

Strategic Principles of Recognition of Turkish Republic of Northern Cyprus by Turkic Republics*

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Abstract

This research is based on legal and strategic principles of Turkish Republic of Northern Cyprus (TRNC) by Turkic Republics. The purpose of the research is analyzing problems, solution proposals and the principles about these subjects in the case of the recognition of TRNC by Turkic Republics.

The recognition of the states has been depicted in a several ways in international law. According to the depictions, recognition is a legal process where a state or more than one state unilaterally declare the constitution of the government with the all results of concerned union, certify this state and sustain all the legal relations with the concerned state due to this situation. Nowadays, the recognition of TRNC is debated issue from the different aspects.

The recognition of TRNC by Turkic Republics will be concentrated on whether existence or not of declaratory or decocker impact of the recognition, imperativeness of the recognition process, whether signing or not of the special treaty or unilateral legal process and on the subject of stipulation of the recognition to the term.

Keywords

TRNC, Cyprus, Turkic Republics, The Recognition, International Law, Self-determination.

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Introduction

It is undeniable that the main constitution of international law is independent states. That is why we see the recognition of a state in an international realm, as an essential topic.

In fact, the recognition of the state means adherence of a new member to the international community. From the point of view of legitimizer states, it is a judicial act that shows establishment of relations with the new state due to international law. Recognition is explicit declaration of the existence of aforementioned state (Chen 1951: 133). That is why the recognition has a huge legal impact on recognized and legitimizer states. Under these circumstances the recognition of a new state brings on important aftermaths with itself.

Part of the recognition that is confronted with the problems mostly, is the recognition of states and governments. The political unity that has population, land and hard-core government can always claim in sovereignty allegation or can assert that it's a state. Because of its declaratory feature, neither any political unity needs recognition for being a state, nor any country has an obligation for recognizing the other countries. At the same time, recognition neither is sufficient for existence of any country, nor non-existence of recognition annihilates the country.

But it does not mean that the recognition has no importance. When the legitimizer country recognizes the political unity, it also accepts that the relations with that state will be conducted in the principle frame of sovereign equality of the countries. The retrospective impact of the recognition reveals the importance of this judicial institution. That's why it's possible to utilize the recognition as a tool in the solution of Cyprus problem and in the reconstitution of the skeleton of solution. Particularly, the recognition of TRNC by Turkic Republics will induce production of comprehensive and radical formula for the solution of Cyprus problem.

The method that has been applied in this research based on mostly pragmatic perspective. But in this report the method about procedure analysis has also been applied. It is attempted to use analytical assessments about the subject. By this method the meaning of the recognition of TRNC by Turkic Republics, the importance and the result of the recognition have been evaluated.

The Status and Legal grounds of TRNC in terms of International Law

The proclamation of TRNC has been based on the usage of principle called self-determination where the nation determines its future. In addition to the proclamation of TRNC some political, social and judicial initiatives took contractor part. But it supposed to be mentioned that the proclamation of TRNC will be evaluated by the law of nations in this research.

First of all, the law of nations has not obtained precision with its principles. For instance, the content of self-determination has not been stated clearly in the law of nations (Emerson 1965: 288-289, Şahin 2000: 24). If it's thought that the independence is a reason for preference, then the station of this notion that goals "to establish an independent state" (Şahin 2000: 24-25, Tamçelik 2001: 293-298) should not be found strange. Self-determination principle that means 'the right of nations' to designate its future" indicates that individuals that belong to one nation have the claim to establish an independent state (Vitas 1990: 16). In this sense, when the usage of notion in different time periods is analysed, we are encountered with two different meanings: By its *internal* meaning it means that the community that has the specific objectivity has the freedom to choose its regime (Pomerance 1982: 37-42, Necatigil 1990:179, Sur 2000: 103). By the *external* meaning it's the organization like a state of the community that owns specific objectivity notwithstanding any foreign power (Armaoğlu 1973: 2-3, Pomerance 1982: 37-42, Necatigil 1990: 179, Sur 2000: 103). There are two essential criteria's that can show legitimize the proclamation of TRNC by the law of nations and the principle of self-determination.

One of them is Turkish nation should be founding partner of the Cyprus Republic that established in 1960 and the sovereignty of 1960 Cyprus Republic should be assigned not only to one nation in the island but to both of them jointly. Consequently, we see the Turkish Cypriots as the equal holder of right in the sovereignty of Cyprus Republic (Arsava 1996: 44). 1960's Constitutional Law that based on 1960's Constitutor, Warranty and Alliance Agreements has been ratified and signed by Turkish Cypriots and Greek Cypriots.

