

The Problem of the Turkish Immigrants in TRNC in the Light of International Law

Neriman akır

Submitted to the
Institute of Graduate Studies and Research
in partial fulfillment of the requirements for the Degree of

Master of Arts
in
International Relations

Eastern Mediterranean University
February 2010
Gazimağusa, North Cyprus

Approval of the Institute of Graduate Studies and Research

Prof. Dr. Elvan Yılmaz
Director (a)

I certify that this thesis satisfies the requirements as a thesis for the degree of Master of Arts in International Relations.

Assoc. Prof. Dr. Erol Kaymak
Chair, Department of International Relations

We certify that we have read this thesis and that in our opinion it is fully adequate in scope and quality as a thesis for the degree of Master of Art in International Relations.

Assoc. Prof. Dr. Kudret Özersay
Supervisor

Examining Committee

1. Assoc. Prof. Dr. Kudret Özersay

2. Assoc. Prof. Dr. Wojciech Forysinski

3. Assoc. Prof. Dr. Yılmaz Çolak

ABSTRACT

This thesis examines the presence of Turkish immigrants in North Cyprus and the ways this issue needs to be solved in light of international law. The aim of this thesis is to investigate all different arguments about the Turkish immigrants and to analyze them. The most important one among many different research questions of this thesis is “in the future plan, what will be the legal status of the Turkish immigrants in Cyprus? What are and what will be their rights in this European land?”

The issue of Turkish immigrants is a complicated one, therefore, I will try to find answers among contrasting ideas. Hence, I will try to obtain the correct number of Turkish immigrants, their objectives, motivations and effects of their existence in the island on politics in the TRNC.

In addition, this research will examine different examples in the world in which settlement problems were attempted to be solved, and in the light of this information, I will shed light on the issue of Turkish immigrants for ongoing negotiations and make some predictions about how this problem might be solved.

Keywords: Turkish immigrants, Cyprus problem, international law, TRNC.

ÖZ

Bu tez Kuzey Kıbrıs'ta bulunan Türk göçmenler konusunu ve göçmenler konusunun uluslararası hukuk ışığında nasıl çözülmesi gerektiğini ele almaktadır. Bu tezin amacı Türk göçmenler hakkındaki bütün farklı görüşleri ortaya koymak ve analiz yapmaktır. Bu tezdeki en önemli araştırma sorusu "gelecek bir planda Türk göçmenler nasıl bir yasal statü altında adada kalacaktır? Ve göçmenlerin bu Avrupa toprağındaki hakları nelerdir ve neler olacaktır?"

Türkiyeli göçmenler konusu komplike bir konudur. Bu yüzden bu tezde farklı görüşler ortaya koyulacak ve bu görüşler ışığında gerçekçi ve ispatlanabilen görüşler ortaya çıkarılacaktır. Türkiyeli göçmenlerin amacı, motivasyonu, sayıları ve adadaki varlıklarının KKTC'nin politikasına nasıl etkide bulunduğu tartışılacaktır.

Bunların yanı sıra, bu tezde dünyadaki farklı yerleşim problemleri incelenecek ve bu bilgiler ışığında Kıbrıs'taki çözüm sürecine katkıda bulunulmaya çalışılacaktır.

Anahtar Kelimeler: Türk göçmenler, Uluslararası hukuk, Kıbrıs sorunu, KKTC.

To My Family

ACKNOWLEDGEMENT

I would like to express my best gratitude to my supervisor Assoc. Prof. Dr. Kudret Özersay for his guidance, support, motivation and supervision throughout the writing of this thesis would like to highlight his efforts because, without his assistance and guidance, I would not have been able to finish this thesis.

I would also like to thank Prof. Dr. Ahmet Yörükođlu who encouraged me to write this thesis and became a model for my future life with his personality and hard working.

I would like to thank Devrim Şahin who is a good friend always encouraged and helped me to build this thesis. He has always been very generous and willing to help even when he was very busy.

I would like to thank Akile Serinkanlı who supported me under all conditions.

Lastly, I would like to express my thanks to my mother Meva, my sisters Aynur, Zeynep, Ayşe and my brother Mustafa whom I am indebted for their emotional and financial support. I would not have obtained this master's degree without their support.

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Chapter 1

INTRODUCTION

The Cyprus issue is an extremely important problem, which has remained unsolved since the 1950s. After the beginning of the global trend of decolonization, there appeared a tendency among the Cypriots (mainly the Greek Cypriot community) to gain independence from the British Empire. Cyprus under the influence of these movements.

The Turkish Cypriots and Greek Cypriots have always advocated two different views on the future status of the island. While the Turkish Cypriots supported the continuation of the status quo (being ruled by the UK), Greek Cypriots supported the idea of uniting the island with Greece (ENOSIS).

The Turkish Cypriots later supported the view that if Britain were to give up sovereignty over the island, it should be returned to its former ruler, Turkey.¹ In 1960, the Republic of Cyprus was established by the Turkish Cypriot and Greek Cypriot communities with the Zurich and London Agreements (1959) between Turkey, Greece and the United Kingdom.

The Republic was established on the basis of three agreements; namely the Treaty of Establishment, the Treaty of Alliance and the Treaty of Guarantee.² According to these

¹Zaim, M. Nedjatigil, *The Cyprus Conflict A Lawyer Perspective* (Nicosia: Tezel Offset and Printing Co., 1982), p.5.

² Süha, Bölükbaşı, *The Turco-Greek Dispute: issue, Policies and Prospects*, in Clement H. Dodd (ed), *Turkish Foreign Policy*, (Britain: Eothen Pree, 1992) 31.

treaties, the newly established republic would be semi-independent since the United Kingdom would retain two sovereign bases (the Akrotiri and the Dhekelia Sovereign bases).³ In addition Turkey, Greece and UK became guarantor powers of the new Republic. Things did not go well in the Republic of Cyprus. There were disagreements and clashes between the two communities until 1974. The Greek Cypriots wanted control over the entire island since they constituted the majority of the population. However, Turkish Cypriots tried to protect their rights as part of the Republic. There was strong support that Greek Cypriots used the name of the Republic to achieve their goals represented under the name of ENOSIS. According to Nedjatigil many writers believe Makarios, the first President of The Republic, accepted independence as a spring-board for achieving ENOSIS.⁴

On 15 January 1974, the Greek junta staged a coup d'etat in Cyprus to achieve ENOSIS. After this coup d'etat, Turkey, as one of the Guarantor powers of the Republic of Cyprus staged a military intervention on the island. The Turkish side argued that they used their rights under Article 4 of the Treaty of Guarantee.⁵ After this intervention, the Turkish Cypriots controlled 34% of the island in the North with the help of Turkey. On June 1975, a crisis erupted between the Turkish Cypriots while trying to cross to the Turkish controlled part of the island, and Greek Cypriot security forces. After the commission of violence by the Greek Cypriot security forces against the Turkish Cypriots, the Turkish Cypriot authorities forced around 800 Greek Cypriots to leave the North as a reaction to this crisis. The Turkish authorities then warned the Greek side that if the ill-treatment to

³ Nedjatigil, 7.

⁴ Ibid.

⁵See 1960 Treaty of Guaranty Article iv available at [http://www.law.gov.cy/law/lawoffice.nsf/all/D97E81FCEf000E97C225742B00326963/\\$file/Treaty%20of%20Guarantee.pdf](http://www.law.gov.cy/law/lawoffice.nsf/all/D97E81FCEf000E97C225742B00326963/$file/Treaty%20of%20Guarantee.pdf) Accessed on Data: 08/01/2009.

which Turks had been subjected to in the South and the obstacles to Turks crossing into the North continued, they would have no other option but to expel all Greek Cypriots from the North.⁶ After these events, Greek leaders agreed to make a joint statement for two reasons. First, they feared another intervention by Turkey if there were serious threats against Turkish Cypriots, and secondly, they wanted the Greek Cypriots to remain in the North, especially in the Karpas region.

On 2 August 1975, the so-called Population Exchange Agreement was agreed upon between Denktas and Makarios. This was not a signed document but a joint statement called The Third Vienna Agreement in the literature of the Turkish side. According to this declaration, “the Turkish Cypriots at present in the south of the Island will be allowed, if they want to do so, to proceed north with their belongings under an organized programme and with the assistance of UNFICYP”.⁷ Moreover it states that “mr. Denktash reaffirmed, and it was agreed, that the Greek Cypriots at present in the North of the Island are free to stay and that they will be given every help to lead a normal life, including facilities for education and for the practice of their religion, as well as medical care by their own doctors and freedom of movement in the North.”⁸ Hence, by this joint statement, people on both sides of the island would be free to move to other side and settle there. In addition, the second point was made that if Greek Cypriots who preferred to live in the North would have a normal life and would be able to get help.

In 1975, a protocol was signed between the Turkish Federated State of Cyprus and Turkey. According to this protocol, people from Turkey would be able to come to North

⁶ Ayla, Gurel and Kudret, Özersay, *The Politics of Property in Cyprus*, *PRIO Report 3/2006*, 16-17.

⁷ The Third Vienna Agreement, available at <http://www.cyprus.gov.cy/MOI/pio/pio.nsf/All/9A6B0EFBA6455875C2256D6D0030D232?OpenDocument> Accessed on Data:09.12.2009.

⁸Ibid.

Cyprus as a “labor force”.⁹ Since then, important numbers of Turkish immigrants came to north Cyprus in accordance with the provisions of this protocol.

1.1 Literature Review

The most important problem related to the Turkish immigrants¹⁰ in the TRNC is that there is an inadequacy of the literature on this topic. We can divide the existing literature into different sub-titles. The case of Turkish immigrants can be discussed under the following titles: their name, number, presence on the island, international law and so on. In all these sub-titles there are generally two main opposite arguments. In the literature, the research of Mete Hatay seems to be relatively objective one in defining existence of Turkish immigrants in the island and their numbers when we compared to others.¹¹ The case of Turkish immigrants had not been discussed from the point of human rights and had not been properly researched, so this is one of the important missing parts of the literature. There are two books that discuss the case of Turkish immigrants from the perspective of law, written by Palley¹² and Chrysostomides¹³. In addition, only Mete Hatay’s research on the existence process of Turkish immigrants and their place in the Turkish Cypriot community. The research of Yılmaz Çolak focusses on the intention and

⁹The Demographic Composition of the Northern Part of Cyprus,(Lefkosa: TipografArT Basım Yayın LTD, by IKME and BILBAN Socio-political Studies Institutes), 25.

¹⁰In this thesis the term “Turkish Immigrants” is used to denote persons from Turkey who settled in North Cyprus after the 1974 military intervention and particularly those who came in the late 1970s. I prefer “Turkish immigrants” since it is connected to legal and social factors which will be explained in due course. The term used for persons having similar characteristics with the Turkish immigrants in some other international conflicts which will be examined in detail in the following chapters. For example; “aliens”, “foreigners”, “settlers” etc...

¹¹ See Mete, Hatay, Is the Turkish Cypriot Population Shrinking? (*PRIO Report*, 2007), Mete, Hatay, Beyond Numbers An Inquiry into the Political Integration of the Turkish “Settlers” in Northern Cyprus, *PRIO Report 4/2005* Mete Hatay, Settlers, Soldiers, Students and “Slaves” The Complex Composition of the Turkish Immigrants in Cyprus, (Conference Paper, Presented in Berlin, on 25–26 May 2007. “A Member State with a Divided Legal System”.

¹² Claire, Palley, *An International Relations Debacle The UN Secretary General`s Mission of Good Offices in Cyprus 1999-2004*, (USA: Hard Publishing, 2005).

¹³ Kypros, Chrysostomides, *The Republic of Cyprus A Study in International Law*(London: Martin Nijhoff Publishers, 2000).

motivation of the Turkish immigrants¹⁴. Some writers discuss the issue of Turkish immigrant workers.¹⁵ However, there are no books written more recently than 2004.

Some writers discuss the issue of Turkish immigrants from the perspective of international law. They discuss the applicability of the Fourth Geneva Convention to the presence of Turkish army and the Turkish intervention on the island. Chrysostomides argues that the existence of Turkish immigrants constitutes a violation of the 1949 Geneva Convention because Turkey, as an occupying power of the island, carries its nationals to the island.¹⁶

Today, the number of Turkish immigrants is one of the most important issues causing controversy in the literature concerning Cyprus. According to the most recent census results, 91,475 Turkish citizens live in the TRNC which has a de facto population of 265,100, 27,333 of them having TRNC citizenship¹⁷. However according to Greek Cypriot leadership, the number of Turkish immigrants is around 160.000¹⁸.

There has always been a serious debate about their numbers and the effect of their existence to the self-determination of the Turkish Cypriots. According to Greek Cypriot leadership, the number of Turkish immigrants was more than the number of Turkish Cypriots and they found this as a reason to argue that the self-determination rights of

¹⁴ Yılmaz Çolak, *Identity and Citizenship Among Turkish Immigrants in Northern Cyprus (Mirekoc Research Projects 2006-2007)*.

¹⁵ Ahmet, Rustemli, Biran , Mertcan, and Orhan Ciftci, "In- Group Favoritism Among Native and Immigrant Turkish Cypriots: Trait Evaluations of In-Group and Out-Group Targets", *The Journal of Social Psychology*, 2000.

¹⁶ Chrysostomides, 203.

¹⁷ Hatay, Is..., 30.

¹⁸ "AIDE MEMOIRE: TURKISH SETTLEMENT OF OCCUPIED CYPRUS"

http://news.pseka.net/uploads/img/documents/PSEKA_Turkish_Settlement_Of_Occupied_Territories.doc, Accessed on Data: 18.07.2006.

Turkish Cypriots is impossible.¹⁹ According to some writers, they had come to North Cyprus as a “labor force”, in order to reshape the life in the North²⁰ and their numbers are lower than those of Turkish Cypriots²¹.

