Analyzing Cyprus Accurately:
Legal Aspects of a Political Matter*

■ *by Asst. Prof. Dr. Mehmet Hasgüler** & Dr. F. Murat Özkaleli****

The "Cyprus Problem" is a political matter but the legal aspects of this matter are the most important side of it and can even be stated as a "front." The Greek side makes their own political moves by using the legal arena to try to legitimize their actions. The politicization process of law is one of the strongest reasons that causes the Cyprus problem to become inextricable. The following are the milestones that has been encountered as a result of the crossing of a political conflict and law. Starting with the Founding Treaty of the Republic of Cyprus of 1960, continuing resolutions of UN Security Council – first Resolution 186[1] dated March 4, 1964 which led the UN Peace Force to come to Cyprus and second Resolutions 541 and 550[2] which prevented the recognition of TRNC, the Resolution of the Court of Justice of the European Communities dated 1994 which brought limitations to property purchases and lastly the Orams Case, which subverted all parameters designated at the negotiations of the settlement process of the "Cyprus Problem" that were brought within the 2008 resolution of the Court of Justice of the European Communities. The Court' decisions which changed the whole countenance of the "Cyprus Problem" should be

* This article was originally written in Turkish and translated by Ebru Metin (a trainee lawyer at Ankara Bar Association).

** Academic member of Çanakkale Onsekiz Mart University. The author can be reached at mehmethasguler@yahoo.com.
*** Academic member of Trakya University. The author can be reached at muratozkaleli@yahoo.com.

1 For Resolution 186 of UN Security Council dated March 4, 1964, see Mehmet HASGÜLER, *Kıbrıs'ta Enosis ve Taksim Politikalarının Sonu*, Yenilenmiş ve Genişletilmiş Beşinci Baskı, Alfa Yayınları, 2007, pp. 382-383.

2 Mehmet HASGÜLER & M. Bülent ULUDAĞ, *Devletlerarası ve Hükümetler-dışı Uluslararası Örgütler*, Üçüncü Baskı, İstanbul, Alfa Yayınları, 2007, p. 256.

added to this list certainly. It can be particularly stated that as a result of the *Louzidu* and *Arestis* cases, the Turkish side abandoned the Cyprus (partition) policy and came to support the Annan Plan.

It is clear that the political aspect of the "Cyprus Problem" is also demonstrated by the losses or gains at the legal front of the problem; therefore each position of this "front" is worth careful examination.[3]

Founding Treaty of 1960: Guarantors

The first position of the legal front of the "Cyprus Problem" is the founding treaties and the Guarantorship Agreement since they opened the way for an independent state to be on the Island.[4] The "Republic of Cyprus" was established as a bi-communal state composed of Turkish and Greek peoples and placed under the guarantorship, as kind of a wardship, of the Republic of Turkey, United Kingdom and Greece.[5] Because of a right granted in this guarantorship agreement, the Republic of Turkey was able to intervene after the coup was staged in Cyprus. On the other hand, the Greek side always questioned the Turkish intervention and launched an effort against the "military action and subsequent *de facto* partition" as an infringement of the 1960 Treaties at every international event which succeeded in a way. The guarantorship in the Founding Treaties should be considered to be an essential issue in terms of the legitimacy of the 1974 Peace Operation. Maybe if there had not been such a treaty, Turkey could still intervene with a military action in order to "prevent the genocide of its blood brothers" within the frame of a humanitarian intervention doctrine, for example. However, it is open to discussion whether such agreement would have been favored in the mid-1970s, the second Cold War period. So the Founding Treaties, and specifically the Guarantorship Agreement, are the primary and most essential points of the intersection of law and politics.

Resolution 186: Installation of UN Peace-Keeping Force in Cyprus

As is well-known, for the installation of a peace-keeping force in a state, the authorization of the state is obligatory. After the ethnic conflicts broke out in 1963, the authorization of "Cyprus" for the deployment was needed. However, an essential question emerged as "of whom is the "State of Cyprus" composed?" After Makarios, who provided the basis for the 1963 conflicts with the amendment of 13 articles of the constitution which removed Turkish Cypriots from Cypriot state

3 For the list of UN and EU decisions on the extent of law about Cyprus and their analysis report, see Nejat DOĞAN, *"Birleşmiş Milletler ve Avrupa Birliği Kararlarında Kıbrıs Sorunu"*, Akdeniz Üniversitesi İİBF Dergisi, 4, pp. 84–106 (2002).