Another essential criteria by self-determination is establishment of government of Turkish Cypriots in the north. As then, Greek control in the north cannot represent Turkish nation. That's why Greek executives are not in the

circumstances and position to represent and speak for Turkish Cypriots. Consequently, Cyprus Greek control that has been initiated to EU are not entitled to represent either Turkish Cypriots or rest of the Cyprus. Moreover, existence of TRNC that has constituents for being a state indicates that Greek control has not the right to represent them in the north of island (Reçber 2009: 50).

Specially, Turkish Cypriots, in 1963 after being forcefully excluded from the two nations (bi-communal) Republic, governed themselves and did not take in charge any Greek government except the supreme judicial bodies. These governances named General Committee in 1963-1967, Temporary Turkish Governance in 1967-1974, Autonomous Cyprus Turkish Governance in 1974-1975 and Turkish Federated State of Cyprus in 1975-1983.

In fact, both governors pursued their mission with the condition of just remaining in their territory. Specially, at the end of 1963 Turks had to establish their governance against the Greeks that captured state mechanism (Sarica et al. 1975: 227). This de facto segregation became legal after 1967's conflict with the establishment temporary Turkish governance in Cyprus.

With the 5th article of July 20, 1974's Geneva Treaty, the acceptance of 2 self-governing called *Greek Cypriots and Turkish Cypriots Community* (Tamçelik 2001: 291-293) and with the acceptance of existence and equality of two community in the island with the 3rd and 4th article of November 1, 1974's General Assembly Resolution, the perspective that says *the best solution for the Cyprus issue is federation* (Tamçelik 2001: 297) has been adopted. Indeed, all of these things compose external conditions of Turkish Federated State of Cyprus. In addition, the gathering of on the island in the north caused to housing and employment issue and it necessitated the transition to the democratic life (İsmail 1992: 149). So, transition to the multi-party system and democratic system and achieve to the federative structure in the grounds of equality was possible with the proclamation of Turkish Federated State of Cyprus in February 13th, 1975.

The time period from the establishment of TDSC till TRNC called federative though, caused to the establishment of the state, constitution of political agencies, solution of the problems of people at the short time and procured democratic system in the political life of Turkish Cypriots. It is possible to

see this case in UN reports. On the report of that times' General Secretary U-Thant that submitted to the Security Council in 1965, was stated that decisions of Cyprus Government were not to rule in the territories of Turkish supervision. As its seen in the 1974's Geneva Convention Treaty there are two different governances in Cyprus and Greek Governance does not represent Turkish Cypriots. If the dichotomy in Cyprus is analyzed by the law of nations, it will be able come up to this truth.

Specially, in the law of nations the split of sovereign government is not encouraged by the means of usage self-determination principle. But for the implement of this principle, the non-existence of government that represent all the nations in the country is required. There is no joint government that represent both Greek and Turks in Cyprus. Consequently, there is no any legal obstacle in the usage of self-determination right for Turkish Cypriots.

But despite all the solution efforts, Cyprus Greek Governance does not assent to the agreement that bases on equality and ignores Turkish Cypriots, and this necessitated the establishment of TRNC. So, we see TRNC as ultimate and concrete example where Turkish Cypriots use their right of self-determination. The factual structure after 1974's intervention fulfil all the conditions for being a state and proclamation of state is nothing but obtaining legal character to existential status (Mor 1999: 285).

There was not any *unilateral independence* case in Cyprus like Unilateral Declaration of Independence (UDI) in Southern Rhodesia (Pazarıcı, 1997: 8). Indeed, *unilateral independence* is separation from the legitimate government, but Turkish Cypriots did not separate from the legitimate government (Lütem 1959: 104, Donnely 1995: 158). Consequently, the proclamation of TRNC nothing but announcement to the world the existence of two equal state in Cyprus. But in this way only, the reunion of two states under one federation or confederation will be possible.

UN Security Council made several decisions about the reunion of the island. But *political* preferences take precedence over *legal* principles in most of the decisions that Security Council made about Cyprus problem. In other words, the decisions are based on political perspectives but not to the law principles. For instance, Security Council claims that the proclamation of TRNC is at odds with 1960's Constitutor, Warranty and Alliance Treaty.

Security Council defends it in prospect of existence Cyprus Government and constitutional system that predicts these agreements. The agreements mentioned above do exist and are valid. But unfortunately, the system that predicts these agreements is not seen for now. Two different governances have replaced it.

