courts of last instance of all legal

50 NEOCLEOUS, p. 11.
51 NEOCLEAUS, p. 11.
52 NEOCLEOUS, p. 11.
53 An, p. 87; NEOCLEAUS, p. 11.
54 NEOCLEOUS, p. 11.
55 TORNARİTİS, C.G. : *The Legal System of the Republic of Cyprus*, Nicosia 1984, p. 74; Neocleous, p. 11.

and criminal cases, except those falling within the exclusive competence of the Islamic Courts (*Şeri'ye)* and the Community (*Cemaat)* Courts, i.e. guardianship, alimony, cancellation and/or nullity of marriage and divorce cases[56].

The above mentioned legal system was adopted and applied in Cyprus until 1882, when the British administration went for some major changes by broadening the area of jurisdiction of regional courts, which restricted the power of *Şer'iye* courts considerably.[57] Moreover, within the same period of time, for disputes stemming from family law issues, which had previously been heard by the High Court as a court of first instance, regional courts were held to be competent, and it was decided that for those disputes the High Court would only be acting as the court of appeal.[58] The intention of British administrators to make the applicable law more "British" on the island soon showed itself also in the law that had been applied to "Greek- Orthodox" community during the Ottoman Era. In this context, the power of Greek Community Courts was limited to the cases of guardianship and adoption, by empowering the regional courts on all other cases. This system remained until the establishment of RoC.[59]

2. Cypriot Legal System in the "Late British Era (1914-1960)"

The years between 1914 and 1960 were the years when the British administration undertook legal and administrative moves to maintain its existence on the island permanently.[60] In those years, the British both wanted to restructure the judicial councils permanently throughout the island and to reshape the community with the new substantive law provisions, and thereby maintain their existence on the island permanently. For instance, the laws like the Protection of the Plaintiffs Code, the Mutual Recognition of the Foreign Court Judgments Code, the Implementation of the Alimony Orders, the Oaths Code, the Limitation of Action Code, the Testimony Code, the Criminal Procedure Code, the Civil Procedures Code, the Justice Courts Code, were the most important laws in the field of procedural law enacted by the British Administration. Similarly, the Marriage Code, the Maritime Code, the Working Hours Code, the Policy Code, the Bankruptcy Code, the Municipalities Code, the tax laws like the Real Property Tax, the Income Tax, the Torts Code, the Contracts Code, the Tax Collection Code, the Real Property Acquiring Code, the Inheritance Code, the laws on the education such as the Elementary Education, Secondary Education, the British School, the laws such as the Trade Unions

56 NEOCLEOUS, p. 12.
57 An, pp. 87-88.
58 NEOCLEOUS, p. 11.
59 NEOCLEOUS, p. 11.
60 For the preliminary transactions of the British administration for to be permanent in the island and reactions from Greek and Turkish communities towards those transactions, please see GAZİOĞLU, (*Enosis* Çemberi), p. 41 et seq.; UÇAROL, p. 154 et seq.

Code, the Passport Code, the Immigration Code, the Adaptation Code are the laws that include substantive code provisions through which the British administration aimed to reshape the Cypriot community and become permanent on the island by maintaining the communal living.[61] It should be stated that the British administration succeeded in this policy and produced a permanent effect on the legal system of the island in 88 years, something the Ottoman administration failed to do in 307 years. Today, if it is said that the Cypriot Legal system, including TRNC law, is based on Anglo-Saxon law, and indeed it is, the underlying principal cause of that is the stated legislative activities of the British administration as for changing the legal system in the island permanently in the years between 1914 and 1960. One should not forget that, the stated laws enacted in the British era and not have been repealed over time, were exactly still in force in the RoC which we call the Greek Cypriot Republic of Southern Cyprus, in accordance with the Article 188 of the Constitution of this state[62]. Similarly, the laws put into effect until the date of December 21, 1963 among those executed in the years stated, have been kept in force within the Turkish Cypriot Legal System as well, both by virtue of the Turkish Federative State of Cyprus Constitution (Art. 1) and also by the provisional clauses of the Turkish Republic of Northern Cyprus Constitution (Art. 4).[63] Indeed, the Penal Code, the Criminal Procedure Law, the Testimony Code, the Civil Procedure Law, the Contracts Code and the Torts Code are laws that remained from those years and applied by the TRNC courts on a daily basis.[64] It is quite difficult to mention a "Turkish Cypriot Legal System" in this context. The single point we can express regarding the Turkish Cypriot Legal System in those years is that the British preservation of the jurisdiction of the religious courts *(şer'iye mahkemeleri)* was abolished in 1924, and the promulgation of the Turkish Family Code in 1951, and also the Turkish Code of Family Courts in 1954. Regarding these two laws, it is quite unlikely to mention the existence of a "Turkish Cypriot Legal System" on the island during this time period.

IV. THE REPUBLIC OF CYPRUS ERA

As mentioned above, the RoC was established with the Treaty of Zurich in 1958, the Treaty of London in 1959 and the Treaty of Nicosia in 1960. As a result of these treaties, the Turkish Cypriots who chose to attain neither the British nor the Turkish citizenship became citizens of the RoC automatically in accordance with Attachment D of the

61 For the chronological list of the stated laws that British Administration enacted, please see COŞKUN,R.: *Kuzey Kıbrıs Türk Cumhuriyeti Hukuk Mevzuatı*, Amme Enstrümanları (Yasa Referansları), C.I, Gazimağusa 2006, p. 205 et seq.

62 NEUCLEOUS, p. 11.

63 *Kıbrıs Yasaları*, (Revised and Conflated), 1st Volume (Chapter1-104), Revised New Edition, KKTC Cumhuriyet Meclisi Yayını, 2001, p. 5.