4 Kudret ÖZERSAY, *Kıbrıs Sorunu: Hukuksal Bir İnceleme*, 2nd ed., Ankara, ASAM Yayınları, 2002, pp. 17-21.

5 For the limitations of Republic of Cyprus to sign agreements, become a party to international organizations and engage in warfare, see Murat SARICA, Erdoğan TEZIÇ ve Özer ESKIYURT, *Kıbrıs Sorunu*, İstanbul, Fakülteler Matbaası, 1975, pp. 36-37. Furthermore see, Seha MERAY,*Uluslararası Hukuk ve Örgütler: El Kitabı*, Gözden Geçirilmiş 2nd ed., Ankara Üniversitesi SBF Yayınları No: 430, Ankara, 1978, pp. 66-68.

bodies and caused Republic of Cyprus to become a Greek State[6] But Turks had already lost all their effectiveness in the governing powers of the state when this came up at the UN in 1964.

As a matter of fact, the Republic of Cyprus was composed of only Greeks after the "Bloody Noel." So the authorization for the deployment of a peacekeeping force was given by the government of "Republic of Cyprus," which was composed of Greeks representing the communities temporarily. So with the help of the UN, the representation of Cyprus was given to the Greek Cypriot community. At the end of this period, the Republic of Cyprus, which was established as a bi-communal federation with an international agreement under the wardship of three NATO member states, became a unitary Hellenistic nation-state by way of the UN Security Council. Many times the Republic of Turkey criticized the process whereby Cyprus essentially became the Hellenistic Republic of Cyprus because of Turkey failing to object to this resolution.[7] Supposing that today Greeks were to have a relative political vantage, the origin of this can be stated as Resolution 186 (dated 4 March 1964) and the complementary Resolutions 541 and 550 of the UN Security Council, to provide a monopolized state where Greeks had the single-handed and absolute jurisdiction.

Resolutions 541 and 550: Declaration of the TRNC as "Illegal"

If Resolution 186 of UN Security Council is defined as the basis for the political glory of the Greeks, Resolutions 541 and 550 of the same UN body can be defined as the climax. On 15 November 1983, the Turkish Republic of Northern Cyprus (TRNC) was unilaterally declared by the Turkish Cypriots. Right after this, the UN Security Council gathered and passed Resolution 541 on 18 November 1983, which aimed at the non-recognition of the TRNC. On 11 May 1984, UN Security Council passed also Resolution 550 which strengthened the political approach for non-recognition of the TRNC by the UN.[8] This is the violation of the right to self-determination (self-governance) for the Turkish Cypriots. If the events that occurred right after the declaration of the TRNC are deeply analyzed, the embodiment of the effect of the law-politics conflict on the essence of the UN Charter

6 Mehmet HASGÜLER, *Kıbrıs'ta Enosis ve Taksim Politikalarının Sonu*, Yenilenmiş ve Genişletilmiş Beşinci Baskı, Alfa Yayınları, 2007, pp. 247-248. For an analysis of the amendment proposal of the Constitution's 13 articles which caused the alienation of Turkish Cypriots from the Republic of Cyprus and institutions of the Republic, the coup staged and emerging developments based on this proposal, see p. 245 (f.n. 71). After the Makarios coup (after 1963), it could be stated that the Republic of Cyprus died in terms of "law" or that the "first Republic" ended. On the contrary, Seha MERAY emphasized that the general rule in international law as "governmental changes within the constitution whether lawful or not won't affect the state's legal personality." So, despite the alienation of Turkish Cypriots, the legal personality of the Republic of Cyprus stands still under the scope of the principle of "continuance of legal personality and uniformity of the state, but the legitimacy of the structure after 1964 is open to discussion. See Seha MERAY, *Devletler Hukukuna Giriş*, Cilt I, Gözden Geçirilmiş İkinci Baskı, AÜ SBF Yayınları, Ankara, 1960, pp. 233-34.