Turkish Cyprus Governance never claims the invalidity of Guarantee Agreement. But Greek Cyprus Governance proclaimed invalidity of Guarantee Agreement with the justification that it contrasts with Cyprus sovereignty and UN Agreement.

It is stubborn fact that the right of *equality of nations and self-determination* is entitled in UN Agreement and at the “1970’s Declaration of Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations. Due to this declaration, “all the nations have the self-determination right. By this principle nations have the right designate their politic status without any external intervention” (Necatigil 1990: 178). In 1983, November 15th Turkish Cypriots designated their future and political status through chosen legislative power and proclaimed their *independence*. So, Cyprus Turkish community utilized the right of self-determination in consideration of international legal norms.

Thereon, *Security Council* made a decision where indicates invalidity of the proclamation of TRNC and in this way violated UN Agreement and many tools of international law. Security Council like *judicial organ* made assessments and proclaimed some countries like a legitimate states other illegitimate. But, this decision is not appropriate approach to the international law (Arsava 2009). It can be said that in terms of Security Council this case is *ultra vires*. Because there is no any *international mechanism* that designates if one state is a state in the international law. That is why the decision made by UN Security Council about the *non-acknowledgment* of TRNC due to international law norms is violation of these norms.

Actually, European Council has done the same thing. The decision made by European Council about the *non-acknowledgment TRNC* not only contrasts with the international law norms mentioned below but also with the *self-determination and the right of equality* that states in the VIII. Article

of Helsinki Final Act. Due to this article, all the nations have the right to designate their internal political status without any external intervention. Turkish Cypriots also utilized this right. But it's been seen that the principle of self-determination have been utilized *political* (Tamçelik 2001: 295) but not judicial in the ongoing international Cyprus issue.

This case can be partly correlate with the proclamation of independence of Kosovo. Because when the president of International Court of Justice (ICJ) Hisashi Owada stated that there is no any provision that forbids proclamation of state in the international law, ICJ did not see the proclamation of independence of Kosovo against the law. Consequently, ICJ decided the states that recognized and will recognize Kosovo to legitimate the countries. But the international actors and organizations did not evaluate the proclamation of TRNC in this way.

The Recognition of TRNC due to International Law

The recognition institute which is still mood point in many aspects is one of the hardest issues of international law. Difference of opinion about the nature and judicial impacts of this institute cause to strict disputes. The subject of this declaration, when the Turkic Republics recognize TRNC is about the existence of declaratory or decocker impact of the recognition, existence or non-existence of agreement qualification and about the necessity by other countries caused to difference of opinions. In fact, the debating of recognition specific to TRNC, indicates that there is not one description for recognition.

First of all, if the general description of recognition due to international law is required, it is unilateral *judicial procedure* where *international law actor* designates validity of the situation, document or the claim that occurs without him and pursues its international relations in the consideration of these datas (Schwarzenberger 1950: 27, Vitas 1990: 17, Taylor 1992: 26, Şen 2003: 19). Consequently, it should not be forgotten that the recognition by the Turkic Republics, is a procedure that each state has to constitute itself. The recognition of TRNC does not bring any (legal) obligation to these countries.

It is clear that, the most important document about the recognition of the countries is the one that has been made by the International Law Institu-

tion in 1936. Due to it, “the recognition of a new state is a free seizure of acceptance of the new country with the existence of independent community that can fulfil the obligation that comes from the international law, by other countries and declaration of those states about the new member of the mentioned state in international realm” (Bilsel 1941: 60, Crozat 1953: 2, Mirci 1953: 43, Meray 1968: 267, Eroğlu 1979: 127, Şen 2003: 19). But unfortunately even the description made by International Law Institute cannot annihilate this dissidence. The recognition of the state nothing but the desire of the countries that observe and accept the new state and want to make their relations with the mentioned country through the international law (Schwarzenberger 1950: 28, Moore 1960: 74).

But for the recognition the new established *state* should fulfil some conditions. Then, this news political existence can depend the recognition. These conditions have been mentioned in the League of Nations Permanent Mandate Committee in 1931 (Crozat 1953: 3). They gather after 3 main title.

It should be spoken of about the *Three Element Theory* that was presented by the *George Jellinek* who built a reputation like lawyer of nations in the international realm. Due to this theory that is still valid, it should be evaluated whether three notion that constitute the state, *community*, *country* and *sovereignty* is being performed or not, the existence of *hard-core authority*, if the hard-core authority constitutes the *public order* and if it has the competence to pursue it or not and then give the right for *recognition* or *acknowledgment* to the entity that comes out.