64 NECATİGİL,Z.M.: *Kuzey Kıbrıs Türk Cumhuriyetinde Anayasa ve Yönetim Hukuku*, Lefkoşa 1988, p. 9 ve p. 12; NECATİGİL, Z.: *KKTC'de Hukuk Sistemi*, Kıbrıs Türk Hukuk Dosyası, (Şubat 1999), (TC/KKTC Hukuk Formu Tutanakları), K.B. Raif, 2nd Edition., Ankara 1999, pp. 138-141.

Facility Treaty *(Tesis Antlaşması)*.[65] Therefore, in the era of the RoC, it is not possible to mention a Turkish Cypriot legal system to which Turkish Cypriots were subjected to. There was a newly-established independent state which is subject to the Cyprus Republic legal system whether its roots are Greek, Turkish or Maronite. Considered from the Turkish point of view, the sole fact to be noticed here is the existence of the rules and the structures that directly interests Turks, because of a bi-communal structure of the Republic. However, it should not be forgotten that, there are rules and structures within the system that directly interest Greek Cypriots just like the Turks. Therefore, two main points must be particularly emphasized while evaluating the Cyprus legal system in the Republic era. The first one is the dependence of the fundamental character of the system on Anglo-Saxon law and the second one is that the system reflects the characteristics of a bi-community as a matter of the state structure.[66]

When the Cypriot Republic legal system is considered, what should be said without hesitation is that this country's legal system is predominantly based on British law.[67] As was said above, legislative transactions performed by the British administration between the years of 1914 and 1960 played the foremost role in the formation of this foundation. As a matter of fact, Article 188 of the Constitution of the RoC was clearly based the structure of the state on British Law by stipulating that the laws from the British era which were not contrary to the constitution and have not been abolished yet will remain exactly in force.[68] Moreover, despite all the events that took place, the sustainment of the "State" nature of the Cypriot republic, at least from their own perspective, in other words the lack of any attempt by the Greek Cypriots to reorganize as a state, who are left to be the only founding nation of the state, lead the system to be based on British Law more so than the current TRNC law. Because, as we will see below, although the current Turkish Cypriot legal system is also based on British law, it has at least in certain areas and to some extent moved away from the British law, due to inevitable going through a "state establishment process".

Undoubtedly, the legislation that forms the RoC legal system is not only the laws inherited from British era and held in force. Besides these laws, the RoC Assembly has expanded the system and regulated the implementation scheme by having new legislative functions in fields, which are deemed necessary, by amending or repealing the current ones and by participating in some international treaties. For instance,

65 In this respect, please see TURHAN, p. 45.
66 NEUCLEOUS, p. 18, 2-8.
67 DAYIOĞLU, S.: *KKTC'de Yargısal Yapı*, Kıbrıs Türk Hukuk Dosyası,(February 1999), (TC/KKTC Hukuk Formu Tutanakları), Drafted by K.B. RAİF, 2.Bs., Ankara 1999, p. 60; NECATİGİL, *KKTC Hukuk Sistemi*, pp. 138-139; NECATİGİL, *Anayasa ve Yönetim Hukuku*, p. 1.
68 NEUCLEOUS, p. 30, 2-27 ; NECATİGİL, *Anayasa ve Yönetim Hukuku*, p. 1.

the "Republican Army Code", "the Cyprus Republic Citizenship Code", "the Foreign Ministry Code", various tax and tax collection laws, "the Election Code", "Central Bank Code", "Maritime Code", "Justice Courts Code", "Turkish Municipal Corporations Code" and other similar codes provide for the fundamental political and economic organization of the state. However, in addition to these laws, in this system, it is also possible to come across laws only concerning the Turkish Cypriot community due to the bi-communal structure of the Republic and the presence of the constitutional obligation on the regulation of some fields by their own community assembly (Article 87). "Turkish Community Assembly Election Code", "Turkish Community Assembly Foundations and Religious Affairs Code", "Public Holiday and Memorial Days Code", "Illegitimate Children Code" are examples of codes that directly apply to Turkish community[69].

It will be appropriate to start explaining the subject of regulations or structuring directly concerning Turkish Cypriots in the Republican era legal system with an institution which still preserves its existence, even today, both in the South part, and in the TRNC, briefly called the "Attorney General" or "Law Department". According to the Constitution of the Republic, two persons who fulfill the requirements of being a high court judge may be appointed by the President and the deputy as a "chief prosecutor" and "deputy chief prosecutor". Both of these officials who are permanent members of the Republic Courthouse and who act as the legal counsel of both the Council of Ministers and the ministries, shall not belong to the same community. In this case, it is evident that either the "chief prosecutor" or the "deputy chief prosecutor" will be Turkish. The most important feature of the Chief Prosecution institution is the obligation to consult one another before taking decisions on the issues related to the president's or the deputy's community. In this case, for instance, a Greek Chief Prosecutor, who takes a decision concerning Turks, is required to consult with his/her Turkish counterpart[70].