In the literature, there are two perspectives on the presence of Turkish immigrants on the island. Some writers, such as Paley argue that they are “settlers” since, according to them, these people immigrated to the North with the assistance of Turkish administrators for political reasons. On the other hand, some researchers, such as Loizides, underlines that settlers in Cyprus fit the profile of an immigrant population interested primarily in welfare and daily survival issues and much less in politics.²²

The issue of the Turkish immigrants exists in the literature concerning the issue of property. The Turkish immigrants were the main recipients of the properties of the displaced Greek Cypriots after the 1975 agreement and thus became part of the property issue, which is one of the core issues in the Cyprus problem.

The Turkish immigrants issue became an important issue in particular during the Annan plan referendum and its aftermath. This was primarily due to their effect on the Turkish Cypriot community in politics. For example, Papadopoulos demanded that Turkish

¹⁹ Chrysostomides, 201.

²⁰ Hatice, Kurtulus & Sema, Purkish, “Turkiye’den Kuzey Kıbrıs’a Göç Dalgaları: Lefkoşanın Dışlanmış Göçmen –Enformel Emekçileri”, *Toplum ve Bilim*, Bahar, 112. Sayı, 2008, 6.

²¹ Hatay, Is., 47-48.

²² Neophytos G. Loizides, “Settlers and Mobilization in Cyprus Antinomies of Ethnic Conflict and Immigration Politics”, *Political Geography*, special issue on “Settlements and Settlers in Contested Territories”, 2009, 3

immigrants should not participate the referenda,²³but this was rejected by the Former UN Secretary General Kofi Annan.

The issue of Turkish immigrants has always been an important topic in the literature on the Cyprus negotiations. Greek Cypriot leadership brought the issue of Turkish immigrants to the negotiations in terms of international law, arguing particularly that there existed violations of the 1949 Geneva Convention. However, Turkish Cypriot leadership underlined that the issue of Turkish immigrants should be solved in the light of human rights and the rights of immigrants should be protected.

1.2 Objective of the Thesis

The legal status of the Turkish immigrants is not clear in the international law, it is debatable issue. The aim of this thesis is to investigate the different arguments concerning the Turkish immigrants and to analyze them. The most important among many different research questions of this thesis is “in the future plan, what will be legal status of the Turkish immigrants in Cyprus? What are and what will be their rights in this European land? Moreover, this research paper will try to find answer to following questions. What is the accurate number of “illegal” immigrants in TRNC?, Where did they come from and how did they settle in TRNC?, Is it possible to apply Fourth Geneva Convention in the case of TRNC?, How did this “illegal” settlement problem occur? Is there any political aim behind it? , What is the current situation in TRNC regarding ‘illegal’ settlers? These are some questions that you will find answers in the whole thesis.

²³ Palley, 75.

In addition, this study examines the different cases throughout the world, which have tried to solve settlement problems. If there will be a new solution plan for Cyprus problem, it is important to know what kind of provisions could be put forward for the Turkish immigrants. After making a comprehensive research on the Turkish immigrants, I would like to point out problems related to this topic and try to foresee various formulations to overcome the settlement problem in the TRNC.

One of the important objectives of this thesis is to shed light on the issue of Turkish immigrants for ongoing negotiations and make some predictions about how this problem might be solved.

1.3 Methodology

In this thesis, secondary sources such as books, journal articles and newspapers will be primarily used. Moreover, official documents of the Ministry of Foreign Affairs of the Republic of Cyprus, The TRNC Prime Ministry State Planning Organization Statistics and Research Department, Census of Population: Social and Economic Characteristic of Population are used. In order to develop arguments, the United Nations' official web page and its decisions, draft settlements, resolutions are examined. Findings/results of the interviews and questionnaires conducted with "Turkish immigrants" in the TRNC, which were carried out by Yılmaz Çolak, will be consulted in the research.

Internet sources and texts of the international law documents and agreements will be examined. Moreover, primary sources will be used such as Annan plan, Security Council Resolutions. Lastly, comparative analyses will be used among different world examples.

1.4 Significance of the Study

This study is important in the sense that it discusses an important obstacle before the solution of the so far unsolved Cyprus problem. In addition, it will be an important source that deals with all dimensions of the issue of Turkish immigrants in the TRNC. All factual information on this matter will be included. Different ideas will be given consideration. In addition, this thesis will include all documents under a single source to get a realistic perspective and vision about future provisions on the matter in a solution plan. Finally, it is important since it will examine other settlement processes as examples and discuss the special conditions in the case of Cyprus. I believe that this topic will be very useful to the field of International Relations as it will focus on an important dimension of the Cyprus problem and will try to suggest alternative formulas by taking into account international law and past examples.

The thesis is also important because it will deal with international rules, which are relevant for Turkish immigrants in the TRNC. In addition, this study may offer an insight into the discussions in the negotiations between the two communities. Moreover, it may fill the gap in the literature on the Turkish immigrants in the TRNC. Finally, it can provide insights to Turkish immigrants' decisions about their future.

1.5 Structure of the Thesis

The study will be divided into five main chapters. The first chapter will include an introduction and general information will be given about the existing Turkish immigrants in the TRNC. It will briefly discuss the historical background of the Cyprus problem. A general literature review will be included. Moreover, methodology, objective and the significance of the thesis will be examined.

The Second chapter will deal with rules about immigrants in international law. It will focus on specific rules of international law that pertain to long term immigration. Here, the thesis will deal with the ECHR Article 8 "right to respect for private and family life" and article 3, which is about the prohibition of inhuman/degrading treatment, ICCPR Article 17 "Arbitrary or unlawful interference with his privacy, family, home..." and article 13, Fourth ECHR Protocol Article 4 on the prohibition of collective expulsion of aliens and of discrimination.

The aim of this chapter is to investigate how the rules of international law protect long term immigrants who maintain their lives in a particular foreign state. This is one of the most important chapters in this thesis because without examining the rules of international law it is impossible to have a clear picture on the rights of Turkish immigrants. The second chapter consists of an analysis of the rules of the European Convention on Human Rights since it is applicable in the TRNC. At the end of this chapter, above mentioned rules will be applied to TRNC.

The third chapter will examine the situation in Cyprus. It will focus on different perspectives on the presence of Turkish immigrants. In these arguments, two main approaches can be found in general. In the first perspective, Turkish immigrants are considered to be people who had been brought to North Cyprus by Turkey and Turkish leaders to change the demographic structure of the island. Moreover, the transfer of Turkish immigrants is seen as a war crime. Some writers argue that Turkey used these people to stage the intervention on the island and that they were trained as soldiers of Turkey. According to this perspective, these people were brought to the island for political aims and thus, they should be deported. According to the second perspective, it is underlined that the Turkish immigrants did not come to Cyprus for political reasons.

Instead, they came to "reshape the life" in North Cyprus. In other words, they came as a "labor force". In addition, some writers argue that there is a misunderstanding of the intention of people who came from Turkey. They believe that, since today's globalized world permits the freedom of movement, not all people can be categorized as "settlers". There are many Turkish immigrants on the island since Turkey is the only country to recognize the TRNC. The presence of many Turkish immigrants on the island is a result of the unrecognized status of the TRNC. This chapter is important, because it will discuss different perspectives under a single title and it will try to discover a reasonable approach in the light of factual information.

Chapter four will deal with the UN's attitude and provisions for Turkish immigrants in the settlement plan. Here, we will analyze the relevant provisions of the UN proposals and plans concerning other settlement problems in the world. Although Greek Cypriots did not accept it, the Annan Plan will be one of the most important sources since it has attempted to solve the problem of Turkish immigrants in a comprehensive way. Moreover, similar UN decisions and proposals for the settlement problem in Palestine, Rhodesia, Namibia and East Timor will be analyzed, and compared to the TRNC case. The last chapter will be the conclusion of this thesis and it will include the summary of the thesis. In addition, the final conclusion of this research and the critique of different arguments will be presented in this chapter.

Chapter 2

THE PROTECTION OF “IMMIGRANTS” UNDER INTERNATIONAL HUMAN RIGHTS AGREEMENTS AND GENERAL INTERNATIONAL LAW

2.1 Introduction

“Immigrant” rights are among the more controversial issues in the world. Each sovereign state has the right to control/regulate foreigners in their jurisdiction. However, this right is not absolute. There are international human rights documents that put some limitations on the power of states.

In this chapter, the rules of international law limiting the power of the State on “immigrants”, will be discussed. These rules are important in the case of the Cyprus problem for two reasons. First, Turkish Cypriot leadership underline the fact that the problem of Turkish immigrants should be solved in the light of Human Rights. Hence, it needs to be decided which rights should apply. In the following paragraphs, the European Convention on Human Rights (ECHR) rules will be analyzed. There are certain reasons for that. One may argue that North Cyprus is not under the jurisdiction of the Republic of Cyprus, thus, European rules are not applicable in the territory of the TRNC. However, there is some evidence to the contrary. In 2006, the Constitutional Court decided that international treaties duly entered into effect for the TRNC had

constitutional force and prevailed over ordinary legislation.²⁴ The court stated that this was particularly valid for the ECHR.²⁵

Moreover, by the declaration of the TRNC in 1983, the Northern side separated from the Republic of Cyprus and declared its independence unilaterally. The independence declaration of the TRNC made reference to human rights in 1983. With the establishment of the TRNC Turkish Cypriots accepted some Human Rights instruments, such as the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on Civil and Political Rights.²⁶ Because of this reference to Human Rights instruments, on 21 June 2006, the Constitutional Court decided that “..the substance of those conventions codified principles of customary international law binding upon all states. The TRNC, as an unrecognized state, was also obliged to follow the rules of customary international law.”²⁷ In addition, at the beginning of the TRNC constitution, it is stated that if it is not against the existing rules in this constitution, the 1960 Constitution is effective. The ECHR was ratified by the 1960 Republic and according to transitional provision 4 of the constitution ECHR continued to be in force in TRNC.²⁸

Özersay analyze the same situation as;

Despite the generally known fact that the new 2005 Property Law was put into effect as a result of ECtHR rulings, the TRNC Assembly of the Republic made no attempt to explain the status of international conventions, and particularly the ECHR, in the domestic legal system. It was essentially the court itself which,

²⁴ For the sake of argument, we can think that ECHR rules are not applicable in TRNC. When the issue of Turkish immigrants is solved in a settlement, this convention shall be applicable in day one following the entrance of the settlement.

²⁵ Kudret, Özersay, Oxford Reports on International Law in Domestic Courts, National Unity Party v TRNC Assembly of the Republic, (3/2006); ILDC 499.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

appropriately, examined the importance of the ECHR and other international human rights conventions in the TRNC domestic legal system. The court based its position regarding such conventions on two main arguments: First, even an unrecognized entity can assume responsibility as a result of its unilateral declaration of independence. (paragraph 37) Second, the ECHR was ratified and became part of the domestic law of TRNC. The court implicitly considered the TRNC as a successor to the ROC, and the law ratifying the ECHR in 1962 for the ROC was considered to remain in force for the TRNC as well.²⁹

Hence, in the light of these, the rules of ECHR should be taken into consideration when dealing with the issue of Turkish immigrants. In this chapter we will focus on particular articles of ECHR and ICCPR. Main reason for using these articles, is that we think these articles are more relevant than other articles considering circumstances in Cyprus.

2.2 European Convention on Human Rights: Article 8

The ECHR forms part of the domestic legal systems of Turkey, ROC and the TRNC, thus, the rules have to be taken into account while trying address the issue of Turkish immigrants.

According to the ECHR Article 8;

Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, for the prevention disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.³⁰

Article 8 of the ECHR is not unique in this sense.³¹ Article 12 of the Universal Declaration of Human Rights regulates the same right with some minor differences. It

²⁹ Ibid.

³⁰ J. G. Merrills and A. H. Robertson, *Human Rights in Europe A study of the European Convention on Human Rights* (UK: Manchester University Press, 2001), 137.

³¹ Article 8 of the ECHR is based on Universal Declaration of Human Rights Article 12.

states that “no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence...”³²

Article 8 underlines that people have the right to respect for their private and family life, their homes and correspondence. Article 8 provides this right to “everyone”. In other words, it does not make any distinction between citizens, immigrants, settlers and others. Again, according to Article 8, states may not allow people to use this right under certain conditions. If any of these conditions are met, then states have the right to interfere the exercise of this right and will not be considered as a violation of the Article. “Article 8 of the convention ...includes the second paragraph which sets out the limitations which may be imposed on the right proclaimed in the first paragraph.”³³ Interference will be legitimate if it occurs “in accordance with law” and has a “legitimate aim” and is “necessary in democratic society.”³⁴

In various cases in European states, European courts have shown that Article 8 can be interpreted differently and its coverage is beyond its content. For example, the term of “home” in Article 8 is interpreted as right to access, not to be expelled, the right to have a business and it covers residence.³⁵ Moreover, the term of “private life” is interpreted as “identity, moral and physical integrity, personal relationship and sexual relations.”³⁶

³² Fiftieth Anniversary of the Universal Declaration of Human Rights”, Article 12, available at <http://www.un.org/rights/50/decla.htm> “Access on Data:24.03.2009.

³³ Merrills and Robertson, 137.

³⁴ Diane Antikson Sanford, European Human Rights Mechanism in Joan M. Fitzpatrick (ed), *Human Rights Protection for Refugees, Asylum –Seekers, and Internally Displaced Persons : A Guide to International Mechanism and Procedures* (New York: Transnational Publishers,2002) 405.

³⁵ Javaid, Rehman, *International Human Rights Law, A practical Approach* (England, Pearson Education:2003) 150.

³⁶ Ibid.

In addition, the term “family life” is also interpreted with wide scope. In the *Marckx v. Belgium*³⁷ case, the European Court of Human Rights decided that Belgium is under positive obligation to provide legislative process for the integration of family life for an “illegitimate” child. The Court came to the conclusion that Belgium violated Article 8 of the ECHR by not providing this right to the illegitimate child and her mother.