But nowadays there are countries that even they fulfil the conditions they *have not been recognized* and there are countries that even though they do not fulfil the conditions they *have been recognized*. This shows that the recognition that has judicial aftermath and that is the unilateral political will is being utilized lie a political tool. That is why TRNC’s case should be evaluated like this:

TRNC; Country with a Certain Frontier:

One of the notions that constitute the state is existence of the *country* with certain frontier or piece of land with determined frontiers (Göze 1959: 5). One state can indicate its existence and personality with the settlement in certain country. The state that has not certain and constant country should

not be considered that it proved its existence (Eroğlu 1979: 104). It is impossible to think about the state that has no country. Consequently, it's possible for TRNC to claim the recognition in the international realm, specially by Turkic Republics due to this principle. It is constant that TRNC has been established in piece of land with certain frontiers. TRNC has 3.355 km² square measure and has the land, air and sea predominance and it is sufficient for the recognition of TRNC.

Existence of Sovereign and Superior Authority in TRNC (Government):

For the claim of recognition one political unity has to obtain the qualification of state and fulfill several conditions. Specially, it has to be talked about the existence of sovereign and superior authority among these conditions. It is not enough talk about the existence of one state when a group of people come together in certain country. Besides that, realization of political and judicial organization is absolute reality (Pazarıcı 1998: 19). That organization is assumed to be manifested like a sovereign and superior *public authority* that can represent them, perform its mission with *submission* and *reliance* of people, and adequate to *fulfil the needs* of people that came together in the country.

It will be clear with analysis of two notions whether this element realizes in TRNC or not. First one is whether there is an independent *government* (Croizat 1953: 3) in TRNC or not. Because this is subject with international obligations for the Turkic Republics that are wanted to recognize. Specially, the recognition of the state without independent government will be interpreted like interfere in the internal affairs of another country and it will international offence (Pazarıcı 1997: 7). In other words, if there is not an independent government, it will mean that Turkic Republics meddle in domestic affair of TRNC. But there is such an organization in TRNC that is why it is not possible to talk about such element of a crime.

Another factor that should be considered is if the government *compliance* and *reliance* one by the population (Croizat 1953: 3). *Because it is very essential for the Turkic Republics if sovereign and superior authority of TRNC is honored with the submission and reliance of the people. It this is fulfilled there is not any obstacle for the recognition by Turkic Republics.*

Capableness of TRNC to Perform the International Obligations:

It is undeniable that these conditions are not sufficient for the recognition of TRNC. That is why it will be asked for the capableness to fulfil *obligations that arise from international law* (Wolfe 2002: 185). Otherwise, the logical result of recognition *having intercourse with the state and interrelation* act will be realized.

In fact, if the main aim of recognition is constitution all sort of international relations with that country, then Turkic Republics will like to see if TRNC has the power (Wolfe 2002: 185) like a state to interrelate thoroughly. The recognition of TRNC that has no capableness to fulfil the international obligations that arise from the international law, will mean nonsense to Turkic Republics.

These all indicate that TRCN has duly fulfilled three liabilities conditions for being a state due to international law. It can be said that TRNC obtained the right to defend its integrity, independence and land, decrease its wealth level, to organize itself as he wants, enact due to its interests, to make services by itself, to defend its law and stand up for the adequacy of the courts'. Consequently, due to international law invoke and implementation of these rights do not differ from the other recognized countries'.

The Political Aspect and Importance of Recognition TRNC by Turkic Republics

There are some conditions in certain cases where recognition is forbidden. Consequently, it can be talked about the three main principles about the *non-acknowledgment* (Croizat 1953: 4, Eroğlu 1979: 128, Pazarıcı 1998: 6, Sur 2000: 121) of TRNC by Turkic Republics. If these three principles will be analyzed by the aspect of recognition by Turkic Republics we will see these realities:

The Principle Prohibition of Appealing to the Force (Stimson Doctrine):

There are several delimitations to recognition due to international law. One of them is the "principle prohibition of power" (Dugard 1987: 25). Then there would be such an aftermath about TRNC case: It is not possible for the Turkic Republics to recognize TRNC that have been establish by the *usage of power to the force* that is contrary to law. From that point, we see the

recognition of TRNC by Turkic Republics like the forbidden case by the international law.

Prohibition to the recognition of the state that has been established *by the usage of force* is directed to two things; to the contrary to the law intervention of the third country or the establishment of the state by the separatist action of the people that do not have the right of self-determination (Dugard 1987: 25, Vitas 1990: 20, Pazarcı 1997: 7). Consequently, due to the principle that is called *Stimson Doctrine*, the states that have been established by the usage of force contrary to law are not being recognized (Crozet 1953: 4, Dugard 1987: 28, Pazarcı 1997: 7, Grant 1999: 130-131, Sur 2000: 121).