7 For an assessment made during that period, see DERVİŞ, MANİZADE, *"Güvenlik Konseyi Kararları ile Kıbrıs Meselesi Nasıl Halledilebilir?"*, Türk Silahlı Kuvvetleri Malülller Dergisi, No 48, March 1964, pp. 13-16.

8 For texts of Resolutions 541 and 550, see HASGÜLER, *supra*, pp. 398-399 (541), pp. 400-402 (550).

can be clearly seen.[9] There are two principles that drew attention in the essence of UN Charter: the first principle is the right to self-determination (self-governance).[10] This principle, in the UN Charter, allows every people having their own state and is a reflection of the nation-state idea that originated in the French Revolution. The other principle is to protect the independence and territorial integrity of member states.[11] As a center belief of international politics, this principle represents actually an attitude in favor of the maintenance of the *status quo*. In other words, the intention herein is the protection of states. However, these two principles are inevitably in conflict because every people do not has its own state. This situation is difficult especially for countries embodied by more than one ethnic group. It is clear that at some point people who desire self-determination will act against the political independence and/or territorial independence of the state they are living in. As a result, people or communities will be in conflict as elements of establishing the power of such a state.[12]

Cyprus was an old colony of the United Kingdom which declared independence in 1960. Herein the territorial integrity was not the central issue but it was the right to self-determination of the Cypriots. Because of the existence of two communities in desire of self-determination, the Republic of Cyprus was established with a social agreement between the Greek and Turk communities as undivided wholes but not between individuals. In other words, the composing element of the state was the communities, not the individual. Keeping this in mind, it can be said that the 1960 Agreement favored the Turkish Cypriots in terms of self-determination. On the other hand, territorial integrity became the subject for discussion after the establishment of the Republic of Cyprus. Besides this, Resolution 186 resulted in the Greeks representing the Republic of Cyprus because they had all the governing powers. As a result of this Resolution, the declaration of TRNC was interpreted as a separatist movement by the UN and a series of Security Council Resolutions were passed in order to prevent the recognition of TRNC as a separate and independent state in the international arena.

This discussion shows us the conflicts between *de facto* and *de jure* sovereignty as well as internal and external sovereignties.[13]

---

9 Ali L. KARAOSMANOĞLU, *İç Çatışmaların Çözümü ve Uluslararası Örgütler*, İstanbul, Boğaziçi Üniversitesi, 1981, pp. 65-67.

10 The principle of "To develop friendly relations based on the equality of rights of peoples and respect to self determination" is stated in the section of UN Charter where the aims of the Organization listed (Art. 1, par. 2).

11 The principle of "All members shall prevent all illegitimate threat of use of force and use of force which are against other states territorial integrities and political independence that is in conflict with the purposes of UN" is stated in Art.2, Par. 4 in the UN Charter.

12 For a liberal point of view, see Will KYMLICKA, *Çokkültürlü Yurttaşlık Azınlık Haklarının Liberal Teorisi*, (Ayrıntı Yayınları), 1998.

13 MERAY, *supra*, pp. 216-220, pp. 232-233.

If we define *de facto* sovereignty as the highest authority that has all legal means to establish control over an area of land at the extent of Weber approach,[14] the TRNC is the *de facto* sovereign in Northern Cyprus.

In terms of the simplest expression, the legal police force is the Turkish Cypriot law enforcement department. On the contrary, Resolutions 541 and 550 left all the *de jure* sovereignty to the Republic of Cyprus under the control of the Greeks. As a result, even if the local control is in the hands of TRNC authorities, it is actually (legally) in the hands of the Greek-led Republic of Cyprus according to international law. This conflict can be explained with the concepts of internal and external sovereignties. If we accept sovereignty as the monopoly of actual control, the problem is to find a way to legalize this. Legalization of such a monopoly can be done in one of two different ways: first, people living on the affected land could establish their own state mechanism and set up their own monopoly by using the means of legal control. Mostly states are essentially established this way. However with the founding of the UN in 1945, the international dimension of legitimacy and sovereignty came up. The main legal action herein is "recognition." Since 1945, a political authority still has been able to establish a legitimate state by using monopolized legal means but that is not sufficient. In order to complete the process of being a state, it is necessary to be recognized externally.[15]