The two other structures of the Republic Constitution which relate to both Turks and Greeks and are comprised of both Greek and Turkish judges together within its structure are the two institutions called the Constitutional Court and the Superior Court of Justice. Among those, the Constitutional Court was composed of an independent president-chief and a Greek and a Turkish judge; the Superior Court of Justice was also composed of an independent president-chief and two Greek and one Turkish judge and both of the members of those courts were appointed by the President and the chief deputy. However, after the inter-societal conflicts began in 1963, due to the malfunction of both

69 For the dates of the entry into force of the stated laws, please see COŞKUN, p. 231 et seq.
70 NEUCLEOUS, p. 12 and p. 26, 2-20.

courts, these courts were abrogated with a law enacted by the Greek Cypriot deputies and a sole Superior Court, currently in duty, was established in lieu of them.[71]

Although, it does not matter today and even just for historical information, it will be beneficial to mention briefly about the republic legal system's regulations on the lower courts. The status of the lower courts had been determined by Article 159 of the Constitution, the principle is that the cases of Turks would be conducted by the courts established by Turkish judges and the cases of Greeks' would be conducted by the courts established by Greek judges. These cases, where the plaintiff and the defendant or the offender and the aggrieved belong to different communities, were heard by the courts consisting of the judges appointed by the Superior Court[72].

V. THE TURKISH CYPRIOT LEGAL SYSTEM DURING THE "NATIONALIZATION PROCESS (1967–1983)"

The lifetime of the RoC in terms of the Turkish Cypriot community was not quite long. As a result of the incidents that occurred in only the third year of the establishment of the Republic and the subsequent attempts of Makarios to amend the crucial constitutional arrangements for Turks, as well as the 1967 incidents, the Turks receded from the state administration.[73] Following this year, Turkish Cypriots experienced a process that was not only very difficult, but also crucial for them. During what we call the "nationalization process" of Turkish Cypriots, Turks established firstly the Provisional Turkish Administration, then the Autonomous Turkish Cypriot Administration, Cypriot Turkish Federation and finally the current Turkish Republic of North Cyprus and hereby they both continue their existence on the island, and form their structuring based on bi-communal, bi-zonal and political equality. Undoubtedly, although the different structures that emerged in the experienced process are based on the one-unique state philosophy basically desired and yearned for, the legal structure surrounding Turkish Cypriots has changed from one to another. Therefore, it is beneficial to consider the subject respectively according to each political structure. Undoubtedly, within these structures, the current legal system of "Turkish Republic of Northern Cyprus (TRNC)" will be considered separate from the above-mentioned three periods.

1. The Turkish Cypriot Legal System in the era of the Provisional Turkish Administration of Cyprus (1967-1974)

The reason behind the establishment of the Provisional Turkish Administration of Cyprus was to carry out the social affairs of the Turkish Cypriot community who had been excluded from the Republic admin-

71 NECATİGİL, *Anayasa ve Yönetim Hukuku*, p. 1.
72 DAYIOĞLU, p. 60.
73 GAZİOĞLU, *Cumhuriyet Yılları*, p. 358 et seq.; İSMAİL, *Kıbrıs Cumhuriyeti*, p. 68 et seq, particularly p. 77 et seq.

istration due to the 1963 incidents, to put an end to the existing disturbances and the conflicts of authorities, briefly to establish a social system that would ensure the desire of the Turkish Cypriot community for the coexistence. In this manner, this administration, as an expression of "restructuring," has never been an organization implemented against the Republic and as an alternative of it for Turks.[74] In fact, therefore, the Provisional Turkish Administration had not formed a detailed constitution but rather promulgated a document of 19 articles as a "miniature constitution" including provisions that the Turkish community would be subject to. This document did not repeal the Cyprus Constitution; furthermore it expressed the view that Republic laws adopted before December 21, 1963 were kept in force. However, the Provisional Administration had initiated the nationalization process of the Turkish Cypriots by separating legislation, executive and jurisdiction affairs within these 19 articles to apply current Cypriot Constitution and its laws[75].

Leaving executive affairs apart from our discussion,[76] the rules applied in the Turkish zones of the island have been established by the "Provisional Turkish Administration Assembly." This Assembly was composed of 15 Turkish members elected to the House of Representatives and the members of Turkish Community Assembly in accordance with Cypriot Constitution[77]. Undoubtedly, this assembly has made significant contributions by enacting new laws within the framework of the newly-established structure, to the survival of the Turkish Cypriot community on one hand and to the nationalizing process on the other hand. For instance, laws such as "the Judicial Courts Code," " the Code on the Entrance and Exit Control to the Turkish Zones," "the Code on the Prohibition of Selling Real Estate to non-Members of the Turkish Community," "the Code on Election of the House of Representatives and Community – *cemaat* – Assembly", "Firearms Law", "the Turkish Cypriot Armed Forces Code", "the Department of the Religious Affairs Code," "the Code Stating the Working Conditions of Cypriot Turks in Turkey", "Military Penal and Procedural Code" are only some of them enacted by the Provisional Administration.[78] Eventually, in conclusion, it must be stated that the judicial activities have been executed by the Turkish judges assigned to by the proposal of the vice president.

As is evident from this brief description, in the initial stages of the nationalization process, the Turkish Cypriot Legal System was mainly dependent on the Republic Law. In other words, the fact that legal

74 For the aims and characteristics of the Provisional Turkish Administration, please see SARICA/TEZIÇ/ESKIYURT, p. 157 et seq., particularly p. 160.
75 SARICA/TEZİÇ/ESKİYURT, pp. 158-160.
76 For executive acts, please see SARICA/TEZİÇ/ESKİYURT, p. 159.
77 SARICA/TEZİÇ/ESKİYURT, pp. 158-159.
78 For the Laws enacted in the Provisional Turkish Administration period, please see COŞKUN, p. 248 et seq.

rules surrounding the Turkish Cypriot community are mainly based on Anglo-Saxon law has not changed. On the other hand, the Turkish community by being separated from the republic administration which means forming a new organization by taking care of their own, makes it essential to enforce new laws as required by their own social structure and needs. In this manner, the will of Turkish Cypriot Community and its organization to protect the Republic at the beginning, reluctantly, started to move away from British law gradually and directed towards a double-headed structure.