But this case is not valid for the proclamation of TRNC. TRNC is a state that was established in 1983. So, it is not right to assert that it was established after 1974's Peace Operation. According to the Stimson Doctrine, TRNC is not a state that established by the use of force and at the same time, it is a self-contained state that was constituted by the cyclic growth and it is a political evolution where the Turkish Cypriots' will be reflected.

The Principle of Not Interfere in the Internal Affairs:

Not interfere to the internal affairs of one country is a norm that brings international obligation. Because interfere in the internal affairs of one country means that you impair the sovereignty of the mentioned country. That is why *not interfere in the internal affairs* is a compulsory case (Sur 2000: 111) of the principle of sovereignty and equality of the states. Consequently, this *principle* is one of the most important principles that should be fulfilled in the recognition of the state. There are some that claim in the not-acknowledgment like an international principle with the justification that TRCN was been established by the "separatist Turkish Cypriots". Actually, it means that international community should not interfere to the subjects about the political regime and sovereignty of Cyprus Republic. So, the recognition of TRNC by the Turkic Republics will be characterized like interfere in the internal affairs. These kinds of cases can be evaluated like interfere in the internal affairs that are why it has been forbidden by the international law. Even these sorts of actions hold the qualification to be an international offense.

But it is not a correct approach to evaluate TRNC's proclamation and existence due to this principle. Because TRNC is not a principle part that separated from the state apparatus of Cyprus Republic. So, it is not possible to claim about the sameness of the piece that did not separate from the whole and talk about the sovereignty of the Cyprus Republic. The beginning date of the separation from 1960's state apparatus that Turkish Cypriots constituted is December 1963's. Constitutor, Warranty and Alliance Agreements that established Republic system in 1964-1967, then was changed unilaterally and Cyprus Republic became monist Greek state mental and ethnic and it not same as it was before. Consequently, Turkish Cypriots did not participate in the begging of this time period and they felt the need of reconstruction due to new conditions and conjuncture and later on established their administrative structure. If it is evaluated under this condition, TRNC should be seen like a state that came up by the evolution of politic identity of Turkish Cypriots. Actually, this case should be evaluated like a need of the way that Turkish Cypriots started from *the autonomy administration* till the *state*.

All these show that, 1960's Cyprus Republic where ethnicity changed, governmental and judicial bureaucracy differentiated and became monist state, should not be considered like *interfere in the internal affairs* of the state if Turkic Republics recognize TRNC.

The Principle of Self-Determination:

The principle of *self-determination* where people can designate their future also means that the individuals that belong to one nation have the right to *establish an independent state* (Cassese 1995: 1-37). Like in Cyprus it is not unexpected and unacceptable thing that Turkish Cypriots that have the right to designate their political regime and constitutional order. Because TRNC is aftermath of Turkish Cypriots will.

But this right that is really essential by the recognition institution in the international law, is repudiated with the justification that it is counter to integrity and even separates it (Cassese 1995: 173). Consequently, in such situations the principle of self-determination is not recognized and is not considered lawful either (Lütem 1959: 104). According to this justification, in the case of recognition of TRNC by Turkic Republics, it is talked

about the abolishment integrity of territory, state and regime of Cyprus Republic. Consequently, Turkish Cypriots are being the ones without right of self-determination, so there is a strong conviction in the aspect of *non-acknowledgement of TRNC*. It is possible to see it in the decisions made by UN Security Council.

That is why rational projection and a plan should be made for the recognition of TRNC by Turkic Republics. The recognition of TRNC by the states, at least by Turkic Republics has to be the main aim of the recognition strategy. If it is not possible then, it must consider importance to the actions that will support and increase the recognition image. The main goal of the recognition strategy does not have to be the absolute recognition of TRNC. Besides of it, the methods that can make *recognition image* like taking steps for the opening representation offices in some countries and international organizations, sending watchdog members to the internal congress should be improved. Decrease foreign investments, providing international business, realizing direct flights and improvement of the tourism will have a huge impact on making recognition image. So with the recognition perception it will be possible enter the Greeks into the rational agreement.

The new strategy about the recognition of TRNC besides of explicit will be implicit recognition and it will be more useful to choose *de facto* (factual) recognition in spite of *de jure* (judicial) recognition. So, Turkic Republics or the other states that want to recognize TRNC will be able to act without repression of the international law and conjuncture.