The TRNC is an exemplary state with its democratic structure in terms of internal sovereignty. However, the TRNC has not yet completed the process of being a state, because of the non-recognition in terms of external sovereignty. This is the result of Resolutions 541 and 550 of the UN Security Council. Because the UN has prevented the recognition of the TRNC, Turkish Cypriots are unable to act within their right to self–determination. The TRNC which merged at the end of a democratic process with the result that the right to self–determination, which is an essential principle granted by the UN, were unable to escape from the situation of being a legal state not recognized externally as being imposed by the UN Security Council, including its five permanent members, the USA, UK, Russia, France and China. So it can be stated that, as a political problem, Cyprus actually is an example of manipulation of politics by legal means.

Resolutions of ECJ Judgements: Economic Embargo and Property

There are two decisions of the European Court of Justice (ECJ) which can be pointed out as political victories for the Greek side in the

14 Max WEBER, *The Theory of Social and Economic Organization* (1964), p. 154.

15 Actually resources refer to an interesting recognition doctrine before 1945. For an old but ageless discussion, see Cemil BILSEL, *Devletler Hukuku, Birinci Kitap*, İstanbul Üniversitesi Hukuk Fakültesi Yayınevi, 1941, pp. 57-73.

legal "front" of Cyprus problem. First, a decision from 1994 prevents commercial sales from the TRNC to the EU and the second decision came at the end of the Orams case. Instead of giving details of these decisions, it would be better to state the importance of these decisions and relations between law and politics in Cyprus.[16] First of all, the most important point is the negotiation process that has been carried out by the Greeks with the EU on the behalf of the "Republic of Cyprus" and the full membership status they gained beginning on 1 May 2004. The Constitution of the Republic of Cyprus created a system that Cyprus could never be compelled by international organizations to sign agreements which Turkey and Greece are not parties to.[17] From this point of view, it is clearly contrary to the Constitution[18] of the Republic of Cyprus that Republic of Cyprus is a member of the EU although Turkey is not; this can be considered to be the consequence of UN Resolutions 186, 541, and 550. The second point is that the EU had legally linked the Cyprus problem with the ECJ decisions, which is actually a political problem. The ECJ is actually an EU institution and it is obvious that both the restriction brought to the sales of Northern Cypriot goods and the ECJ decisions, as decisions taken by an EU institution related to the property market in North Cyprus, would never contribute to the solution. The third point is that the decisions given by the ECJ are not judicial in character, but are political. This decision restricted the sales of goods from North Cyprus to EU members and consequently the sales of citrus fruits collapsed as a vital branch of the economy of North Cyprus. The Turkish side was very weak at the Cyprus negotiations because of an economic crisis at the time. Since 1994, the people of the TRNC have been seeing, or they have been made to see, EU membership as a salvation because of that economic recession. Without mentioning the details of the Orams case, it is important to explain the relationship between this case and the sovereignty discussion.[19] This matter should not be considered in European Union countries as simply as a law suit filed by the previous Greek owner of the property (before 1974) against an English couple who own the house today within the TRNC and the implementation of a decision rendered at the end of the case by the Southern Cypriot Court. The essential issue is that the court rendered the judgment about proprietorship.

The Greeks, on behalf of the "Republic of Cyprus," took up the prevailing objections to the sales of estates in the TRNC through this

16 For the effects of ECJ decisions on Cyprus problem, see, TEPAV-EPRİ, "Avrupa Topluluğu Adalet Divanı Konuları Işığında Kıbrıs Sorunu", http://www.tepav.org.tr/tur/admin/dosyabul/upload/latif_aran_kibris.pdf.

17 See Constitution of the Republic of Cyprus Art. 50 (1)a. (Kıbrıs Cumhuriteyi Matbaası, Lefkoşa, 1960, p. 20.)

18 Ahmet C. GAZIOĞLU, *"Kıbrıs'ın AB Üyeliği, Enosis Hayalleri ve Gerçekler"*, *Avrupa Birliği Kıskacında Kıbrıs Meselesi(Bugünü ve Yarını)*, İrfan Kaya Ülger ve Ertan Efegil (Ed.), Ankara, 2001, p. 83.