The European Court of Human Rights states that:

In the Court's opinion, "family life", within the meaning of Article 8 (art. 8), includes at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a considerable part in family life." "Respect" for a family life so understood implies an obligation for the State to act in a manner calculated to allow these ties to develop normally.³⁸

Hence, states are under an obligation, to take some action to secure the rights of people that are presented in Article 8. ³⁹These wide interpretations and decisions of the European Court of Human Rights were also interpreted in a way that grants long term immigrants to have the right to stay in the countries to which they immigrated. Although ECHR Article 8 protects the rights of immigrants, it does not only consider the presence of these people in the host country, but other conditions are also taken into consideration, such as the social ties between “immigrants” and the society. The extent of integration is measured through the strength of social, cultural and family ties with the state of residence and with the state of nationality. If “immigrants” have immigrated to that state a long time before and have social ties with the society, then the expulsion of these “immigrants” is seen as a violation of Article 8. There is no specified time period for the presence of “immigrants” in a country but many writers argue that the longer a

³⁷*Marckx v. Belgium*, 13/06/1979 , full text of the case available at http://www.equidad.scjn.gob.mx/IMG/pdf/Caso_Marckx_v-_Belgica_Ingles_-2.pdf Accessed on Data: 23.11.09.

³⁸ *Ibid.*

³⁹Clare Ovey & Robin C. A. White, *The European Convention on Human Rights*, (USA; Oxford University Press, 2006) , 243.

person has been residing in a particular state, the stronger his or her ties with that country will be, and the weaker the ties with the state of nationality.⁴⁰

Actually, the ECHR does not prohibit the expulsion of immigrants and it does not guarantee the right to maintain a family life in a particular country⁴¹. Judge Matscher states that “it must also be stressed that this positive obligation, flowing from Article (art. 8) of the Convention, is limited to what is necessary for the creation and development of family life according to the ideas which contemporary European societies have of this concept”. Furthermore, States enjoy a certain power of appreciation as regards the means by which they propose to fulfill this obligation.”⁴² Merrills and Robertson also support this idea by stating “a state has the right to control the entry of non-nationals into its territory.”⁴³ However, when the expulsion of one member of the family affects the “effective family life”, then such a decision becomes related to Article 8 since this expulsion is seen as interference in the “family life” which becomes a violation of Article 8.⁴⁴ In order to benefit from Article 8, there should be strong family ties, which will be affected by the expulsion in a negative way. For

⁴⁰ Ronen, Yael, *Status of Settlers Implanted by Illegal Regimes Under International Law*, International Law Forum of the Hebrew University of Jerusalem Law Faculty, No.11-08, September 2008, 47.

⁴¹ Ovey & White, 263.

⁴² *Marckx v. Belgium*, 13/06/1979, full text of the case available in http://www.equidad.scjn.gob.mx/IMG/pdf/Caso_Marckx_v-_Belgica_Ingles_-2.pdf Accessed on Data: 23.11.09. Partly Dissenting Opinion of Judge Matscher.

⁴³ J. G. Merrills and A. H. Robertson, 151.

⁴⁴ See *Berrehab* case, a Moroccan immigrant (Mr. Berreab), applied for renewal of his residence permit after he divorced his Dutch wife. They have a daughter who is Rebecca. This was rejected by the Netherland authorities. Then he applied European Court of Human Rights by arguing if he is not able to get residence permits, he is going to be expelled from the Netherlands and thus he would not be able to see his daughter and therefore it would be a violation of Article 8 of the ECHR. The court found his application to be true since his “family life” will be effected from this decision of the Netherland authorities. See *Berrehab v. The Netherlands*, 3/1987/126/177; 10730/84, Council of Europe: European Court of Human Rights, 28 May 1988, available at: <http://www.unhcr.org/refworld/docid/3ae6b6f424.html> Accessed on Data: 23.11.09.

example, the relationship between an uncle and nephew is not sufficiently close⁴⁵ to argue that their rights should be protected under the Article 8. "... only husband-wife and parent-child relationship⁴⁶ have been expressly recognized as sufficiently close in cases involving non-citizens."⁴⁷

Judge Schermers expressed that "as Article 8 guarantees the right to respect for his home to everyone, the rights of the new occupant should be taken into account, even if the occupation was originally established on an invalid title. After a long period of time, restoration of the status quo ante will become a violation of Article 8 with respect to the new occupant. It is difficult to establish how long this period is to be, because in fact it is a gradual process".⁴⁸

Judge Schermers also underlined the idea that even criminal immigrants who were born and grew up in the host country, should be protected and not be expelled since they will have close ties with home states but not with host states.⁴⁹ States have a responsibility to create suitable environments for "immigrants" to benefit from Article 8.

In addition, the expulsion of long-term immigrants who have ties with the society becomes a violation of Article 8 since it will be interfere in the "private life". For example, in the case of *Üner v. The Nertherlands* the European Court of Human Rights

⁴⁵ Clare Ovey & Robin C. A. White, *The European Convention on Human Rights*, (USA; Oxford University Press, 2006), 262.

⁴⁶ For example in the case of *Alam and Kham v. The United Kingdom*, the court decide that separation of a father from his thirteen year old son, could give rise to a claim under article 8(1). See D. J. Harris, "Imigration and the European Convention on Human Rights", *The Modern Law Review*, Vol. 32, No.1 (Jan., 1969), 102-106.

⁴⁷ Guy S. Goodwin-Gil and Jane Mc Adam, *The Refugee in international Law* (USA: Oxford University Press,2007), 318

⁴⁸ *Cyprus V. Turkey*, Application No. 8007/77 Seperate Opinion of Mr. H. G. Schermers. Full text of the case available at <http://www.uniset.ca/microstates/15EHRR509.htm>. Accessed on Data: 07/04/09.

⁴⁹ See Henry Schermers, "The Second Generation of Immigrants", *Michigan Law Review*, Vol.82, No.5/6 (Apr-May,1984), 1421.

stated that “the expulsion of an integrated immigrant...constitutes an interference with his or her right to respect for private life”⁵⁰

In addition, the lack of appropriate regime does not mean that the state can violate Article 8. Connelly points out that “the lack of an appropriate legal regime does not constitute an interference in the applicants private and family life which may or may not be justified under paragraph 2. Rather, it constitutes a failure on the part of the State to take the action required of it in order to afford the necessary respect to their private and family life and is a violation of Article 8 to which paragraph 2 is irrelevant.”⁵¹ The Council of Europe’s Parliamentary Assembly suggests that lawful residents in a country prior to establishment or restoration of the independence of that country should enjoy at least the same level of protection as long-term immigrants and, in particular, under no circumstances be expelled.⁵²

In addition, in some cases, long-term immigrants may not be integrated into the societies, especially if these people are located far away from society. Even in these cases, immigrants’ rights should be protected under Article 8. Ronen points out that “the question may be not only whether the individual would be deprived by his or her removal, but also whether the community would be deprived by that removal.”⁵³ Hence, states should take into account not only the needs of immigrants but also the needs of the

⁵⁰ Steinorth, Charlotte, “Üner v The Netherlands: *Expulsion of Long-term Immigrants* and the Right to Respect for Private and Family Life”, available at <http://hrlr.oxfordjournals.org/cgi/content/full/ngm043v1> Accessed on Data: 09/03/2008.

⁵¹ A. M. Connelly, “Problem of Interpretation of Article 8 of the European Convention Human Rights”, *The International and Comparative Law Quarterly*, Vol.35, No. 3 (Jul,1986), 590.

⁵² Parliamentary Assembly Recommendation 1504 (2001), Article 8. “Non-expulsion of long term immigrants” from <http://assembly.coe.int/documents/adoptedtext/ta01/erec1504.htm> Accessed on Data: 24/03/2009.

⁵³ Ronen, 48.

society. To what extent an immigrant is appropriate for that society is also important. In the case of *Üner v. The Netherlands*, the Grand Chamber of the European Court of Human Rights stated that “the totality of social ties between settled migrants and the community in which they are living constitute part of the concept of "private life" within the meaning of Article 8.”⁵⁴

There are two sides of the coin. If an immigrant immigrates to a country and lives there for a long time, has social and family ties there, then the immigrant will have several rights and these rights have to be protected by states. States are also under a positive obligation to protect immigrants' rights in their states from other possible attacks by ordinary people, which would lead to the violation of Article 8.

2.3 International Covenant on Civil and Political Rights (ICCPR)

The ICCPR forms part of the domestic legal system of Turkey, ROC and TRNC, thus its rules have to be taken into account while trying to address the issue of Turkish immigrants.

2.3.1 Article 17

Article 17⁵⁵ of the ICCPR protects people from arbitrary or unlawful interference in their family, privacy and home.

It should be underlined that there is no clear definition of the term “privacy” in Article 17 of the ICCPR. However a compromise definition can be made as freedom from unwarranted and unreasonable intrusions into activities that society recognizes as

⁵⁴ Charlotte.

⁵⁵ Article 17 states that “ 1.no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attack on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.” See <http://www2.ohchr.org/English/law/ccpr.htm> Accessed on Data: 12/04/09.

belonging to realm of individual autonomy.⁵⁶ The meaning of privacy has not been defined in any case yet so there is a question about it until which point the word “privacy” can be expanded.

On the other hand, Article 17 prohibits `unlawful` and `arbitrary` interference in someone's “privacy”, “family”, “home” and “correspondence”. This means that no interference can take place except as envisaged by the law. In order to make the decision to interfere in someone's rights, the decision must be made by the authority designated under the law, and on a case-by-case basis.⁵⁷

“Family” in the Article 17 of the ICCPR is interpreted as it covers formal relations, rather than of social ties.⁵⁸ In this way, it is different from the ECHR Article 8. In the case of *Winata v. Australia*, an Indonesian couple (Mr. Hendrick Winata and Ms. So Lan Li) immigrated to Australia and had a child named Barry. Barry grew up in Australia and is an Australian national. Expulsion of the parents was the decision of the state authorities in Australia. The Winata family tried every way to stay in Australia but their applications were denied by authorities. Hence, the Winata family would face with letting their 13 year-old child stay in Australia alone or force him to immigrate to Indonesia with them. Barry was fully integrated into the Australian society, had no cultural ties to Indonesia and did not speak either Chinese or Indonesian.⁵⁹ Because of these conditions, the Human Rights Committee decided that the expulsion of the family

⁵⁶ Sarah ,Joseph, Jenny, Schultz and Melissa, Castan, *The International Covenant on Civil and Political Rights, Cases, Materials and Commentary*,(USA:Oxford University Press,2004), 476-477

⁵⁷ Ibid. 481.

⁵⁸ Ronen, 48.

⁵⁹ *Winata v. Australia*, Communication No.930/2000, 26 July 2001,CCPR/C/72/D/930/2000, Para. 3.4. Full text available at http://www.bayefsky.com/html/120_australia930.php Accessed on Date: 19.11.2009.

from Australia would lead to an “interference” in family life⁶⁰ and would be a violation of Article 17 of the ICCPR.

In addition, the ICCPR does not limit the rights of an individual with any condition. In other words, it does not give any opportunity for the State to deviate from this rule. “The privacy guaranteed under Article 8 of the European Convention expressly permits states to limit the right to privacy, whereas the parallel privacy guarantee under Article 17 of the International Covenant does not.”⁶¹

States are under the obligation to protect people from any kind of interference by state authorities, natural or legal persons and states have to provide a remedy for the people to benefit from this right.⁶²

2.3.2 Article 13

Article 13⁶³ of the same Convention provides that an alien⁶⁴ lawfully in the territory of a state may be expelled from there only in pursuance of a decision reached in accordance with law, and aliens have the right to present arguments against their expulsion and to

⁶⁰ Ibid, para. 7.2.

⁶¹ Liz Heffernan, “A Comparative View of Individual Petition Procedures Under the European Convention on Human Rights and the International Covenant on Civil and Political Rights”, *Human Rights Quarterly*, Vol. 19, No.1 (Feb., 1997), 90.

⁶² Ibid.

⁶³ ICCPR Article 13 states that “An alien lawfully in the territory of a State party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.” See <http://www2.ohchr.org/English/law/ccpr.htm> Accessed on Data : 10 April 2007.

⁶⁴ “Alien” can be defined as: an individual who does not hold the nationality of the host country or the country of residence but who is bound by a link of nationality to the state from which he or she comes or who holds no nationality at all and is thus in a situation of statelessness. see United Nations, General Assembly, International Law Commission, Fifty-seventh session, by Special Reporter Mr. Maurice Kamto “Preliminary Report on the Expulsion of aliens” 2 June 2005, 4.

have their cases reviewed by competent state authorities. However, this review right may be abrogated where compelling reasons of national security are required.⁶⁵

In order to benefit from Article 13, an alien has to be legally residing in the territory of a state that is party to the Convention. National law concerning the requirements of the entry and stay must be taken into account in determining the scope of that protection. Illegal aliens or aliens who stay longer than their permits are not able to benefit from article 13.⁶⁶ For example in the case of *V.M.R.B v. Canada*, the Committee decided that the applicant could not benefit from the Article 13 since he was staying illegally in Canada.⁶⁷

The same principle was accepted by General Assembly Resolution 40/144 Article 7.⁶⁸ More importantly, the same article prohibits individual or collective expulsion of aliens on the ground of race, color, religion, culture, descent or national or ethnic origin. Hence, Article 7 of the General Assembly is more specific than Article 13 of the ICCPR.

2.4 Prohibition of Inhuman/degrading Treatment

Prohibition of inhuman or degrading treatment is an important rule the scope of which has been extended day by day. Many international documents prohibit this application.

⁶⁵ Joseph, Schultz and Castan, 377.

⁶⁶ Ibid. 379.

⁶⁷ See *V.M.R.B v. Canada*, Communication No: 236/1987, 18 July 1988, para. 6.3.