The implicit recognition of Turkic Republics indicates that the country will be in relations that involves will of recognition. In other words, in *implicit* recognition the recognition of TRNC will not be designated with explicit proclamation. Station of this evolution by the will of recognition will be the main aim.

De facto recognition of TRNC by Turkic Republics is the way that make certain suspicious and that's why presents the will of temporary and limited judicial relations. So with the *de facto* recognition by Turkic Republics it will be assumed that they have certain suspicious about the independence, authority on the country and the continuity of TRNC and that they do not want to entrust themselves completely. In these conditions, this sort

of recognition by Turkic Republics will be useful. By this method it will be possible both interrelate in different realms with TRNC and retract this action when it is necessary.

In addition, there are some other theories that also attribute value to recognition of TRNC. For instance, *Declaratory Theory* bases on the proclamation of political truth (Wolfe 2002: 58-63). According to this theory, TRNC is a state that proclaimed its independence. Consequently, TRNC *existed* and it *obtained the right* of recognition. So, we see TRNC like a state that worth to be recognized.

Due to Constitutive Theory, the establishment of a new state is being asserted and the existence of this state or government being explained (Wolfe 2002: 102-114). From this point of view it will be clear that TRNC has the right of recognition for a long time.

According to the *real politic* perspective, when democratic or the constitutional government of the country is being analyzed, the political reality of the country should be evaluated but not the legal criterias that it was established by. Consequently, due to this perspective the independence and sovereignty of TRNC is acceptable thing.

After these all it can be said that the interrelation of Turkic Republics with independent, sovereign state TRNC is a realistic approach. Whether confirmed or not TRNC does exist like a state. If the international law adjusts the relations among the countries by assigning it then, it definitely should handle common criterias. Especially non-acknowledgment of TRNC does not mean that it does not exist. From this point of view TRNC does not need any approval from the exterior. Due to diplomacy customs, the legality and existence of one state cannot be debated. Specially, inquisition of legality of a new state by other state is contrary to *dominance theory*.

As it is seen, many theories and doctrines indicate the validity of TRNC in the frame of international law and show the necessity of the recognition of TRNC.

Conclusion

The Cyprus issue that does not lose its importance since the first day comes up with two main aspects today. *First one* is not acceptance to the law the

factual situation of Cyprus or non-concurrence of the sides to the agreement under the judicial control. The second is non-formation of one nation in Cyprus and due to this motion, ignorance the right of self-determination of Turkish Cypriots.

Greek Cypriots feel anxious that old government, Cyprus Republic or GKRY will be shown like illegal governance by TRNC and it is contrary to the new system, and it means separation from the legal (!) system. But due to UN Agreement and the 1970's Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations the right of self-determination "in the case of non-existence of the government that leads the people in the country without the distinction of race, belief and colour it is not possible to talk about the sovereign and independent state", so it means it cannot be talked about the legal governance in Cyprus since December 21th, 1963.

In fact, Cyprus Republic Government that did not represent Turkish Cypriots and did not have sovereignty in the north of the island turned on SCGG. Turkish Cypriots that are not being represented by Cyprus Government and that signed the August 16th, 1960's Constitutional and the Agreements that constituted Cyprus Republic Government obtained the right of self-determination and can assert the will of being another state.

Another factor that should not be forgotten is that TRNC was not established by the usage of force. The legal interfere of Turkish Armed Forces was in 1974 and TRNC was established in 1983.

Even though TRCN is not recognized in the international realm, with its land, human potential and organized government it is a political existence. It should not be forgotten that recognition is more political action rather than legal declaration of the will. We can mention that the *political* side of subject so essential that it can require "*non-acknowledgment of TRCN like a state*". That is the reason why TRNC is not recognized by the other countries besides of Turkey.

So, nowadays, the recognition of TRNC is a debated issue from the different aspects. Specially the recognition of TRNC by Turkic Republics will cause to different problems. The recognition of TRNC by Turkic Republics:

- * Whether existence or not of declaratory or decocker impact of the recognition,
- * Whether imperativeness or not of the recognition process,
- * Whether signing or not of the special treaty or unilateral legal process,
- * Will be concentrated in the subject of stipulation of the recognition to the term.

In fact, neither TRNC needs recognition like a state, nor Turkic Republics have the obligations to recognize TRNC like a state. Because recognition *does not make* TRNC a state and *non-existence of recognition* will not be sufficient to consider TRNC like non-existence. But it is not correct to think that: “It has not any importance being recognized by Turkic Republics for TRNC”. It is not a correct approach.