2. Turkish Cypriot Legal System during the Autonomous Turkish Cypriot Administration (1974-1975) Period

The Provisional Turkish Administration was initially renamed the "Turkish Administration" and was eventually replaced by the "Autonomous Turkish Cypriot Administration" with a decision taken by the administration in September 1974. The Autonomous Turkish Cypriot Administration was a short period that only lasted for less than a year. A review of the legislation activities in this period reveals that there were hardly any developments as far as the Turkish Cypriot Legal System is concerned. The system is essentially the same with that of the Provisional Administration period. Nonetheless, the Assembly continued enacting codes aimed at "state establishment", i.e. the "Code on the Registration of Births and Deaths" and the "Minutemen Act."[79] It is noteworthy that, besides the Justice Courts Code that forms the basis of the current Code of Courts numbered 9/1976, a "Code of Citizenship" was enacted. Considering that the concept of "citizenship" is defined as a legal and political bond that bounds persons and things to the "state," it is self-evident that the administration had the intention to restructure the Turkish Cypriot Society as a "nation" as early as 1974.[80]

3. Turkish Cypriot Legal System during the Turkish Federative State of Cyprus (1975-1983) Period

A careful examination of the state establishment process of the Turkish Cypriots reveals that the most important period in this process was that of the Turkish Federative State of Cyprus (1975-1983) following the peace operation, because simply put, this period is marked by Turkish Cypriots doing their part in order for an "independent and federal" RoC to be realized in the future - in other words founding the "Turkish State" that was intended to become one of the founding partners of a future federation.[81] In this stage, the Turkish Cypriot commu-

79 See COŞKUN, pp. 256-257 for these codes.

80 For an overall evaluation of the Code of Citizenship of the Autonomous Cyprus Turkish Administration see ULUOCAK, N.: *"Otonom Kıbrıs Türk Yönetimi Yurttaşlık Kanunu'na İlişkin Kritik Bir İnceleme, Kıbrıs Türk Federe Devletinin Milletlerarası Hukuka İlişkin Bazı Sorunları"*, Symposium, May 6-7, 1982, İstanbul 1983, p. 69 et seq.

81 For the political developments that had lead to the foundation of the Turkish Federative State of Cyprus and the basic properties of this political structuring see TOLUNER, p. 352 et seq. BARUTÇU, E.: *Hariciye Koridoru*, Ankara 1999, pp. 122-123; for the historical function of the Turkish Federative State see AYDOĞDU, pp. 151-152 and İSMAİL, S.:

nity had adopted their Constitution, switched to a genuine multi-party democratical system, made the state fully functional through two general and two local elections, and began to wait on the Greek side for a federation based on equality.[82] It should be noted that the fact that the Turkish Cypriot administration had been restructured as a state to improve the economical and social infrastructure of the Turkish Cpyriots, had inevitably caused the Turkish Cypriot legal system to depart from the legal system of the Republic and proceed to become a sui generis legal system.

It can be argued that the Turkish Cypriot legal system in the Federative State period had not completely departed from the legal system of the Republic and therefore Anglo-Saxon law. Although some laws from the British period were slowly being repealed or tried to be made compatible with the needs of the Turkish community, the positive law was still based heavily on the British laws in force since the Republic period. However in spite of this reality, it should be remembered that the Turkish Federative State of Cyprus that was sovereign over the northern part on its own behalf, had announced to the world by enacting a constitution in 1975 that she wanted to continue her existence as an independent state and as a natural requisite wished to pursue legislative activities within the frame of principles and procedures determined in the constitution.[83] A closer examination of the Constitution of the Turkish Federative State of Cyprus reveals that it had codified all vital foundations for a basic political organization of a state, such as "citizenship (Art. 53)", "suffrage and right to participation in referenda (Art. 54), "founding of political parties (Art. 56)", "admission to public service (Art. 58)", "patriotic duty (Art. 60)", "Federative State Assembly (Art. 63)", "legislation, amendment, amnesty, enactment of budgetary laws (Art. 65)", "executive power (Art. 78)", and "head of state and council of ministers (Art. 79, Art. 58)."[84] These regulations, reflective of a statehood structure considerably divergent from that of the RoC, illustrates that the Turkish Cypriot legal system, although still bearing traces of British law, was gradually shifting towards a *sui generis* system that was influenced also by the legal system of the Republic of Turkey.

It should be noted that the "Assembly of the Turkish Federative State of Cyprus", responsible for carrying out the legislative activities of the Turkish Federative State of Cyprus, had met all prerequisites of being a "state assembly" and ferried the Turkish Cypriot

150 Soruda Kıbrıs Sorunu, İstanbul 1998, pp. 160-161; NECATİGİL, *Anayasa ve Yönetim Hukuku*, pp. 15-16. Also see Sakmar, A.: *Kıbrıs Türk Federe Devleti Vatandaşlığı Üzerine Genel Düşünceler, Kıbrıs Türk Federe Devletinin Milletlerarası Hukuka İlişkin Bazı Sorunları*, Sempozyum, 6-7 Mayıs 1982, İstanbul 1983, p. 63 et seq. and especially p. 66.

82 İSMAİL, *Kıbrıs Sorunu*, p. 161.

83 In this respect, the speech given by the President of the Autonomous Cyprus Turkish Administration Rauf R. Denktaş on February 13, 1975, at the Assembly of the Autonomous Cyprus Turkish Administration and explicitly reveals the purpose of the new political structuring. For the text of this speech see AYDOĞDU, pp. 151-152.