19 For a discussion about the Orams Case, see, USAK Stratejik Gündem, "Orams Davasıyla İlgili ATAD Kararı Değerlendirmesi" (30 Nisan 2009) http://www.usakgundem.com/haber/34686/orams-davas%C4%B1yla-%C4%B0lgili-atad-karar%C4%B1-de%C4%9Ferlendirmesi.html (Kaynak AA).

case and tried to prevent the TRNC from exercising the right to self-governance as the most essential right to be exercised on their land after recognition of this will by the EU. Because of these intentions, it can be stated that the Orams case is not just a legal matter but also a political issue. Of course, this is same for the decision of the European Court of Justice. In 1994, the ECJ became a party to the Cyprus problem with its decision against an economic embargo, which was in favor of the Greeks. Likewise the Orams case was destructive in nature to the construction market of the TRNC, which was on the rise after the Annan Plan. Ultimately, law once again politicized with this decision.

Decisions of ECHR: Whose Sovereignty?

It is certain that the Court (ECHR), bound to the Council of Europe, is the only place where politics and law crosses negatively in Cyprus. After the Peace Mission in 1974, the Greeks filed many lawsuits against Turkey and within years they were granted many rights as a result of these cases. Particularly after Turkey enabled individual applications to the Court, Greeks filed for lawsuits with the support of their government. The most famous ones of these cases are the *Louizidu* and *Arestis* cases. In the following part the political results of these cases will be assessed.[20]

The most important result of the lawsuits which were filed about Cyprus in the ECHR is that Turkey became the "occupant" party to this problem with its military presence in Cyprus. All criticisms were directed to these political theses because Turkey was in a position to represent all the infringements of human rights and be the addressee for these political issues without regarding TRNC's position. Also the tragedies experienced during war time were used politically through legal means. The ECHR decisions caused Turkey to defend itself in the international arena against the EU and other countries that also created an economic burden of millions of Euros regarding estate issues. In addition to this, especially after 2002, Ankara had to revise its approach towards and policies about the Cyprus problem because of the economic burden caused by cases and the other political obstacles which Turkey to become a member of EU as a result of not implementing ECHR decisions.

The ECHR created a situation where the TRNC's sovereignty was not even considered. It is important to highlight the political results but not the legal characteristics of this matter.

20 For an expert analysis of these cases, see Ali Nezhet BOZLU, *"Kıbrıs'ta Mülkiyet Sorunu ve AİHM Kriterleri"*, *Mersin Barosu Dergisi* (22), Ömer FAZLIOĞLU, *"AİHM'in Xenides-Arestis Kararı ve Kıbrıs'ta Mülkiyet Sorunu"*, *TEPAV/EPRI Dış Politika Etütleri Programı*.

Doctrine of Political Matter

It is beneficial to remind ourselves of the doctrine of "political matter" that is accepted in the US when the relationship between law and politics in the Cyprus problem is discussed. According to this doctrine, a court may refuse to hear a case if one of these situations exists: first the case may impermissibly intertwine the powers of the government regarding foreign policy which is considered sole the province of the executive branch, second the standards which will be implemented by the court may be inefficient and last the court may agree not to intervene as the best option. Of course, this doctrine is accepted in US law to protect the fair implementation of doctrine of the separation of powers and maybe it is not correct to apply this doctrine to the Cyprus problem, which is an international problem. This cautious approach is agreed upon, but Cyprus as a completely politicized problem should be evaluated in terms of this doctrine because of the involvement of high courts such as the ECJ and the ECHR. These courts are involved politically in this matter by giving decisions in favor of the Greek side and these decisions have helped the Greeks to be at a political advantage. However, these courts may agree not to render a judgment because of the fact that Cyprus is an international political power where a settlement could not be provided and also the courts could consider the negative effects of lawsuits on peace negotiations. If the courts were to decide not to render a judgment, this would not provide an advantageous situation to the Turkish side because if there were no court decisions, both sides would attempt to find a settlement vigorously by keeping their political attitudes to themselves. However, the Greek side protracts all the official talks with their negotiation strategy and prefers to wait for new court decisions which oppress Turkey. In other words, the Greek side prefers the oppressive circumstances where Turkey has to make concessions because of the ECHR and ECJ decisions, in spite of settling this issue with finding solutions.