⁶⁸ Article 7 provides that “An alien lawfully in the territory of a state may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons why he or she should not be expelled and to have the case reviewed by, and be represented for the purpose before, the competent authority or person specially designated by the competent authority. Individual or collective expulsion of such aliens on ground of race, colour, religion, culture, descent or national or ethnic origin is prohibited.” Available at <http://www2.ohchr.org/english/law/individual.htm> Accessed on Date: 01.05.10.

One of the most important is Article 3 of the ECHR⁶⁹. It provides that “no one shall be subjected to torture or inhuman or degrading treatment or punishment.”

Inhuman treatment can be defined as a deliberate cruel act, which leaves the victim in extreme distress causing anguish and suffering⁷⁰ In addition, in the case of *Pretty v. UK*, degrading treatment was defined as something that ,“humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feeling of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance.”⁷¹

This right is not restricted with any condition under convention. It is an absolute right. Actually, the article does not mention the word “absolute” but it “has emerged from general human rights discourse and litigation before the Strasbourg supervisory organs.”⁷² However, in practice, there are certain limitations. In order to fall within the scope of Article 3, it must attain a minimum level of severity.⁷³

In order to determine inhumane treatment, five conditions are taken into consideration which are; the duration of the treatment, physical or mental effects, the sex, age and state of health of the victim.⁷⁴ Humiliation is the most important thing to be present in a case in order for it to be connected with Article 3. Moreover, it should contain severity. If an

⁶⁹ Other international documents that prohibit inhuman or degrading treatment are United Nations Convention Against Torture and Other Form of Cruel, Inhuman or Degrading Treatment or Punishment, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment.

⁷⁰ See

http://www.coehelp.org/file.php/8/resources/eng/training_materials/article_3_prohibition_of_torture_eng.ppt Accessed on Data: 22/03/09.

⁷¹ Goodwin and McAdam, 313

⁷² Michael K. Addo and Nicholas Grief, “Does article 3 of The European Convention on Human Rights Enshrine Absolute Rights?”, *European Journal of International Law* 9, (1998), 513.

⁷³ Ovey & White, 49.

⁷⁴ *Ibid.*

application does not lead to serious mental or physical suffering, then it is not within the scope of Article 3. In addition, if a person is expelled from one state to another where his or her life or liberty would be in danger, such an act of expulsion could constitute a violation of rights amounting to inhuman treatment.⁷⁵ For instance, in the case of *Conka v. Belgium*, the European Court of Human Rights decided that there was no violation of Article 3. Judge Mr. Velaers explained ECHR reason by pointing out that: “the applicants were in no danger of being subjected to torture or to inhumane or degrading treatment or punishment in their country of origin, Slovakia, after their expulsion.”⁷⁶ We can conclude that states are not only responsible for their acts regarding an individual’s right to protection under Article 3 but also they have to consider where the immigrants will be sent and whether these immigrants’ treatment might violate Article 3 or not.

Each state in the world has the right to set rules for their country and take some measures against foreigners, including immigrants. However, the treatment of the state should not be “degrading” or “inhuman”. In other words, it should not violate Article 3. “Extradition... which not explicitly referred to in the brief and general wording of Article 3, would plainly be contrary to the spirit and intention of the article.”⁷⁷ The Commission stated “unequivocally that the infliction of pain and suffering which is contrary to article 3 is unacceptable whoever were to inflict the punishment...”⁷⁸

Forcing immigrants to emigrate can be accepted as “degrading”/”inhumane” treatment since they will emigrate unwillingly and this application will make them feel humiliated.

⁷⁵ J.G.Merrills, A.H.Robertson, *Human Rigts in Europe* (Manchester: Manchester University Press, 2001), 43.

⁷⁶ Case of *Conka v. Belgium*, (Application No.51564/99) , 26.

⁷⁷ Alexander Orakhelashvili, “Restrictive Interpretation of Human Rights Treaties in the Recent Jurisprudence of the European Court of Human Rights”, *EJIL* (2003), VOL. 14 NO.3 P. 553.

⁷⁸ Addo and Grief, 512.

As rightly put by Duffy, treatment or punishment of an individual may be said to be degrading if it grossly humiliates him before others or drives him to act against his will or conscience.⁷⁹

According to Judges Meyer and Morenilla, expulsion of second-generation immigrants, born or raised from early age in the host state, constitutes inhuman treatment prohibited under Article 3.⁸⁰ Moreover, Judge Morenilla stated that; “the deportation of such ‘non-nationals’ may be expedient for a State which in this way rids itself of persons regarded as “undesirable”, but it is cruel and inhuman and clearly discriminatory in relation to “nationals” who find themselves in such circumstances.”⁸¹

In the *Tyrer case*, the European Court of Human Rights stated that the Convention is a living instrument and it should be interpreted in the light of present day conditions.⁸² In other words, it is not static and social and political developments should also be considered when a decision is taken.

As in Article 8, states are under positive obligation to provide suitable environment for all people to benefit from Article 3, if they are part of the convention. The Convention does not cover acts of states, which are not part of it. Moreover, according to Article 3, states are under responsibility to provide appropriate remedies for victims who stay

⁷⁹ P. J. Duffy, “Article 3 of the European Convention on Human Rights”, *The International and Comparative Law Quarterly*, Vol. 32, No. 2, (Apr.1983), 319.

⁸⁰ Judge de Meyer and Judge Morenilla in a partly dissenting opinion in *Nasri v. France* (1996) available at http://www.iussoftware.si/EUII/EUCHR/dokumenti/1995/07/CASE_OF_NASRI_v._FRANCE_13_07_1995.html Accessed on Data: 12.11.09.

⁸¹ Judge Morenilla in a partly dissenting opinion in *Nasri v. France*, *ibid*.

⁸² Case of *Tyrer v. The United Kingdom*, paragraph 31. 1978 see <http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/e4ca7ef017f8c045c1256849004787f5/b2044df2ab5b44e1c1256640004c2601?OpenDocument> Accessed on Data: 12/04/09.

under their jurisdiction.⁸³ Furthermore, collective expulsion of immigrants who share the same race might be interpreted as inhumane treatment since it is based upon being members of a particular race. “Discrimination based on race could, in certain circumstances, of itself amount to degrading treatment within the meaning of Article 3.”⁸⁴

However, in the *Indian Residents* case, the European Court of Human Rights decided that only racial discrimination in the entry of nationals will, and will not, amount to degrading treatment under Article 3.⁸⁵ Each case has to be examined separately before the Court to decide whether there is a violation of Article 3 or not.

In each immigrant’s case, if a person is to be expelled from the host state, her/his age, sex and particular conditions must be considered. Especially in the case of collective expulsion; its psychological effects has to be carefully calculated, “If the difference of treatment did indicate contempt or lack of respect for the personality of the applicants, that may meet the level of severity necessary to constitute degrading treatment.”⁸⁶ The reason they are to be expelled and the consequences of this action has to be calculated very carefully not to cause any additional violation of human rights.

If an immigrant, who has not committed a crime and wants to continue to live in the host country, he/she should have this right as a human being. Dian Antikson-Sanford suggests that the Court must strike a balance between state and community interest on the one hand and the rights of the individual on the other. Otherwise, it will lead to

⁸³ Orakhelashvili, 552.

⁸⁴ Duffy, 341.

⁸⁵ Ibid. 343.

⁸⁶ Ovey & White, 66.

violation of Article 3 of the ECHR since it means “inhumane/degrading treatment”. He underlines that cases where there is a violation of Article 3 will impose an absolute duty on states not to expel or extradite, regardless of National interest.⁸⁷

2.5 Prohibition of Collective Expulsion of Aliens

Article 4 of the ECHR Protocol 4 states that “collective expulsion of aliens is prohibited.” Some regional conventions also support the Article 4 of the ECHR Protocol 4; such as the American Convention on Human Rights⁸⁸ and the African Charter on Human and People`s Rights.⁸⁹

In the case of *Becker v. Denmark*, the European Court of Human Rights defined “collective expulsion of aliens” as; “any measure of the competent authorities compelling aliens as a group to leave the country, except where such a measure is taken after and on the basis of a reasonable and objective examination of the particular cases of each individual alien in the group”⁹⁰ On the other hand, removal of large number of aliens is possible if each case can be justified individually.⁹¹ For example, in 1975 a case came in front of the European Commission of Human Right on group expulsion of Vietnamese children. This was the first time a case related to expulsion of aliens came to the European Commission of Human Right. At the end, the Commission decided that these children were not expelled as a group. Each application was reviewed, as much as

⁸⁷ Sanford, 376-377.

⁸⁸Article 22(9) states that “the collective expulsion of aliens is prohibited”.

⁸⁹ Article 12 (5) states that “the mass expulsion of non-nationals shall be prohibited.” June 27, 1981.

⁹⁰ See *Becker v. Denmark* Application No. 7011/75 available at <http://www.unhcr.org/refworld/country,,COECOMMHR,,VNM,4562d8cf2,3ae6b7058,0.html> Accessed on Data: 11/03/09.

⁹¹Merrills and Robertson , 258.

practicable, separately, and on its merits.⁹² States, which extradite people, are under responsibility not to expel them to a country where their human rights might be violated. “If a state, by extraditing a person knowingly concurs in a violation of that person(‘s) fundamental human rights by another state, the first state is co-responsible for this infringement as a participator.”⁹³

At times states that are party to ECHR may expel immigrants by law. Even in these circumstances, the law, which protects human rights, should be considered to be of more importance since human rights treaties by their nature are superior to other treaties.⁹⁴ Under these protocols and court decisions, expulsion of aliens as a group is prohibited and they are protected under international law.

2.6 Prohibition of Discrimination

The Human Right Committee (HRC) interpreted “Discrimination” as simply any kind of distinction, exclusion, restriction or preference based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.⁹⁵

⁹²Diane Antikson Sanford, *European Human Rights Mechanism* in Joan M. Fitzpatrick (ed), *Human Rights Protection for Refugees, Asylum –Seekers, and Internally Displaced Persons : A Guide to International Mechanism and Procedures* (New York: Transnational Publishers,2002), 405.

⁹³ Christine Van den Wyngaert, “Applying the European Convention on Human Rights to Extradition: Opening Pandora’s Box?”, *The International and Comparative Law Quarterly* , Vol. 39, No. 4 (Oct., 1990) , 765.

⁹⁴ Ibid, 762.

⁹⁵“ Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 26 (1994)” in <http://www1.umn.edu/humanrts/gencomm/hrcom18.htm> Accessed on Data: 12/03/09.

Around the world, discrimination is prohibited by various international commissions and documents. Some of these are:

The Committee on the Elimination of Discrimination against Women; the Committee on the Elimination of Racial Discrimination and 1989 Convention on the Rights of the Child. In addition, General Human Rights treaties, such as the 1969 American Convention on Human Rights and the 1966 International Covenant on Civil and Political Rights contain important prohibitions on discrimination.⁹⁶

We can also add the United Nation Charter⁹⁷, Resolutions of General Assembly, the Universal Declaration of Human Rights and The European Convention on Human Rights to this list.

The non-discrimination principle is recognized as part of the customary international law. However, the principle of equality is not absolute. States may make some distinctions which should be reasonable and proportionate to a legal state objectively.⁹⁸ States may regulate acquisition of the nationality. If a state determines who its nationals are, and then proceeds to expel other persons, the second action, which is the expulsion of non-nationals, is not discrimination. For instance, in the issue of “settlers”⁹⁹, the question of discrimination arises since some people's nationalities are canceled because of their ethnic origin. Although in the texts of the solution plans, the name of targeted nationality was not mentioned, the main aim was to put certain limitations or restrictions on certain nationalities. For example, in the Annan Plan, there was a discussion about who would get the citizenship of the newly established state. The Annan plan held

⁹⁶ Sanford, 10.

⁹⁷ Especially article 55 and 56.

⁹⁸ Ian Brownlie, *Principles of Public International Law* (USA: Oxford University Press, 2003), 546.

⁹⁹ In Baltic States and East Timor.

different criteria, such as preparation of a list which would consist of 45.000 people who were not citizens of the 1960 Republic of Cyprus or their descendants. The creation of the list of 45.000 was interpreted as discrimination by some academics.¹⁰⁰ They argued that there had been no other state in the world, which used similar criteria. On the other hand, when we look at the Annan Plan, it does not mention any specific name for a certain nationality, so it does not include discriminatory approaches, but in reality, the general aim of the preparation of the list was to put certain limits on the presence of Turkish nationals in the island since their presence was seen as a threat by Greek Cypriots for different reasons. In other words, they constituted the core of the discussion. Ronen states that “there is no doubt that the political motivation for the legislation was ethnically oriented.”¹⁰¹

To sum up, states must be careful about their decisions related to “immigrants” since their authority is not unlimited. The rights of “immigrants” have to be protected as well.

2.7 Recent Developments

The issues of “expulsion of aliens” has started to be discussed more comparing to the past and support for the rights of “immigrants” is increasing day by day.

The rights of long-term immigrants and second generations have especially begun to be differentiated from criminals and short-term immigrants. A new idea has been developed that States should provide long-term immigrants with equal security and rights as much as possible. “Long-term residents should enjoy equality with citizens of the member

¹⁰⁰ See Hakan Yozcu, 12.05.08. “KKTC Göçmenler Derneği Gerçeği”, *Volkan newspaper*.

¹⁰¹ Ronen, 45.