84 For the text of the Constitution of the Turkish Federative State of Cyprus see SARICA/TEZİÇ/ESKİYURT, p. 413 et seq.

community to become the "Turkish Republic of Northern Cyprus." The Turkish Federative State of Cyprus, which had preserved, with the Provisionary Article 1 of her Constitution the enforcability of the codes from the British period, codes enacted by the House of Representatives of the RoC until December 21, 1963, the Turkish Community Assembly, Assembly of the Autonomous Turkish Cypriot Provisionary Administration, and the Legislative Assembly of the Autonomous Turkish Cypriot Administration, had created a unified legal system with its codes adopted, amended and abolished by her Assembly. [85]. This legal system has come to be the core of the current legal system of the Turkish Republic of Northern Cyprus. In this respect, a few examples could be given for laws enacted by the Assembly of the Federative State and commonly found in the legal structure of all institutionalized political authorities referred to as "states": "Referendum Law", "Political Parties Law", "Land Registry and Cadastre Law", "Motor Vehicles Law", "Immovable Properties Law", "Monetary and Exchange Affairs Law", "Public Servants Law", "Military Zones Law", "Banks Law", "Social Insurance Law", "Law on the Foundation of Security Forces", "Retirement Law", "Reserve Military Officer Law", "Law on the Collection of Public Receivables", "Court of Accounts Law", and "Rent Law."[86] A closer technical inspection of these laws enacted after 1974 makes it apparent that a majority of them were inspired by the laws of the Republic of Turkey. Therefore it can be said that during the Federative State period, the Turkish Cypriot legal system gradually moved farther away from the Anglo-Saxon legal system and attained a mixed structure by reapproaching the Turkish legal system.

However it should be underlined that the observation that the Turkish Cypriot legal system has been shifting towards a mixed structure composed of Anglo-Saxon and Turkish legal systems, pertains to the substantive law rather than procedural law. In other words, the shift from Anglo-Saxon law to Turkish law has been in the field of substantive law, not the procedural law. On the exact contrary, the Federative State Assembly continued to remain loyal to the judicial structural and procedural laws of the RoC period by affirming the validity of the procedural laws from the British period, and complimenting them with other laws like the "Law on the High Judiciary Council", "Legal Chamber Law", and "Code of Courts." We believe that, those who claim that the modern Turkish Cypriot legal system is based on the Anglo-Saxon legal system, reach this conclusion by taking into account the more conspicuous judicial structure and the procedural law. As the judicial structure formed in the Federative State period

85 *Kıbrıs Yasaları*, p. 5.
86 For the dates of entry into force of these codes and other codes enacted by the Federative State Assembly see COŞKUN, p. 257 et seq.

is almost completely preserved in the Turkish Republic of Northern Cyprus period, it will be examined more thoroughly below.

VI. LEGAL SYSTEM OF THE TURKISH REPUBLIC OF NORTHERN CYPRUS

Although Turkish Cypriots had hoped for the foundation of a prospective "Federal RoC", and founded the "Turkish Federative State" with all its institutions which would constitute the Turkish branch of this federal state, their expectations in this sense did not materialize. The Turkish Cypriot community and its representative Federative Assembly did not wait any longer and exercised the "right of self-determination" and declared the "Turkish Republic of Northern Cyprus" (TRNC) on November 15, 1983, in order to reverse the negative international attitude caused by UN resolutions and still be able to negotiate with the Greek Cypriots under equal terms.[87]

Following the declaration of the TRNC, during an Assembly meeting in December 1983, it was decided that the Assembly would become "Constituent Assembly" with 70 members and was given the tasks of drafting the constitution, holding elections and carrying out necessary legislative activities hitherto. The draft constitution, prepared by the Constitutional Commission composed of a president and fourteen members, was made public right after the Founding Assembly finished her work, the Constitution of TRNC entered into force with a referendum on May 5, 1985.[88] An overview of the Constitution of 1985 reveals that the foundations of the state structure of the TRNC were laid down in the Federative State period. In other words, due to the shift away from a federal state expectation, the Constitution of 1985 introduced a new structure that envisioned absolute and unitary exercise of sovereignty within the borders of TRNC, but left this fundamental approach aside, it fully preserved the basic institutions of the Federative State Constitution and reorganized them in more detail and in line with the contemporary approaches.[89]

It will be appropriate to provide some information on the formation of the judiciary and applicable legislation in explaining the current Turkish Cypriot legal system that is outlined in Section Five (Articles 136-158) of the Constitution of 1985.

1. Judicial Organization of the TRNC

As stipulated under Section Five ("Judiciary") of the Constitution,

87 For the process that paved the path to the declaration of the Turkish Republic of Northern Cyprus see EROĞLU, H.: *Kuzey Kıbrıs Türk Cumhuriyeti'ni Yaratan Tarihi Süreç (1940-1983), Kıbrıs'ın Dünü, Bugünü ve Geleceğe İlişkin Vizyonu Konulu Uluslararası Sempozyum Bildiri Kitabı*, (Ed. Gökçekuş, H.), Near East University, Nicosia 2001,p. 133 et seq.; MELEK, F.: *KKTC'nin İlanı: Tepkiler ve Tartışmalar Kutusu, Türk Dış Politikası: Kurtuluş Savaşından Bugüne Olgular, Belgeler, Yorumlar*, C.II, 7.Bs., Istanbul 2004, p. 108; AYDOĞDU, p. 176 et seq.; İSMAİL,(Kıbrıs Sorunu), p. 176 et seq.177.

88 For the drafting process of the Constitution see NECATİGİL, *Anayasa ve Yönetim Hukuku*, p. 3 ; İSMAİL, p. 177. For a text of the constitution see NECATİGİL, *Anayasa ve Yönetim Hukuku*, p. 166 et seq.