Conclusion: Legal Politics or Political Law

How legitimate is international law? This is a question that should be considered essential.[21] We are not lawyers but are instead international relations experts, so we have to be contented with just asking. But whatever the conclusion is, Cyprus should be determined to be a problem where law becomes a means to politics. With their decisions, the UN, EU and ECHR have become parties to this problem, not legally, but in a way which concludes in favor of the Greek side. Herein, we have to state that all legal means are depleted and international politics prevailed. One of the most essential aims of the international

21 Faruk SÖNMEZOĞLU, *Uluslararası Politika ve Dış Politika Analizi*, Gözden Geçirilmiş İkinci Baskı, Filiz Kitapevi, İstanbul, 1995, pp. 538-540.

players is the strategy of balancing the power of Turkey. Being on the side of the Greek Cypriots is not a legal preference and it is not for justice but is a matter dictated by the "international code of politics."[22] Also, it can be said that the Greeks got over the things they lost in war and found the way to regain them with legal means. On the other hand, it must be taken into consideration that the Turkish side has not been punished by UN Security Council since July 1974 despite all the efforts of the Greek Cypriots. However as the Greek side mentioned for many times, the UN would able to impose many alternative sanctions on Turkey. Herein lies the fact that a Turkey that has been criticized severely and torn apart but not penalized fully is because of Turkey's role in balancing the strong powers like Russia at past and Europe today.

In addition to all these, there were many human rights violations and illegal armed conflicts back in the 1963 – 1974 period in Cyprus but Turkey never sought legal remedies. Long before the Greeks, Turkey would be able to appeal to the European legal institutions by an international application. One year after the Republic of Cyprus had signed the European Convention on Human Rights, the crisis that started in December 1963 oppressed and blockaded the Cypriots. It must be considered that while both Cyprus and Turkey was parties to these agreements, Turkey never made a complaint to the European Human Rights Commission for the suppressive and racist policies of the Republic of Cyprus, while between 1964 - 67 Turkish Cypriots had very hard times. If Turkey had ever made an appeal like this, the negotiation process between Cyprus and European Economic Community would be affected for sure. However Turkish diplomats and the Turkish Ministry of Foreign Affairs had probably not predicted the possible effects of this mechanism and never needed to use this. As a result, the inclusion of Cyprus into the EEC continued fast. Also during the same period, the "both communities of Cyprus shall be represented at the same time" decision was taken within the representation from the House of Representatives of the Republic of Cyprus in the Council of Europe's Parliamentary Assembly. Turkey objected to this decision and as a result of this objection, the representation of the Republic of Cyprus was prevented in the Council of Europe's Parliamentary Assembly from 1965 to 1983. So it can be said that the Turkish government would be able to oppress the Makarios government and make people to be emphatic to the Turkish Cypriots case, by exercising the legitimate right granted to Turkey in European Convention on Human Rights. Turkey did not exercise this right probably because of the fol-

22 SÖNMEZOĞLU, age., pp. 133-140.; Tayyar ARI, *Uluslararası İlişkiler ve Dış Politika*, Beşinci Baskı, İstanbul, Alfa Yayınları, 2004, pp. 140-141; Önder ARI, *Uluslararası İlişkiler*, İstanbul, Der Yayınevi, 1987, p.12, pp. 35-42.

lowing reasons: the hatred against Greek Cypriots continued to grow while Greeks oppressing Turkish Cypriots. Second the loyalty to the Republic of Cyprus weakened because of the emerging developments. Third the solidarity between the Turkish Cypriot community became stronger. As the final reason, the expectations of the decision making body in Ankara were the extensification of consciousness of being Turk at first and becoming alienated of being Cypriot.[23]

23 Mehmet HASGÜLER, *"Kıbrıs'ta Karşılaştırmalı Eleştirel Yöntem Işığında Ulusçu Tatmin ve Siyasal Denge Modeli"*, *Kıbrıs'ın Turuncusu*, Mehmet Hasgüler ve Ümit İnatçı (Ed.), İstanbul, Anka Yayınları, 2003, pp. 16-17.