States in a wide range...”¹⁰² Steinorth argues that there should be special treatment for long-term immigrants as a special category of aliens whose expulsion would require very weighty reasons. This reason is generally described as national security.¹⁰³

In the EU Council Directive 2003/109, Article 12 states that member states can make a decision to expel a long term resident based solely on where he/she constitutes an actual and sufficiently serious threat to public policy or public security. Moreover, in order to take a decision to expel a long term resident, the member state must examine certain factors: the duration of residence, age, possible consequences of this action for this person and its family and links between this person and the country.¹⁰⁴

States such as Iceland and Norway, which are members of the Council of Europe, made the decision to prohibit the expulsion of immigrants born in their State. Moreover, Belgium, France, Sweden, Portugal, Austria and Hungary “have adopted policies to the effect that immigrants who were born or raised in the host state are no more liable to expulsion than their nationals.”¹⁰⁵ Long-term residence status enjoys autonomous human right protection, independent from the family status and the existence of formal bonds.¹⁰⁶ Furthermore, the Council of Europe Parliamentary Assembly made the

¹⁰² EU Council Directive 2003/109/EC. Full text of the Council Directive available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0109:en:NOT> Accessed on Data: 12.11.09.

¹⁰³ Steinorth, Charlotte, “Üner v The Netherlands: Expulsion of Long-term Immigrants and the Right to Respect for Private and Family Life”, available in <http://hrlr.oxfordjournals.org/cgi/content/full/ngm043v1> Accessed on Data: 09/03/2008.

¹⁰⁴“Council Directive 2003/109/EC” Full text of the Council Directive available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0109:en:NOT> Accessed on Data: 12.11.09.

¹⁰⁵ Charlotte, Steinorth, “Üner v The Netherlands: Expulsion of Long-term Immigrants and the Right to Respect for Private and Family Life”, *Human Rights Law Review*, January 10, 2008, available at <http://hrlr.oxfordjournals.org/cgi/content/full/ngm043v1> Accessed on Data: 09/03/2008.

¹⁰⁶ Daniel Thym, “Respect for Private and Family Life Under Article 8 ECHR in Immigration Cases: A Human Right To Regularize Illegal Stay? “, *ICLQ*, vol. 57, January 2008, 93.

decision that “under no circumstances should expulsion be applied to people born or brought up in the host country or to under-age children.”¹⁰⁷ Moreover, the Council of Europe Parliamentary Assembly defines expulsion of long-term immigrants as a discriminatory sanction in its 1504 Recommendation Article 11.¹⁰⁸

When examining the recent developments, one can easily note that these protections generally focus on people socially integrated to the host country. It is interesting to see that long-term immigrants and second generations have close ties with their host countries and have lost ties with their home country. This is why the expulsion of such immigrants should be prohibited and their rights should be protected.

2.8 Application of International Law to Cyprus Issue:

The Turkish immigrants issue in TRNC has to be discussed particularly in regard to international law. In the case of possible expulsion of the some Turkish immigrants from the island, these laws need to be considered. Article 8 of the ECHR protects the right to respect for private and family life. In an expulsion case, the ties between immigrants and country must be calculated. Certainly this social tie between Turkish immigrants and Turkish Cypriot society exists, as immigrants have been living on the island for a long time. The case of second generations is of particular importance because having been born and raised on the island, they know Cyprus as their “home”. Expulsion of immigrants who have lived in North Cyprus for a long time or are second generation would certainly lead to a violation of Article 8. In addition, expulsion of any family member would lead to the violation of effective family life right. When any decision concerning immigrants is made, the needs of the Turkish Cypriot community must be considered as well as the rights of the Turkish immigrants. Hence, the position of the immigrants in the

¹⁰⁷ Parliamentary Assembly Recommendation 1504(2001) “Non-expulsion of long term immigrants” from <http://assembly.coe.int/documents/adoptedtext/ta01/erec1504.htm> Accessed on Data: 24/03/2009.

¹⁰⁸ Council of Europe Parliamentary Assembly, Recommendation 1504 (2001), “Non-expulsion of long term immigrants”, Article 11 ii.a, from <http://assembly.coe.int/documents/adoptedtext/ta01/erec1504.htm> Accessed on Data: 24/03/2009.

community and their positive effect to society must be calculated. In addition, according to Article 17 of the ICCPR, interference in family or private life can only be possible if it is carried out according to law. This would be a violation of the international rule if any expulsion from the island were not based on law. The case of expulsion in the TRNC will lead to a violation of the prohibition of inhumane/degrading treatment. Certainly, expulsion from the TRNC will lead to humiliation among others. On the other hand, states are under a positive obligation not to send immigrants to where their life and liberty would be in danger. This principle cannot be applied to the TRNC, since the life and liberty of immigrants would not be in danger in Turkey. Furthermore, the expulsion of immigrants collectively and on the basis of race will lead to a violation of international law. Each immigrant's case has to be taken separately by the court, which is very difficult. On the other hand, if this does not take place it will mean collective expulsion of the aliens, which is a violation of the ECHR Protocol 4. Lastly, in order to benefit from international law an immigrant must be legally in the host state. In the case of the TRNC, the Greek Cypriots support this idea. However, when we look at the Annan plan under article 12 of the Foundation agreement, which deals with past acts -judicial, legislative or executive- were accepted as valid regardless of the authority behind it. Hence, it is unlikely that Greek Cypriots will argue that the existence of Turkish immigrants on the island was illegal.

2.9 Conclusion

The rights of "immigrants" is a complicated issue. There is no absolute protection by the international law against states. However, we can say that protection of immigrants in the international arena is increasing day by day. This chapter attempts to underline the applicable rules of international law regarding the issue of immigrants. There are various rules of international law that protect rights of immigrants such as the ECHR Article 8, the ICCPR Article 13 and 17, Prohibition of Discrimination, Prohibition of Collective Expulsion, Prohibition of Inhuman/ Degrading Treatment and so on. These are the most applicable rules in cases pertaining to immigrants especially in European states.

Chapter 3

DIFFERENT PERSPECTIVES ON THE PRESENCE OF TURKISH IMMIGRANTS IN THE TRNC

3.1 Introduction

The Cyprus problem is a complicated issue which has not been solved since the late 1950s. One of the reasons why this problem could not be solved is its nature. It includes many sub-titles such as power sharing, territory and property related issues. One of the important dimensions of the Cyprus problem is the problem of Turkish immigrants.

Different terms have been used by various writers when referring to these people such as “settlers”, “illegal settlers”, “Turkish immigrants” and “mainland Turks”. The name used changes depending on the perspective of a particular scholar on the Cyprus issue.

Turkish immigrants in the TRNC have been seen as an obstacle before the settlement. Turkey and Turkish Cypriot authorities have always been accused of bringing Turkish nationals to the TRNC in order to change the demographic composition of the island,¹⁰⁹ that’s why it is very important to understand this problem. The Council of Europe underlined the same by stating “...the fact that such an artificial change in the

¹⁰⁹ Such a claim has recently been raised by Y. Omiru who is the head of Greek Assembly Defense Committee and caused a debate with Hasan Kemal who is the head of Turkish Grand National Assembly Defense Committee. Omiru accused Turkey of “bringing thousands of mainland Turks to the TRNC to change the composition of the island in order to make population destruction in a European state”. For detailed information see “Rum Parti Lideri ile Türkiyeli Milletvekili Prag’da Kavga Etti”, Kıbrıs, 27.02.09, 22.

demographic structure of the island could only delay the solution of the Cyprus problem, and characterize the situation as “anachronistic;...”¹¹⁰

There was no reliable data to have a clear picture about Turkish immigrants presence in the island and their numbers. The information given by the TRNC, ROC and International Reports on Turkish immigrants do not match with each other. This causes discussion based on subjective approaches. The U.K House of Commons Foreign Affairs Committee defines this fact as “it is clear that there is no reliable figure in the public domain for the number of people of Turkish mainland origin who have taken up residence in northern Cyprus since July 1974.”¹¹¹

Furthermore, the issue of Turkish immigrants is very sensitive in the sense that it is open to abuse for political reasons, thus it becomes a more complicated issue. Laakso Report¹¹² is a good example to understand how this issue is politicized. The Parliamentary Assembly of the Council of Europe asked Mr. Jaakko Laakso to prepare a report on the demographic conditions in Cyprus. He asked both side leaders to meet with him about demographic conditions of the northern Cyprus under the title of “Colonization by Turkish settlers of the occupied part of Cyprus”. However, this was rejected by Turkish Cypriot leadership because of its title. Turkish Cypriot side asked for change in the title. However, this was rejected by Mr. Laakso. Turkish Cypriots

¹¹⁰ Council of Europe ,Parliamentary Assembly, “ Colonisation by Turkish Settlers of the occupied part of Cyprus” 10 April 2000 ,available at <http://assembly.coe.int/main.asp?Link=/documents/-workingdocs/doc00/edoc8711.htm>. Accessed on Data: 12/09/2008. See also Cuco Report which states that “The issue of the settlers had become a major stumbling block to solving the Cypriot problem.” Para. 55, 8.

¹¹¹ House of Commons Foreign Affairs Committee, Cyprus, Second Report of Session 2004-2005 (Printed in 1 February 2005) , 63.

¹¹² Parliamentary Assembly Report,“Colonisation by Turkish Settlers of the Occupied Part of Cyprus” Doc 9799, 2 May 2003.

authorities rejected to meet with him by arguing that the reporter had come to a conclusion before he made proper research.

After having examined the subject the Rapporteur has decided not to modify the title,...this indicates that before having come to Cyprus and before having investigated the facts, Mr. Laakso had already formed his opinion, apparently based on preconceived ideas and views.¹¹³

Although Mr. Laakso did not meet with Turkish Cypriot authorities, he came to the conclusion that the settlers have outnumbered the indigenous Turkish Cypriot population and there is a hidden colonization of the north by Turkish nationals.¹¹⁴

The aim of this chapter is to explain the process of settlement of Turkish immigrants in the island and to analyze different perspectives on their presence in the TRNC.

3.2 The Circumstances in Cyprus Following the 1974 Turkish Military Intervention

Following the Turkish intervention¹¹⁵ in the island on July 20, 1974, Turkish and Turkish Cypriot forces took control of 34% of the island. After this intervention, the island has been divided into two zones as Turkish Cypriot majority in the north and Greek Cypriot majority in the south.

Some Turkish Cypriots stayed in the south and some Greek Cypriots in the north even after the Turkish intervention. A crisis erupted between Turkish Cypriots, and Greek

¹¹³ Dissenting Opinion of Mevlüt Çavuşoğlu to Mr. Jaakko Laakso Report on 1 November 2002, Appendix 6, 15.

¹¹⁴ Parliamentary Assembly Report, "Colonisation by Turkish Settlers of the Occupied Part of Cyprus" Doc 9799, 2 May 2003, 1.

¹¹⁵ Some writers describe the Turkish use of force as an "invasion" instead of "intervention". Writers who are using the term "invasion" mean that Turkey did not have any right to make military operation to Cyprus in 1974 and presence of Turkish troops in the island is -even today- illegal. Which term should be used? or which explanation is appropriate? The legality of 1974 operation is outside the scope of this thesis. Therefore, the term "intervention" will be used to describe the Turkish military operation in 1974.

Cypriot security forces. After this crises, on 2 August 1975, Denktash as the leader of the Turkish Cypriot community and Klerides as the leader of the Greek Cypriots community had a meeting and agreed on five issues. The most important one they agreed on was:

“The Turkish Cypriots at present in the south of the island will be allowed, if they want to do so, to proceed to north with their belongings under an organized program and with the assistance of UNFICYP. The Greek Cypriots at present in the north who at their own request and without having been subjected to any kind of pressure, wish to move to the south will be permitted to do so.”¹¹⁶

When we examine the literature, many Turkish writers explain these five issues as an agreement. These agreed issues are called “The Third Vienna Agreement/ Population Exchange Agreements”. This is the Turkish side interpretation of the issue. On the other hand, the same declaration is called as “Vienna III (Humanitarian) Agreement” by the Greek Cypriot side. In reality, there was no document signed by the leaders of the two communities. The two community leaders agreed on five issues and they were publicized. In other words, “this was a kind of gentlemen`s agreement between the interlocutors.”¹¹⁷ Moreover, there are different legal interpretations on the nature and meaning of these types of agreements between the two sides. For example, Hoffmeister argues that the agreements made between the Cypriot parties are not legally binding. He proposed three reasons to support this argument. First, these agreements are not expressing common will, second these agreements are not of international character and lastly they are not governed by international law. They are of bi-communal character.¹¹⁸

¹¹⁶ Murat Metin Hakkı, *Cyprus: Selected Treaties & Documents Volume I: Constitutional Issues*, (Lulu Enterprises, Inc., 2004) , 344.

¹¹⁷ Gürel and Özersay, 17, footnote 25.

¹¹⁸ Frank, Hoffmeister, *Legal Aspects of the Cyprus Problem Annan Plan and EU Accession (USA: Martinus Nijhoff Publishers, 2006)*, 70-71.

This argument shows us that there are different views on the agreed five issues in terms not only of their names but also of their legal nature.

After this declaration, many of Turkish Cypriots moved to the north as many of the Greek Cypriots moved to the south. Both Turkish Cypriot and Greek Cypriot displaced persons abandoned their immovable properties back such as their houses and lands.

3.3 Turkish Immigrants: How Did They Come to North Cyprus

Following the displacement of the Greek Cypriots to the south, there appeared vacancy in various fields in the north Cyprus. According to Turkish Cypriot authorities, due to the long time existence of war, there was a need to create a new order in the north. It was uncertain when and how the Cyprus problem would be solved. Hence, Turkish Cypriot authorities decided to encourage some Turkish nationals to come to north Cyprus in order to “reshape life” in the north. “Turkey and Turkish Cypriot administration initially facilitated and encouraged immigration of Turkish nationals from Turkey following the war.”¹¹⁹ It was made according to an “Agricultural Labour force Agreement”¹²⁰ by Turkish Cypriot leadership and Turkey under protocol 60 on 2 May 1974.¹²¹

In order to encourage people to come and settle in Cyprus, announcements were made by headmen in certain villages. In Turkey many people applied to come and settle in north Cyprus. These people came to Cyprus under the title of “the Agricultural Labor Force”. There were considerable of good advantages offered by the government to immigrants such as accommodation, land and equipment. It is interesting to note the

¹¹⁹ Hatay, Is..., 2.