89 NECATİGİL, *Anayasa ve Yönetim Hukuku*, p. 16.i

the current Turkish Cypriot Legal system's judicial organization is composed of the "High Judicial Council (Art. 141), "Constitutional Court (Art. 144-150)" - "High Court of Appeals (Art. 151)", "High Court (Art. 143)" acting as "High Administrative Court (Art. 152)", "Family Court", "Juvenile Court", "Courts-Martial (Art. 156)", "Military High Court of Appeals (Art. 157)" and "Chief Public Prosecutor's Office (Art. 158)". As underlined above, this organizational structure, apart from some non-foundation-related deviations, is a framework derived from the Constitution of the RoC, based on the Anglo-Saxon judicial organization and fully preserved throughout the Federative State period.[90]

A) High Judicial Council

To start our explanations with the High Judicial Council, it will not be wrong to state that this Council is charged with the duties of the Ministry of Justice and the High Council of Judges and Prosecutors in the judiciary organization of the Republic of Turkey. This council, set up by the Constitution of the TRNC, is composed of the President and seven members of the High Court, one member each appointed by the President and the Speaker of the Assembly, the Chief Prosecutor and the Head of the Bar Association. The council is empowered in respect of the following: the general operation and regular functioning of the judiciary, the attendance of the public officers attached to the judges and the courts to their duties, the effective conduct of tasks, the training of the judges, the preservation of the dignity and the honor of the profession, the appointment of the judges, the promotion of the judges, changing the duties or posts of the judges, security of job (life tenure), and deciding on disciplinary matters.[91]

B) Lower Courts

The courts of first instance (referred to as "Lower Courts" in Art. 155 of the Constitution) were founded with the "Code of Courts" drafted and enacted during the Turkish Federative State of Cyprus in September 1976, and later amended in line with the administrative structure of the TRNC. "Courts-martial" aside, the lower courts ought to be examined under two sections: civil courts and criminal courts.[92]

a) Civil Courts

Lower courts operating in civil law matters, so called civil courts, are divided into three subgroups: "Full District Court", "Senior District Court Judge", and "District Court Judge". The Full District Courts operate on the district level and are established in Nicosia (Lefkoşa), Famagusta (Mağusa), Kyrenia (Girne) and Morphou (Güzelyurt). The

90 DAYIOĞLU, p. 61 et seq; NECATİGİL, *Anayasa ve Yönetim Hukuku*, pp. 3-4.
91 For the High Judicial Council see DAYIOĞLU, p. 63; NECATİGİL, *KKTC Hukuk Sistemi*, p. 115. Also see http://www.mahkemeler.net, " FAQ".
92 DAYIOĞLU, pp. 65-66; NECATİGİL, *KKTC Hukuk Sistemi*, p. 132 et seq.

Court of Nicosia also operates in other areas such as Lefke and Iskele (Trikomo). These courts are composed of two or at most three judges. However in practice, they operate with two judges, the more senior of who acts as the president. Cases with an object of litigation of 5.000 Turkish Liras or more fall under their jurisdiction. The president has the power to conduct a hearing at his own initiative if the object does not exceed 15,000 Turkish Liras. "Senior District Court Judge" and "District Court Judge" conduct hearings on their own, and have the power to hear cases not exceeding 15,000 TL and 5,000 TL, respectively. As a matter of fact, it should be noted that Cyprus is a small country divided into only six districts, with a total of 31 judges operating in all courts throughout the country.[93]

b) Criminal Courts

Lower courts that operate in criminal matters are divided into three subgroups: "High Criminal Courts", "District Courts" and "Juvenile Courts". High Criminal Courts are established only in Nicosia, Famagusta and Kyrenia. They are normally composed of a president and two judges appointed by the High Court. However in practice, the hearings are conducted with three district court members. An exception to this tradition is cases where the defendant is being alleged with a crime that necessitates capital punishment, then the president of the district court chairs the court board. High criminal courts are entitled to hear cases where the punishment is more than 5 years of prison penalty or 2,000 TL of pecuniary penalty. These courts also have the power to assess damages of up to 15,000 TL in favor of the persons injured due to the crime. In districts with no established High Criminal Courts and during the judiciary recess between July 1 and September 14, the cases are heard by mobile field courts. District Courts hearing criminal cases are composed of one judge, and are entitled to hear cases that call for a prison penalty of less than five years or pecuniary penalties not exceeding 5000 TL.[94]

Another court related with the criminal law is the Juvenile Court established according to the "Code of Juvenile Criminals". These courts are entitled to try juvenile defendants of younger than 16 years of age. They are composed of a single judge, namely the district court judge. They practice special trial procedures which involve barring the entry of spectators and the press to the hearing room.[95]

c) Family Courts

Family Courts appear in accordance with the historical development of the Turkish Cypriot legal system. Disputes related to family law had been excluded from the jurisdiction of general courts since the

93 See http://www.mahkemeler.net; DAYIOĞLU, pp. 65-66.
94 DAYIOĞLU, p. 66. Also see http://www.mahkemeler.net.
95 DAYIOĞLU, p. 67.