We think that, the recognition of TRNC by Turkic Republics will have an important role in international law, at the same time it will not be stipulated to any condition and will not offer any obligation from the point of other countries. It will be a legal process. Consequently, it is assumed that the recognition of TRNC like a state, by Turkic Republics will terminate the arguments that proceed today and will contribute with its aftermath.

Indeed, the recognition of TRNC by Turkic Republics will provide these benefits to the Turkish Cypriots and the state that they have constituted:

1. The recognition of TRNC, will increase the relations between Turkic Republics and Turkish Cypriots and it will bring judicial aspect to the relations
2. TRNC will take advantage of exemption and jurisdictional immunity by Turkic Republics.
3. Due to national law of Turkic Republics, they will show respect to the public processes of TRNC
4. The recognition of TRNC by Turkic Republics will increase the international responsibilities of TRNC and it will make easier TRCN to include to the global politics.

Additional to all these, in general:

5. It will bring a new aspect to Cyprus issue

6. It will provide dominant, equal and self-determination rights to both nation in the island
7. It will have a huge impact to the solution of issue and lost of the time by the both sides will be prevented.

Though the recognition of TRNC, is the indication of the legal acceptance by the states that recognize TRNC and it is a unilateral judicial process, the Turkic Republics have not realized it yet. That's why, except Turkey TRNC is not recognized by any other country. Indeed, the use forcible means contrarian to the international law and international treaties are the main factors why TRCN is not recognized. Even though TRNC is not recognized by other countries it does not mean the TRNC does not exist like a state.

These justifications are not conformed with moral and judicial factors. Because for analyzing the existence of TRNC like a state, it should be looked if TRNC incorporates the three main justifications in the constitution process of a state: “*Country*”, “*community*” and the “*sovereign authority*”. These three points and the principle of “*self-determination*” are found in the establishment of TRNC and in the state structure. That is why it is possible to recognize TRNC by Turkic Republics through the conditions in fact.

Notes

- ¹ 1960 Cyprus Republic came up with the usage of the principle of self-determination by both community together These two nations accepted to utilize self-governing power in the ethnic, religious and cultural subjects under one state besides of using self-determination separately with the division of the island. Consequently 1960's Republic became partnership state with the use of self-determination.
- ² Look about this subject... “Declaration of Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations”.
- ³ UN decisions are under the inspection and guide of standing members of Security Council. So recognition of TRNC became subject and acceptor of International law. Non-acknowledgment of TRNC arises from the interest of the powers that mentioned above. UN Security Council decision No 541 that considered invalid the proclamation of TRNC and disapproved it is a huge obstacle in the recognition of TRNC. The decision is partial and it ignores the legal rights of Turkish Cypriots. This decision made a huge impact on neutral states especially. For instance, Pakistan and Bangladesh had

to dispense their decisions about the recognition because of suppression of U.S.A.

- 4 International law evaluates the states as an evolution, history, political and sociological matter of fact. Consequently, International law does not deal with the way of superior authority that comes out. So, the negative decisions of UN Security Council about the recognition of TRNC are considered ultra vires.
- 5 Look about this subject... “Prof. Dr. Hüseyin Pazarıcı ile Söyleşi: İstedığınız Şerhi Düşün, Uyum Protokolü’nün İmzalanması; “Kıbrıs Cumhuriyeti” Adı Altında Güney Kıbrıs Rum Yönetimi’ni Tanımak Anlamına Gelir”, http://www.2023.gen.tr/tamyazi/ocak05_hp.htm [Erişim Tarihi: 29.9.2010].
- 6 UN Security Council does not have any decision that forbids the recognition of Kosovo. That is why Kosovo is recognized by 69 states so far.
- 7 UN Security Council with decision No1244 (1999) defended the land integrity of Serbia but did not speak about the recognition of Kosovo. International realm’s position about TRNC is different. International realm accepts that decision No 1244 of Security Council does not prevent independence of Kosovo, but it should not be forgotten that 27 years ago decision No 541(1983) and 550 (1984) defends the land integrity of Cyprus Republic and this is a big obstacle in the recognition of TRNC.
- 8 Three Element Theory was confirmed in 1933’s Montevideo declaration, Committee of Mandate during League of Nations and at last in 1991’s Badinter Committee.
- 9 The decisions No 541(1983) and 550 (1984) made by UN Security Council are the evidences for his. UN Security Council with the justification that it was established contrary to law by the usage of force law proclaimed invalid TRNC in its October 18th 1983’s decision No.541 and asked other countries not to recognize other country besides of Cyprus Republic.
- 10 GCSC, opened embassy in Qatar in 2006. Qatar did not want to ruin its relations with Turkey and let TRNC to open representation office. GCSC opened embassy in United Arab Emirates, Jordan, Indonesia, Cuba, Brazil and Bulgaria in 2009. But it was not any action made by TRCN to those states. Greek governance was planning to open embassy in Kuwait and Kazakhstan in 2011 and in 2012 in Canada. The most sensible point for GCSC is to prevent recognition of TRNC in International law and that is why it applied to such ways. Look at embassies that GCSC want to open... Sandıklı, Erişim Tarihi: 29.9.2010.
- 11 All recognition acts in International law are in judicial qualification. But due to International implementation there two sort of recognition. One of them is de facto another one is de jure.