¹²⁰ Hatice, Kurtulus & Sema, Purkish, “Turkiye`den Kuzey Kıbrıs”a Göç Dalgaları: Lefkoşanın Dışlanmış Göçmen –Enformel Emekçileri”, Toplum ve Bilim, Bahar, 112. Sayı, İletişim Yayınları, 2008, 5.

¹²¹The Demographic Composition of the northern Part of Cyprus, (Lefkosa: TipografArT Basım Yayın LTD, by IKME and BILBAN Socio-political Studies Institutes), 39.

circumstances described by a Turkish immigrants: “officials told us that Cyprus is a liar heaven. There is need for people to work. There are lots of empty land”¹²².

Along with the economical advantages, North Cyprus has attracted many Turkish nationals thanks to the similarities between the Turkish and Cypriot cultures. These people knew that they were coming to a country which has very close relations with their home country. In other words, it is a state which shares the same language, religion and there are lots of cultural similarities such as eating practices, dressing, hospitality, marriages and neighbor relations. All of these similar characteristics have attracted many people; and according to the last census in the TRNC, from 1975 till 1979, 11.925 people had immigrated to North Cyprus.¹²³ The number of people, who had arrived Cyprus in 1975, was more than this number but many of them had returned back to Turkey. According to Purkish and Kurtulus: 25% of the immigrants who had come between the years of 1975 and 1979, returned to Turkey.¹²⁴

The people who immigrated to north Cyprus were usually farmers, technical staff, skilled workers and also the families/relatives of these people. In addition, “some demobilize Turkish soldiers and families of the soldiers killed in 1974 military operation were encouraged to settle in the Northern part of the island.”¹²⁵ Another argument of the Turkish Cypriot authorities and Turkish authorities is that: some of these people, who came after 1974, were native Turkish Cypriots who had left the island during the ethnic conflict from 1960s till 1974. Lastly, there are some people particularly after 1990s who immigrated to north Cyprus for their own reasons such as education or other kind of

¹²² Refik, Yazici, immigrant from Turkey to Cyprus from Samsun. Interview made in April, 2008.

¹²³ Hatay, Is...,31.

¹²⁴ Kurtulus & Purkish, 6.

¹²⁵ Hatay, Settlers,... , 3.

economic and personal reasons. “Turkish nationals who currently hold the TRNC citizenship can be divided into four main groups, according to their status when they arrived in the TRNC: white-collar workers, technical staff and skilled workers, soldiers and their families, agricultural laborers and persons who migrated on individual basis.”¹²⁶

These people have generally migrated from the northern, southern and southeastern parts of Turkey.¹²⁷ To be more specific, they generally migrated from cities of Trabzon, Çarşamba, Samsun, Antalya, Mersin, Adana, Konya, Erzurum, Hatay and Muş. They generally used to live in villages. Immigrants had the right to select their location to live. In other words, state officials did not force them to live in particular areas. They have had the right to search and decide whether to stay in or return to any place that they wanted to live. The immigrants who did not like the conditions in north Cyprus returned to Turkey after 14 days visit around north Cyprus. Mete Hatay points out that “some people in these groups have passed away while others have returned to Turkey”.¹²⁸

Mostly these people settled in villages other than those of the native Turkish Cypriots. These villages were generally far away from the center. In other words, while native Turkish Cypriots moved to cities in the north, Turkish immigrants preferred to settle in the villages. The names of these villages are “immigrants” or “Türkiyeli” villages. Some of them are; Sadrazamköy, Kayalar, Geçitköy, Malatya, Kaplıca, Sipahi, Karpaz, Bahçeliköy, Gelincik, Güvercinlik, Aygün, Bafra, Esentepe, Gayretköy, Pamuklu, Kalecik, Büyük Konuk, Derince, Tuzluca, Mersinlik.

¹²⁶Mete, Hatay, Beyond Numbers An Inquiry into the Political Integration of the Turkish “Settlers” in Northern Cyprus, *PRIO Report 4/2005*, 10.

¹²⁷Gül İnanc, *Büyükçelçiler Anlatıyor Türk Diplomasisinde Kıbrıs (1970-1991)*,(İstanbul: Türkiye İş Bankası Kültür Yayınları,2007), 42.

¹²⁸ Hatay, Is ..., 32.

Turkish immigrants took houses and lands left abandoned following the 1974 military operation and the exchange of populations in 1975. They also obtained the citizenship of Turkish Federated State of Cyprus. Mete Hayat underlined that “during this period most Turkish nationals were granted citizenship almost immediately upon their arrival.”¹²⁹

On 3 August 1977, Turkish Federated State put a new law into force called as ITEM.¹³⁰ Main logic for the enactment of this law was to arrange places which were under the control of Turkish Federated State of Cyprus and the owners of these lands or buildings were not in the north. Hence, by this law, the newly established federation used the abandoned properties for the interest of the public. According to the same law article two, immigrants who had been encouraged by state to come and work in agricultural activities would get land to be able to carry out agricultural activities. In addition they would get animate and inanimate properties. In addition, families of people who died in the 1974 Turkish military intervention and people who attended the intervention and returned to the island had the right to get accommodation.¹³¹ According to the same law, people were not permitted to sell these lands or properties. In July 1982, the law was amended and distribution of land to immigrants was stopped. In addition, in 1995, the ITEM law was amended again and user of the property get the “ownership” and they had the right to sell property. This law is one of the most controversial issue today since, at that time, Turkish Cypriot authorities mainly allocated the properties of Greek Cypriot displaced persons to Turkish immigrants and families of soldiers. The flow of Turkish

¹²⁹ Hatay, *Beyond...*, 23.

¹³⁰ Law for Housing, Allocation of Land and Property of Equal Value. “Iskan, Topraklandırma ve Eşdeğer Mal Yasası.”

¹³¹ Iskan, Toraklandırma ve Eşdeğer Mal Yasası, 41/1997, 3 August 1977, available at <http://www.mahkemeler.net/mahkeme-web-t/cgi-bin/showyasa.asp?which-letter=İ&pagenumber=2>
Accessed on Data: 20.10.2008

nationals did not stop even after the end of the encouragement of Turkish leaders following 1974. The process is continuing even today.

From another perspective, some writers describe the process of Turkish immigrants settlement as “forcible transfer”. What they mean is Turkey and Turkish Cypriot authorities forced some of the Turks to settle in north Cyprus. Supporters of this idea generally focus on the result of this transfer and how it had happened by showing pictures of immigrants when they were arriving to north Cyprus by Turkish ships.¹³² Finally they are supporting the idea that the presence of these people is a violation of the 1949 Fourth Geneva Convention. They believe that all people who had emigrated from Turkey should be considered in the same manner. In other words, for them no distinction should be made between those settlers who were directly transferred or implemented by decision of the Turkish government, or those who moved voluntarily after 1974. This argument was supported by the International Court of Justice on 9 July 2004 in Wall Advisory opinion. These arguments and opposite arguments to them will be discussed under following titles in a detailed way.

3.4 Different Perspectives on Turkish Immigrants

3.4.1 Are They “immigrants” or “settlers”?

There is a big debate about the presence of Turkish immigrants in the TRNC. That’s why it is important to examine different perspectives on these persons.

For some writers, such as Palley and Zayas, they are “settlers”. This term has generally been used by Greek Cypriot writers and leaders. The reason why they are using this

¹³² Palley, j.1-2.

terminology instead of “immigrants” is related to their perception and interpretation regarding the events that have taken place following 1974.

“Settler” means, a person who is forced to migrate or encouraged to migrate by the state to another state (generally occupied land) to meet the needs of the state. In other words, in order to change the demographic composition of a country, occupying power may try to transfer its nationals to the occupied territory.¹³³ These people are called “settlers”. In the case of Cyprus, Greek Cypriot authorities and some writers argue that Turkey has brought these people in order to change the demographic structure of the island in the favor of Turkish Cypriots: “Turkey has maintained a policy of bringing in thousands of Anatolian colonists to settle in the occupied area, thus changing the demographic character of the island.”¹³⁴

On the other hand, Turkish authorities and some writers argue that they should be called “immigrants”.¹³⁵ For them, it is not appropriate to call these people “settlers” since the aim of Turkish authorities was not to change the demographic composition but to reshape the life in 1975 and to provide necessary factors for the establishment of a viable economy and order. When we look at the qualifications of these people, we can

¹³³For example, in the case of Palestine-Israel conflict many people, who settled in Palestine after the encouragement of the state of Israel, called as “settlers” to differentiate them from ordinary immigrants. There is a belief that the Israeli state settled these people in order to change the demographic composition of the region.

¹³⁴ Ministry of the Foreign Affairs of the Republic of Cyprus, “Illegal Demographic Changes” available in <http://www.mfa.gov.cy/moi/pio/pio.nsf/all/5abd64A4C8EEF8F7C2256D6D001F33> Accessed on Date: 05/24/2008.

¹³⁵ Some writers that call Turkish nationals as “immigrants” or as follower: Yılmaz Çolak, Identity and Citizenship Among Turkish Immigrants in Northern Cyprus (*Mirekoc Research Projects 2006-2007*), Ahmet, Rustemli, Biran , Mertcan and Orhan Ciftci, In- Group Favoritism Among Native and Immigrant Turkish Cypriots: Trait Evaluations of In-Group and Out-Group Targets, *The Journal of Social Psychology*; Feb 200;140,1, Wilson Social Sciences Abstract, Hatice, Kurtulus &Sema, Purkish, Turkiye`den Kuzey Kıbrıs`a Göç Dalgaları: Lefkoşanın Dışlanmış Göçmen –Enformel Emekçileri, *Toplum ve Bilim*, Bahar, 112. Sayı, 2008.

understand that they were brought for farming activities, as technical staff and skilled workers. Moreover, if this was done to change the demography, Turkish authorities should not have led immigrants to decide about their future, whether to stay in the island or to return to Turkey. Moreover, characteristics of these people, such as farmers or skilled workers, is another example showing that the aim of Turkish authorities was to find people who could meet the needs of the society in north Cyprus.

In addition, the immigration process has not stopped until today and many people have immigrated to Cyprus on individual basis. A person who immigrated independently can not be called “settler” since it does not match with the meaning of the term. In the case of Cyprus, it is not easy to differentiate between those who were encouraged by the state and who came as a result of their individual decision. However, there is a well known fact that the number of immigrants is more than that of “settlers”, if there any. In these vague conditions, it is really problematic to call Turkish nationals as “settlers”.

Hatice Kurtulus and Sema Purkish underline that after migration in Cyprus, as a result of the Vienna III agreement, there was a real need for qualified labor force in the north. The reason for this was that 18% of the population who lived as a whole with Greek Cypriots could not adapt the need for the labor force for the whole economy in the newly established federated state.¹³⁶ Moreover, the new economic system which was tried to be established was not recognized by the world, thus people around the world could not come to and be part of the economy of north of the island. Turkish citizens were seen as the only way of solution to meet the need for labor force. Before the division of the island, the public in the Republic of Cyprus had also been divided in

¹³⁶ Kurtulus & Purkish, 4.

working areas. For example, while Greek Cypriots had generally worked in industry production, the service industry, tourism and finance, Turkish Cypriots had worked in agriculture and bureaucracy.¹³⁷ It was more suitable to encourage Turkish nationals to settle down in north Cyprus.¹³⁸ Mr. Cuco states that, “In the light of events in 1974, I could accept that the Northern part of Cyprus, like other European countries had to call on Turkish migrant workers in order to overcome the shortage of manpower.”¹³⁹ On the other hand, we can say that there was another option for Turkish Cypriot authorities. They might have let Greek Cypriot people to come and settle in the north under their control and it might have been more suitable. However, this application might have brought about some ethnic tensions, and perhaps for this reason, Turkish Cypriot authorities did not prefer it.

The number of Turkish Cypriots was not enough to activate the economy while they were isolated by the world and when the solution would take place was unclear.¹⁴⁰ There has been a cease-fire for 35 years in the island. Turkey and Turkish Cypriot authorities did not accept the reality that they encouraged people to come and settle in north Cyprus. They prefer to keep this secret. They said that new comers were the people who had left the island during the ethnic tensions between the two communities. However, it was immediately realized by the Greek Cypriot leadership who were watching the behaviors of Turkish Cypriot leadership very carefully to accuse them and gain more support in the international arena. That’s why, this gap was used by Greek Cypriots and “because this information was known to be largely false, this claim undermines the

¹³⁷ Ibid. 3 footnote 6.

¹³⁸ Ibid. 6.

¹³⁹ Alfons Cuco, Parliamentary Assembly Report, “The demographic Structure of Cyprus” Doc 6589, 27 April 1992, 21 paragraph 109.

¹⁴⁰ The idea of Turkish leaders and Turkey has become true by the time, since 35 years Cyprus problem could not been solved.

credibility of any information Turkish Cypriot authorities supplied on the issue”.¹⁴¹ It may be argued that although Turkey did not intend to change demographic conditions in the island, it encouraged its own nationals to settle in Cyprus for the above mentioned reasons. However, since Turkey encouraged its own nationals to come and settle in north Cyprus, we might consider those people who came between the periods of 1975-1979 to be “settlers”. However, it should not be forgotten that even in this period some people who heard about this process and came to and settled in north Cyprus is a result of personal decision.¹⁴² According to 2006 the TRNC census, 11.925 people came to and settled in north Cyprus between the years of 1975-1979. The number of “settlers” is unclear because of the complexity of the issue but there are limited numbers of people who can be called “settlers”. There is lack of sources in the literature examining the intentions of the people who came and settled between the years of 1975-1979. So, there might be some “settlers” among people who immigrated to the island but their number is unknown. There exist some people who came to and settled in the island on individual bases. Personal decisions cannot be calculated in the number of settlers. Although some people can be accepted as settlers, it should be understood that none of these people had political motivation in deciding to settle in TRNC. They only had economic motivation. “...Despite the political intention of the authorities concerning this state facilitated migration to north Cyprus, settlers themselves had no political motivations.”¹⁴³

¹⁴¹ Hatay, Settlers, ... 2.