British era, and family law and personal law disputes of the Muslims and non-Muslims have been held in different courts. Moreover, there is no Civil Code in the Cypriot legal system. Family law issues such as engagement, matrimony, divorce, custody, guardianship, descent, alimony, law of property, etc. are regulated under a private code, "Family Code." Thus Family Courts, each existing of one judge, apply to this code when resolving disputes in these matters.[96]

C) High Court

Pursuant to the Constitution of the TRNC (Art. 143), the High Court consisting of a president and seven members, is the highest court in the country. Like other courts, the organization chart of the High Court is also transferred from the British era to the RoC and then to the Federated State and to TRNC. An interesting point of this chart is that the High Court acts as the Constitutional Court, as the Supreme Court, as the High Court of Appeals and also as the High Administrative Court (Art. 143,2). In other words, there is not more than one higher court in the TRNC legal system as there are in the Republic of Turkey. One High Court performs the duties of other high courts.

a) High Court acting as the "Constitutional Court"

The high court, when acting as the Constitutional Court, consists of the president of the Court and four High Court judges. Trial process is not performed only on file but through hearings. The High Court has the following rights and duties as the Constitutional Court:[97]

a. 1 To solve power and authority disputes upon the objection by the President, the Assembly of the Republic or another body of the State,

a. 2 To give their opinion to the President, if the President suggests that the whole or some rules of a law adopted by the Assembly of the Republic is contrary to the Constitution,

a. 3 To render final decisions on the annulment cases brought before them by the President, political parties represented in the Assembly of the Republic, political groups, at least 9 deputies or institutions, entities and unions, in matters related to their existence and duties, claiming the contradiction with the constitution of a law, decree, by-law or a decision of the Assembly of the Republic or a regulation,

a. 4 To render final decisions when a code, a decision or a code, which may effect a step of the judicial procedure including the appeal phase, is brought before them by a court claiming contradiction with the Constitution,

a. 5 To construe the articles of the Constitution if requested,

96 NECATİGİL, *Anayasa ve Yönetim Hukuku*, p. 11.
97 DAYIOĞLU, pp. 67-69 ; NECATİGİL, *Anayasa ve Yönetim Hukuku*, p. 5.

a. 6 To try the President, Prime Minister or Ministers as the Supreme Court, and

a. 7 To review the closure cases of political parties if certain grounds exist.

b) High Court acting as the "High Court of Appeals"

High Court, acting as the "High Court of Appeals" with a chairman and two or three High Court judges, is the highest appellate court in the TRNC legal system. It is possible to appeal all the decisions of the first degree courts. The appeal period is 42 days starting from the decision date in civil cases, and 10 days starting from the decision date in criminal cases. In addition to this basic duty, the High Court, when acting as the High Court of Appeals, has the following authorities deriving from British law which are unfamiliar in Turkish Law:[98]

b. 1 to issue a writ to lift an unauthorized detention (Habeas Corpus),

b.2 to issue a writ to provide the implementation of an authority (Mandamus),

b. 3 to issue a writ to prohibit the implementation of a wrongful decision rendered by a court or a body applying the judicial authority (prohibition),

b. 4 to issue a writ to investigate which authority is based upon for the occupation of a post (ex warranto) and

b. 5 to issue a writ to annul a decision of a court or of another body using judicial authority (certiorari).

c) The High Court acting as the "High Administrative Court"

The High Court when acting as the "High Administrative Court" tries cases in which a citizens file a lawsuit against a decision, transaction or negligence of a governmental body, authority or an official using an administrative power, that violates the Constitution, a code or laws and regulations. The misconduct which is being sued can be scrutinized on the condition that the legitimate interest of the plaintiff is damaged or negatively affected. The period of applying to the High Court acting as the High Administrative Court, is 70 days following learning the mentioned administrative decision or negligent action.[99]

Unless otherwise provided by the Code, High Administrative Court rules with one judge. However, the High Administrative Court assembles with three judges in certain circumstances stated in the High Administrative Court Authorization Code: the administrative actions and/or the decisions of the Ministries, the local authorities, public service commissions, and the Transportation of People and Goods with Mo-

98 NECATİGİL, *Anayasa ve Yönetim Hukuku*, p. 7, particularly pp. 129-136.
99 NECATİGİL, *KKTC Hukuk Sistemi*, p. 127.; Dayıoğlu, p. 71.

tor Vehicles Commission. High Administrative Court decisions rendered by three judges are final. However, the decisions given by one judge can be appealed at the same court consisting of three judges. The Court,

c. 1 may approve the decision or the administrative decision and/or act as a whole or partially and,

c. 2 may decide that the decision or act is null and void partially or as a whole or is of no effect and will not create any legal consequences,

c. 3 in case of negligence, it may decide that the transaction should not be realized partially or as a whole, or decide that an act or transaction should be realized.[100]

High Administrative Court decisions are binding. If a decision is not implemented, persons who are damaged due to this non-implementation can sue for damages against the institution, body or authority which is responsible for the non-implementation.

C) The Office of the Chief Public Prosecutor (Chamber of Law)

The Office of the Chief Public Prosecutor is also an institution that has been transferred from the Constitution of the Republic to the law system. The duty of the Office of the Chief Public Prosecutor, which is a permanent member of the Court of TRNC, is to act as the legal advisor for the state, the president, the prime minister, the ministers and other state bodies. In this sense, the Chief Public Prosecutor who is elected and appointed among the persons bearing the qualifications for being a high court judge and who acts in the same capacity and status with the high court judges,

a) has the power to file, takeover, handle or end a lawsuit related to any crime in circumstances where the public interest requires,

b) during the prosecution process of criminal cases, the Chief Public Prosecutor has the absolute power and liability to administrate,

c) has the right and the authority to represent the State or its bodies/ organs where the State is a party of[101].