- ¹² Implicit recognition shelters several difficulties. In this kind of recognition, actions realize without suspicions. The permanent example of implicit recognition is making diplomatic relations with one political unity without recognizing it explicitly.
- ¹³ De facto recognition is a limited recognition with three types; temporary, evictor and the one with notional impacts.
- ¹⁴ De jure is divided into two explicit and implicit.
- ¹⁵ For the de facto recognition methods look at... Galpin 1950: 11, Meray 1968: 273, Pazarcı 1997: 8, Schwarzenberger 1950: 28.
- ¹⁶ Hüseyin Pazarcı ile Söyleşi: İstedığınız Şerhi Düşün, Uyum Protokolü'nün İmzalanması; "Kıbrıs Cumhuriyeti" Adı Altında Güney Kıbrıs Rum Yönetimi'ni Tanımak Anlamına Gelir", http://www.2023.gen.tr/tamyazi/ocak05_hp.htm [Erişim Tarihi: 29.9.2010].

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Türk Cumhuriyetlerinin KKTC'yi Tanıma Stratejisinin Esasları *

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Öz

Bu araştırmada, Türk Cumhuriyetlerinin Kuzey Kıbrıs Türk Cumhuriyeti'ni (KKTC) tanıma olgusu ve esasları üzerinde durulmuştur. Araştırmanın temel amacı, KKTC'nin Türk Cumhuriyetleri tarafından tanınması halinde karşılaşılabilecek sorunların, çözüm önerilerinin ve bunlarla ilgili esasların ne olacağı incelenmeye çalışılmıştır.

Uluslararası hukukta devletlerin tanınması, çeşitli şekillerde tarif edilmiştir. Yapılan birçok tarife göre tanıma, bir veya birden çok devletin, ilgili devleti tüm hukukî sonuçlarıyla birlikte tasdik ettiklerini ve aralarındaki hukukî ilişkileri bu duruma göre sürdüreceklerini, tek taraflı olarak bildirdikleri bir durumdur.

Özellikle Türk Cumhuriyetlerinin KKTC'yi tanıması, birtakım problemleri de beraberinde getirecektir. Buna göre Türk Cumhuriyetlerinin KKTC'yi tanımasında, tanımanın açıklayıcı veya kurucu etkisinin bulunup bulunmayacağı, tanıma işleminin zorunlu olup olmayacağı, tek taraflı hukukî bir işlem yapıp yapılmayacağı, özel bir antlaşma imzalanıp imzalanmayacağı veya tanımanın şarta bağlanıp bağlanmayacağı konusunda yoğunlaşılacaktır.

Anahtar Kelimeler

KKTC, Kıbrıs, Türk Cumhuriyetleri, Tanıma, Uluslararası hukuk, Self-determinasyon.

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Стратегические принципы признания Турецкой Республики Северного Кипра тюркскими республиками*

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Абстракт

Данное исследование основано на юридических и стратегических принципах признания Турецкой Республики Северного Кипра (ТРСК) тюркскими республиками. Целью исследования является анализ проблем, предложений по решениям и принципов в отношении данных вопросов в случае признания ТРСК тюркскими республиками.

В международном праве признание государств возможно несколькими способами. Согласно этим документам, признание является юридическим процессом, когда одно или несколько государств в одностороннем порядке объявляют легитимным правительство со всеми результатами, удостоверяют это государство и поддерживают все правовые отношения с соответствующим государством в связи с этой ситуацией. В настоящее время признание ТРСК обсуждается с разных сторон.

Признание ТРСК тюркоязычными республиками повлечет за собой несколько проблем. В связи с этим, в вопросе признания ТРСК тюркские республики будут сосредоточены на том, будет ли необходимо объяснительное или конструктивное влияние этого определения, будет ли необходим процесс признания, будет ли предпринят односторонний судебный процесс, будет ли подписан специальный договор.

Ключевые слова

Турецкая Республика Северного Кипра, Кипр, тюркские республики, признание, международное право, самоопределение.

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