¹⁴² For example, Mehmet Türüt explains this process as “we hear that some people will be send to Cyprus and they will get land. I personally went other village to add my name to list because the announcement did not made by all chiefs. I convinced the chief to add my name also and I came. I try to convinced many of my relative to come with me to not be alone there. At first they reject it. Then I went alone Cyprus. I visit Cyprus for 14 days then I come back Turkey again. I explain the situation and I convinced some of my relatives to come and settled in Cyprus in the same village with me.” Today they are living in Sadrazamköy which is also known as one of immigrant villages Interview made on 5 January, 2005.

¹⁴³ Hatay, Settlers, ..., 4

Moreover, Y. Dinstein underlines that voluntary settlement and forcible population transfer should be differentiated from each other. She argued that “...to prevent a fundamental demographic change in the composition of the population of the occupied territory. Still, one should differentiate between the transfer of people –which is forbidden under article 49- and the voluntary settlement of nationals of the occupant, on an individual basis , in the occupied territory such settlement,...,is not necessarily illegitimate.”¹⁴⁴

However, in 2004, the International Court of Justice stated in an advisory opinion that “...policy and practices of settling parts of its population and new immigrants in [the occupied] territories” as a “flagrant violation” of the Fourth Geneva Convention.”¹⁴⁵Hence, the International Court of Justice did not make differentiation between those voluntary immigrants and state encouraged ones.¹⁴⁶ In addition, In a 1978 opinion, The Legal adviser to the United Nations Department wrote that; Paragraph 6(article 49(6) appears to apply its terms to any transfer by an occupying power of parts of its civilian population, whatever the objective and whether involuntary or voluntary.¹⁴⁷

After 1979, the flows of immigration have continued on the individual basis. These individual immigrants did not get citizenship, property and land after their arrival north

¹⁴⁴ Y. Dinstein, *The International Law of Belligerent Occupation and Human Rights*, 8 *Israel Year Book on Human Rights*, 1978 quoted in Kypros, Chrysostomides, *The Republic of Cyprus A Study in International Law* (London: Martin Nijhoff Publishers, 2000), 208.

¹⁴⁵ International Court of Justice Advisory Opinion, 9 July 2004, “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory”, 40.

¹⁴⁶ It should be underlined that this decision is an advisory decision and not binding. In addition, just four months ago UN Former Secretary General Kofi Annan put a solution plan on the table to solve Cyprus problem which included rights of the immigrants and giving citizenship rights to them. Therefore one should read this Advisory opinion in the light of established practice of the UN in Cyprus negotiations.

¹³² Jean, Pictet, *Commentary on the Fourth Geneva Convention*, p. 283 quoted in Kypros, Chrysostomides, *The Republic of Cyprus A Study in International Law* (London: Martin Nijhoff Publishers, 2000) , 203.

Cyprus. Hatay points out, “immigration after 1979 was no longer an official policy, but rather reflects people who came to Cyprus on their own initiative. This latter group did not receive properties or citizenship upon arrival, as had previously been the case.”¹⁴⁸

Some writers underline that it is not true to put all people who came from Turkey in the same basket. Hence, there are two types of people who emigrated from Turkey; first, people who came and settled by the encouragement of Turkish Cypriot leadership and Turkey and second, people who came and settled on personal bases. These two groups of people should not be confused with each other.¹⁴⁹ Hence, people who came to and settled in north Cyprus are different from each other in terms of timing, motivation etc...

According to results of the interview with Turkish immigrants “economic reasons were the major motives to leave Turkey. 51 percent of the participants declare that they have migrated to Cyprus because of economic reasons.”¹⁵⁰ In general, there is one name used for all people who immigrated from Turkey without looking at different motivations of them. Greek Cypriots use the name of “settlers” and Turkish authorities use the name of “immigrants”. It is a reality that there are two types of people which I explained above. However, it should be realized that the number of “immigrants” are more than that of “settlers”. Hence, if we want to give a common name to all Turks who came from Turkey and settled in north Cyprus, the term “Turkish immigrants” seems to be a more realistic one compared to “settlers” in the light of statistical information.

It is important to know the intention of the immigrants and how they come to island in order to define their name, have clear picture about the situation of the immigrants case and discuss the issue from different perspectives such as Geneva Convention, international law and etc. For

¹⁴⁸ Hatay, Is ..., 29.

¹⁴⁹ Hatay, Settlers...,2.

¹⁵⁰ Çolak,, 41.

example; if immigrants came to island by the encouragement of the state then we can call them as “settlers” but if they came on individual basis we should call them as “immigrants”. Hence in order to give true name and discuss the issue on proper way their intentions and motivations are important. On the other hand, it is very difficult to make true investigation and come true conclusion on the intention and motivation of people. This is not useful factor that can be used for who might state who not in the island. This is not an objective and true criteria. That’s why in the Annan plan period this is not used as criteria to decide who was going to get citizenship of the future united Republic. However, in the Annan plan residency year of immigrants took as criteria.

3.4.2 Confusing Numbers

One of the most important debates on Turkish immigrants is related to their numbers. Different sources provide different numbers and these numbers are not close to each other. The number of Turkish immigrants is important because they are the core of the discussion about the demographic composition of the TRNC.

For instance, according to the estimate of the Council of Europe; there are 115.000 Turkish settlers, while according to the ROC estimate there are around 160.000 settlers¹⁵¹, the number according to Laakso Report is 118.000 and according to Alfred de Zayas there are “more than 100.000 Turkish settlers.”¹⁵² On the other hand, according to Turkish Cypriot leadership their numbers are around 35.000.¹⁵³

These different numbers indicate that there is no data showing real numbers. After long discussions about their numbers, Turkish Cypriot authorities decided to have a clear

¹⁵¹“AIDE MEMOIRE: TURKISH SETTLEMENT OF OCCUPIED CYPRUS”
http://news.pseka.net/uploads/img/documents/PSEKA_Turkish_Settlement_Of_Occupied_Territories.doc
, Accessed on Data: 18.07.2006.

¹⁵² Alfred de Zayas, *The Cyprus Yearbook of International Relations 2006* (Power publishing, 2006), 173.

¹⁵³ Hatay, Is..., 11.

picture about their numbers and used 2006 demographic census results in order to get true conclusion in the TRNC. This census is a very comprehensive one.¹⁵⁴ Turkish Cypriot authorities made it clear that they would welcome any international monitoring. However, this did not take place. “The TRNC government argued that this was due to the international community’s general concern not to contravene the wishes of the Greek Cypriot government of the Republic of Cyprus, as the latter insisted that by implication such an act would amount to recognition of the TRNC.”¹⁵⁵

The results of the census were very important because it would shed light on the discussion about the number of Turkish immigrants. People who have come from Turkey can be put into five categories. This categorization was made on people who have Turkish citizenship and being part of de facto population of the TRNC. The first one is people who have obtained the TRNC citizenship as a result of naturalization. According to the last census, the number of these people is 27.333. 11.925 of these people declared that they came to and settled in north Cyprus before 1979.¹⁵⁶ “This figure differs by 3,425 from that provided in 2003 by the TRNC Minister of the Interior which showed that 15,350 people born in Turkey were granted citizenship between 1975 and 1979.”¹⁵⁷ It might be due to miscounting in the census and the reality is that some of Turkish immigrants have returned to Turkey.

The second group consists of migrant workers. “According to the agreement between Turkey and the TRNC dated 12 June 1991, the citizens of Turkey and the TRNC can

¹⁵⁴ Ibid. 27.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid, 31.

¹⁵⁷ Ibid.

travel between the two countries with their identification cards only.”¹⁵⁸ This application let more Turkish immigrants to come to and work in the TRNC. Especially, between the years of 2001-2006¹⁵⁹, the number of workers increased in the island due to the increase in the construction sector. According to the last census, there were 30.577 registered workers in the TRNC in December 2006. After the decrease in the construction sector, many workers returned to Turkey. These people were seasonal workers who came from Turkey to earn money. Generally, they did not have any intention to become citizens of the TRNC when they arrived. Immigrant workers' labor force was used in many economic sectors such as construction, hotels and restaurants, agriculture and so on.¹⁶⁰

Greek Cypriot leadership generally confused the people who have citizenship of the TRNC with other Turkish nationals who are in the TRNC but do not have citizenship. In other words, they look at the de facto population and draw the conclusion that the number of Turkish nationals is increasing. It is true that, especially in 2006, the number of Turkish nationals was increased in the island due to the increase in the construction sector. However, these people were not capable of influencing the politics in the TRNC since they were not citizens. The House of Commons Foreign Affairs Committee Second Report on Cyprus underlines the same reality by stating “the term which is widely used to refer to mainland Turks who live in Northern Cyprus is “settlers”, although many of them are migrant workers...”¹⁶¹

The third group includes university students. The TRNC has 7 universities and many Turkish citizens come to Cyprus to have their university education. According to the last

¹⁵⁸ Turkan, Ertuna, “Shaping Turkey's Immigration Policy”, *ISA Panel*, Chicago, 1 March 2007, 18.

¹⁵⁹ Hatay, Is...,36, table 4.

¹⁶⁰ Ibid, 37, table 5.

¹⁶¹ House of Commons Foreign Affairs Committee, Cyprus, Second Report of Session 2004-2005 (Printed in 1 February 2005) , 22.

census, there are 28.565¹⁶² students who have Turkish citizenship. These students do not have citizenship of the TRNC but they are part of the de-facto population. They will return to Turkey when they graduate. The fourth group includes Turkish army officers whose number is around 45000. This consists of soldiers and military officers. Military officers generally come to north Cyprus with their families and they also become part of the TRNC de facto population. In addition, soldiers become part of the de facto population during their off day. The last group includes instructors who came from Turkey to teach in universities and their number is around 159.¹⁶³ They are also part of the de facto population and they generally come to the TRNC with their families. There are very few instructors who have obtained the citizenship of the TRNC. They get the citizenship by naturalization process. Hence, when we look at the above figures, we can easily understand that people who saw Turkish nationals in the north Cyprus draw the conclusion that the number of Turkish immigrants is increasing and they are changing the demographic composition of the island. However, this is not an entirely correct analysis. It is true that in specific periods the number of Turkish immigrants increase in the island but this does not mean that they change the composition of the demography because they are not citizens of the TRNC. Workers, university students, soldiers and their families live in Cyprus for specific time periods and they return when they finish their work in the island. Hence they should not be considered to be a threat to the demographic composition of the island.

According to the last census results, there were 91,475¹⁶⁴ Turkish citizens in the TRNC which has 265,100 de facto population. If we accept the reality that there may be some

¹⁶² Hatay, Is ..., 35.

¹⁶³ Ibid, 37 table 5.

¹⁶⁴ 16.824 people who was born in Cyprus was excluded.

mistakes in the census, such as miscounting, we can assume that the number of Turkish immigrants in the island is around 95.000. It should not be forgotten that, among these 95.000 people, only 27.333 people have the TRNC citizenship and they can influence the politics in the TRNC.¹⁶⁵

There are 178,031 the TRNC citizens according to the last census. When we look at their birth places, we can draw the conclusion that 147,405 of them were born in Cyprus and 27,333 of them were born in Turkey. If we add the people who were born in Cyprus but both of their parents are from Turkey (16,824) to the above number, then we get 44.157. Moreover, if we add people one of whose parents is from Turkey (10,361), then we get the number of 54,518.

From these statistical data, it is clear that people who argue that there exist 100.000 or more “settlers” in the island are wrong. Even if we consider all people who have Turkish citizenship, including 27,185 people who were born in north Cyprus, we have the number of 54,518 which is far away from the above mentioned numbers. The most important mistake made by many academicians is that they fail to differentiate the five groups of people that were mentioned above. If we put all Turkish immigrants in the same group then we will draw an inaccurate conclusion.

Also, there is a strong support that the number of Turkish immigrants is more than the number of “native” Turkish Cypriots in the TRNC. According to the last census results, this argument is also incorrect. According to Mete Hatay's findings in the results of the TRNC 2006 census, there are 178,031 (69.5%) the TRNC citizens; 70,525 (27.5%)

¹⁶⁵ Hatay, Is.,31.

Turkish Republic (TR) citizens; and 8,088 (3.5%) other nationalities.¹⁶⁶ It should also be mentioned that there are some people whose families have immigrated from Turkey to north Cyprus, and they were born in north Cyprus and they got married in north Cyprus. In other words, the third generation of the immigrants' families. In 2006, the state planning organization asked people about the birth places of their mothers and fathers. They gave the answer that "both of their parents were born in north Cyprus", so both of their parents are "native" Turkish Cypriots. Hence, the number mentioned above may not be absolutely correct. However, the above figure is not going to be changed significantly by this fact.

For sure, there is a flow of Turkish immigrants to the TRNC but the numbers are exaggerated. All people who come from Turkey are considered to be "settlers" by many writers without taking their motivations and origins into consideration.

"The argument that the demographics of the North have been altered through immigration is hardly a groundless one, but the change is not as radical as has been claimed."¹⁶⁷ But of course, this does not change the fact that the socio-economic fabric of North Cyprus has been transformed mainly through immigration which is directly connected to the unrecognized status of Turkish Cypriot state.

Mete Hatay points out that;

I think it is worth emphasizing that in a united Cyprus with a projected population of over one million, 42,000 additional naturalized Turks who would constitute 3-4 per cent of the total population" (and of whom 16,000 were born in the island) should hardly be an impediment to solving a problem that has continued for more than four decades to the detriment of all Cypriots.¹⁶⁸

¹⁶⁶Ibid. 30.