2. The Laws and Regulations Applied in TRNC Law System

As it can be understood from the explanations above, the legal system of TRNC has not been formed in an historical development process under a single state's organization without any interruption. On the contrary, the changing sovereignties on the island and the new political structures have prevented the systematic formation of a unique and integrated law system. Thus, today it is stated that TRNC law is

100 DAYIOĞLU, p. 71.
101 NECATİGİL, *Anayasa ve Yönetim Hukuku*, pp.45-47.

actually a "law mosaic." fundamentally based on common law, nevertheless adapted to the conditions and requirements of the country.[102] For this reason, the laws and regulations to be applied by the judicial bodies had to be re-defined in each era. Accordingly, this need has been perceived by the lawmakers of the TRNC and therefore the laws and the regulations to be applied by the TRNC judicial organization had to be defined in Article 38 of the Code of Courts. In this regard, the laws and regulations to be applied have been listed in order of priority as follows:

a) The Constitution,

b) The laws and regulations in force, unless they are infringing the Constitution,

c) The General Principles of Law (judge made law) (*"Ahkam-ı Umumiye"*) and equity law (*"nasfet hukuku"*), on the condition that they are not infringing or not incompatible with the Constitution,

d) The Pious Foundations Codex (*Ahkamül Evkaf*) and,

e) The laws and regulations regarding maritime law, which were in force on 21 December 1963.

Nevertheless, in our opinion some of the sources stated herein this list requires further explanation in particular.

Obviously TRNC judicial bodies shall apply the laws and regulations in force, i.e. the codes, regulations and bylaws as the primary source, provided that they are not infringing the Constitution. However, due to the specific structure of the system, it is important to emphasize the time of the enforcement periods of the codes, regulations and bylaws once more. The temporary Article 4 of the Constitution of TRNC states that, all the codes and the consequent regulations and bylaws issued in compliance with these codes, which are not infringing the Constitution and which have been implemented by;

1. the British Colonial Administration until the RoC was established on the 16 August 1960,
2. the RoC until 21 December 1963,
3. the Turkish Community Assembly,
4. the Turkish Cypriot Provisionary Administration Assembly ,
5. the Autonomous Turkish Cypriot Administration/Legislative Chamber
6. the Constituent Assembly of the Turkish Federative State of Cyprus,
7. the Parliament of Turkish Federative State of Cyprus

102 DAYIOĞLU, p. 73; NECATİGİL, *KKTC Hukuk Sistemi*, p. 141.

8. the Constituent Assembly of the Turkish Republic of Northern Cyprus , and
9. the Parliament of Turkish Republic of Northern Cyprus.

shall be also be in force[103].

Another issue we must mention is that, what should be understood from the terms General Principles of Law (judge made law) (*"Ahkam-ı Umumiye"*) and equity law (*"nasfet hukuku"*). First of all we should note that there are some translation and spelling errors in this group of sources which may lead to misunderstandings. The first mistake is regarding to the term *"ahkam-ı umumiye"* (judge made law). This term is regulated in the Code of Civil Courts, 1960 as "Common Law." Nevertheless, this term, taking its mistake from the Anglo-American law systems, being defined as "common law", "traditional law" in today's legal dictionaries, has somehow been drawn with the wording "*ahkam-ı umumiye*" (general principles) in the Code of Courts, 1976. However, *"ahkam-ı umumiye"* is as known, means general principles and this term has no connection with "Common Law". The term "Common Law" as in the British Law, refers to a law system that has been developed by court decisions sourcing from traditions and customs and which can be adapted to the changing socio-economic conditions of the society[104]. This system which has been developed through court decisions in some certain areas is applicable in TRNC law system as a part of laws and regulations. This implementation in particular, creates an option of interpretation of the codes in compliance with the present conditions in some areas where the requirements of the day are not met and the current legislation is insufficient, on the basis of the "precedents". With regards to the TRNC law system, it can be stated that only the law of contracts and torts is based on Common law[105].

Another issue, included in the laws and the regulations that should be considered is that what is meant by the rules of "equity law" (*"nispet hukuku"*). The term *"nisfet"* or *"nesafet"* which has been erroneously been drawn as *"nasfet"* in the Code of Courts, is also sourcing from British Law and in general terms it refers to "equity" or "restitution". This term has been developed by the "Court of Chancery" in order to overcome inequities that take place during the implementations of Common Law and the exact meaning of it in the legal environment of Continental Europe is, judges' right of ruling in accordance with "justice and equity" as well. The judges of TRNC have the same right and duty[106].

103 NECATİGİL, *Anayasa ve Yönetim Hukuku*, p. 11.
104 NECATİGİL, *Anayasa ve Yönetim Hukuku*, p. 12; Dayıoğlu, p. 62.
105 NECATİGİL, *Anayasa ve Yönetim Hukuku*, p. 12.
106 NECATİGİL, *Anayasa ve Yönetim Hukuku*, pp. 12-13.

Finally, it will be useful to give some brief information regarding the rules known as *"Ahkamü1- Evkaf"* (Pious Foundations Codex). These rules, which are to be applied to TRNC courts prescribed by the Code of Courts, are simply the compilation of rules pertaining to the Law of Foundations. As in many Islamic countries, many charitable foundations have been established in Cyprus, while it was under the governance of the Ottoman Empire. These foundations were so numerous that it is even rumored that they covered the 30% of the whole island. These rules, mentioned as Pious Foundations Codex, are the rules that have been formed and shaped during the foundation implementations which have lasted for years. These rules have also been applied in the British and the RoC eras. The quantity of the properties and assets of the foundations has decreased since the beginning of the British era, due to the suspicious relations between Britain and the Greek society. Yet, despite this decrease, these rules regarding the charitable foundations, are accepted as the primary source in resolution of the disputes arising from the law of foundations[107].

107 See Ömer Hilmi Efendi: *Ahkamü'l- Evkaf,* prepared for publication by Derzinevesi,H./Kasapoğlu, M.K., Lefkoşa [Nicosia] 2003.