¹⁶⁷ Ibid. 47.

¹⁶⁸ Ibid

It should be noted that the fight over numbers did not stop after the 2006 census conducted by the TRNC government. Some academicians underline that there is a need for conducting a new internationally-monitored population census on both sides of the island and it would certainly increase the confidence of both parties in each other and in its results.¹⁶⁹

Another argument of the Greek Cypriots was that, in the 1960 Treaty of Establishment, there is certain ratios for each community to give citizenship and if, today, the population of a community is inconsistent with this ratio, this will be illegal and should not be accepted.¹⁷⁰ Treaty of establishment Annex D section 4.7.c states that “...permanent residency in the Republic of Cyprus, exceeds the number required to maintain the ratio of 4 to 1 between the number of such persons and the numbers of persons who becomes members of the Turkish community, having been granted to the citizenship of the Republic of Cyprus under that sub-paragraph...”¹⁷¹ According to this treaty, the proportion of the citizenship has to be according to 4 to 1 ratio. In other words, if 5 persons would get the citizenship in the island 4 of them should be Greek Cypriots and 1 of them be Turkish Cypriot. However, it should be underlined that this is not suitable to any norm of international law. A state has to put certain conditions which should not be discriminatory and people who meet the requirements should be able to get it, and it should be universal. The state can not put limitations on birth ratio for example. Hence, trying to meet 4 to 1 ratio in the contemporary conditions is not practical and seems to be impossible. Both Greek Cypriot Community and Turkish

¹⁶⁹ See Erol, Kaymak, “Public Opinion in Two Level-Games: Negotiations in Cyprus”, presentation paper at the Annual Meeting of the International Studies Association, February, 2009, New York City, 18.

¹⁷⁰ Interview with Kudret Özersay who is a member of the Turkish Cypriot negotiation team, Interview made on 13.12.2009.

¹⁷¹ The 1960 Treaty of Establishment, Annex D, 4.7.C. 123.

Cypriot Community had immigrants, so this ratio was changed and it will continue to be changed.

3.4.3 Geneva Convention

One of the most important discussions about Turkish immigrants is whether their presence in the island is contrary to the Geneva Convention and whether Turkey violated it by encouraging her nationals. In this connection the following becomes relevant: “Is it possible to apply the Geneva Convention to 1974 Turkish military intervention?”

According to 1949 Fourth Geneva Convention article 49, “the occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies”.

Some writers argue that Turkey violated the Fourth Geneva Convention by bringing its nationals to north Cyprus. Here, there are two important conditions to discuss about Turkey and its application of this principle. The first one is the legal status of Turkey or Turkish forces in north Cyprus or legality of the Turkish military intervention. If we accept that Turkey has invaded Cyprus, so it is an occupying power, then it may be argued that Turkey violated 1949 Geneva Convention by encouraging its nationals to go to north Cyprus. For example, Kypros Chrysostomides, argues that Turkey committed a war crime because Turkish leaders carried their civilians to north Cyprus and Turkey violated 1949 Fourth Geneva Convention.¹⁷² However, there is another argument which states that Turkey is one of the Guarantor powers in the island and it has legitimate right to stay in the island according to 1960 Treaty of Guarantee. Hence, it is not true to call it an occupying power. Moreover, they identify Turkish military operation as an intervention and they argue that Turkey brought peace to both Turks and Greece by

¹⁷² Kypros, Chrysostomides, *The Republic of Cyprus A Study in International Law*(London: Martin Nijhoff Publishers, 2000), 203.

putting an end to the military coup d`etat in Cyprus.¹⁷³ Neither the UN nor any international court has issued opinion on 1974 Turkish military operation so it is not clear whether Turkish military operation is an invasion or an intervention. Without having clear picture about an issue, it is not possible to draw accurate conclusions.

The second discussion is about the applicability of Geneva Convention to the Turkish military intervention. Some writers may argue that the Fourth Geneva Convention is applicable in war conditions. Turkey intervened in the island and it was not technically a war, thus we can not apply the Fourth Geneva Convention to 1974 Turkish military intervention to Cyprus. However, when we look at the article two of the Geneva Convention, it explains the scope of the convention. It states that “the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.”¹⁷⁴ Hence, this convention can be applied to 1974 Turkish military intervention for two reasons. First, it was not a declared war but an international armed conflict. Here the international armed conflict rules should be applied, because there are three parties in the 1974 Turkish intervention. The Greek junta made a military coup d'etat in Cyprus. Turkey, by claiming its guarantor rights under 1960, intervened in the island. Hence, this is an international armed conflict which included foreign states such as Turkey and Greece. Secondly, it is recognized by the high contracting parties. Both Turkey and Greece are parties to 1949 Fourth Geneva Convention.

¹⁷³ Nedjadigil, 48.

¹⁷⁴ “Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949”

<http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e63bb/6fef854a3517b75ac125641e004a9e68>
Accessed on Data: 15 June 2009.

Moreover, if one party does not recognize 1949 Geneva Convention even in this case, principles of Geneva Convention can be applied since one party recognize the convention. In addition, the convention states that this convention can be applied to cases related to partial or total occupation even if it did not get any reaction. “The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.”¹⁷⁵ Pazarci, also mentions that there is no need to declare war in order to be part of international armed conflict. Partly or entire invasion of a country by another state means that it is in the scope of international armed conflict and the Geneva Convention 1949. He also underlines that the Article 2 second paragraph states that, in member states to Geneva Convention, in an invasion case, Geneva Convention has to be applied even if there is no military response to invasion. Moreover, according to the Third subparagraph of Article 2, “although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof. Former UN Secretary General Kofi Annan suggests that the solution plan should “strikes a fair balance between competing legitimate interests and individual human rights and respects the principle of bi-zonality and international law (including international human rights law and the fourth Geneva Convention).”¹⁷⁶

In the light of legal points discussed above, we can conclude that the Geneva Convention can be applied to 1974 Turkish military intervention for two reasons; first,

¹⁷⁵ Ibid.

¹⁷⁶ Security Council, Report of the Secretary-General on his mission of good offices in Cyprus, S/2003/398, 1 April 2003, para. 111, p.24.

1974 military intervention was an international armed conflict, and second, both Turkey and Greece were party to Geneva Convention.

There is no data showing how many people came to Cyprus individually and by the encouragement of the state. When we look at the advisor decision of ICJ, it does not make any differentiation between individual settlement and state encourage ones. Most probably, this is due to the lack of information about those who settled after the encouragement of the state and those who settled as a result of their individual decision. However, when we look at the practices of the UN in the case of Cyprus, the UN did not accept the demands of Greek Cypriot leadership that Turkish immigrants should not participate in the referenda. Moreover, in the Annan plan, the UN Secretary General accept that nearly all Turkish immigrants who had citizenship would get the citizenship of the future Republic. We can conclude through the UN practice that Turkish immigrants are part of the Turkish Cypriot community.¹⁷⁷

Without having a clear picture, it is not easy to discuss whether Turkey violated the convention or not.

3.4.4 Immigrants as “Soldiers”

According to Greek Cypriot leadership, one of the reasons for the settlement of Turkish immigrants in the island is to have an available army in the island. In other words, Turkey would have a trained army deployed in the island even if Turkish army withdraws. In the web page of the Ministry of the Foreign Affairs of Republic of Cyprus, it is stated that “a substantial proportion of the settlers are young Turkish males who have received Turkish Army training as conscripts. By implication even following

¹⁷⁷Kudret, Özersay, “Separate Simultaneous Referenda in Cyprus: Was it a “ Fact” or an “Illusion”?”, *Turkish Studies*, Vol. 6, No. 3, 370-399, September 2005, 390.

the official demilitarization of Cyprus, Turkey would, through the settlers, guarantee the presence of an army in waiting on an island situated within a stone's throw of its shores.”¹⁷⁸

It is important to note that many researches, including international documents such as Cuco Report, House of Commons Foreign Affairs Committee Second Report, state that Turkish immigrants preferred to come to Cyprus for economic reasons.

In addition, according to Turkish regulations, all male citizens over the age of 20 are obliged to perform the compulsory military service. This is not related to coming to Cyprus. Moreover, many people in Turkey are raised in patriarchal families, and in these families, the duty of the male members is to earn money. Hence, generally young men come to Cyprus to earn money. “The average age was 30 years, with a minimum age of 17 and maximum of 52 years. 20 percent were female while 80 percent were male.”¹⁷⁹

This seems like a prejudice against Turkish nationals. When we consider international reports, they accept that immigrants are generally poor people of Turkey who immigrated north Cyprus in search for better economic conditions. Moreover, there are some businessman who would like to make investment in the island for three main reasons. First, Cyprus has unused resources, second there is no real competition and third Cyprus is an important place which attracts many tourists all around the world. Hence, businessmen know that they can profit more in Cyprus compared to Turkey.

¹⁷⁸“ AIDE MEMOIRE: TURKISH SETTLEMENT OF OCCUPIED CYPRUS”

http://news.pseka.net/uploads/img/documents/PSEKA_Turkish_Settlement_Of_Occupied_Territories.doc, footnote 3, page 1, , Accessed on Data: 18.07.2006.

¹⁷⁹ Ozay, Mehmet, Mehmet, Tahiroglu, Fatma, Guven Lisanlier and Salih Katircioglu, “ Labor Mobility and Labor Market Convergence in Cyprus”, *Turkish Studies*, Vol. 8. No.1, 43-69, March 2007, 55.

In the light of the above discussion, it is not realistic to argue that these people are soldiers of Turkey waiting in the island. On the contrary, they are generally workers and farmers. It is obvious that this factual truth is deliberately presented by the Greek Cypriots authorities wrongly.

3.4.5 Different Cultures From Native Cypriots

Another criticism about Turkish immigrants is that they have a culture very different from Turkish Cypriots and they create disturbances among “native” Cypriots. Hence Turkish Cypriots see them as foreign elements.

In the Laakso Report, it is stated that “the settlers come mainly from the region of central Anatolia, one of the poorest region of Turkey. They have not at all or very low professional skills and their customs and traditions differ in a significant way from those in Cyprus. These differences are the main reason for the tensions and dissatisfaction of the “native” Turkish Cypriot population who tend to view them as a foreign element.”¹⁸⁰

This argument is generally proposed by Greek Cypriot leadership. According to Palley, Turkish Cypriots are unhappy with the existence of Turkish immigrants because they are changing the character of Cyprus, and turning the northern part in effect into other provinces of Turkey.¹⁸¹ On the other hand, there are two different perspectives in the TRNC. Some Turkish Cypriots saw them as inseparable part of their community, others are disturbed by their presence on the island¹⁸² and reluctant to embrace them as true Turkish Cypriots.¹⁸³ For instance, Mehmet Tekelioğlu, mentioned his dissatisfaction

¹⁸⁰ Laakso Report, 6, Paragraph 43.

¹⁸¹ Claire, Palley, *An International Relations Debacle The UN Secretary General `s Mission of Good Offices in Cyprus 1999-2004*, (USA: Hard Publishing, 2005), Appendix 3, 227.

¹⁸² See Yusuf, Suiçmez, “Avrupa Birliğine Yazılmış Garip Bir Mektup”, *StarKıbrıs*, 30.04.2008.

¹⁸³ An, Ahmet Cavit, *Kıbrıs Nereye Gidiyor (Quo Vadis Cyprus)*, Everest, Istanbul, June 2002, pp 318-327. Quoted in Mete Hatay, *Settlers, Soldiers, Students and “Slaves” The Complex Composition of the*

with Mr. Laakso statement on above argument. He mentioned that “this is an irrelevant and unsubstantiated argument. In each and every society, there are diverging views and opinions. But, if each diverging view is generalized for the whole society, it would be a mistake. Consequently, I do not think that this is the right approach to follow if one claims to prepare an objective report. It seems that this paragraph attempts to make a personal judgment rather than a reflection.”¹⁸⁴ In addition, Mete Hatay argues that “many left Turkey when they were very young; others were born on the island. The long duration of their presence on the island means that many today have only weak links with Turkey and tend to identify themselves as Turkish Cypriots.”¹⁸⁵

There are two very important factors influencing the negative views of Turkish Cypriots regarding Turkish immigrants. Firstly, people who immigrated to the north between the years of 1975-1979 are generally uneducated people. This creates a ground for the Turkish Cypriots to have prejudice against such Turkish immigrants. Secondly, as Mete Hatay rightly points out, there is a failure to distinguish between immigrants who are temporary residents and immigrants who are citizens of the TRNC.¹⁸⁶ It is a fact that workers are far from being integrated with native Cypriots. This shows them different from native Turkish Cypriots. They are predisposed to aggression and illegal acts. “...the recent arrivals from Turkey –many of them single men who come for seasonal work- are widely blamed for rising crime in the North.”¹⁸⁷ This affects the general image of all Turkish nationals in negative way. That’s why some Turkish Cypriots are against all people who came from Turkey. Moreover, it should not be forgotten that high level

Turkish Immigrants in Cyprus, (Conference Paper, Presented in Berlin, on 25–26 May 2007. “A Member State with a Divided Legal System”, 5.

¹⁸⁴ Laakso Report, Appendix 7, 18.

¹⁸⁵ Hatay, Beyond..., 5.

¹⁸⁶ Hatay, Settlers..., 7.

¹⁸⁷ “Turkish Settlers in Northern Cyprus” http://www.cyprus-conflict.net/www.cyprus-conflict.net/turkish_settlers.html Access of Data:23/05/2008.

of crime between Turkish immigrants is not related with Turkish nationality, it is related with being immigrants.¹⁸⁸

Especially after the ‘guest’ worker immigrants’ number increased in the island, native Cypriots’ behavior started to change against all immigrants. “According to SIT¹⁸⁹, the classification of the social world as “us” (in-group) or “them” (out-groups) results in discriminatory behavior and negative attitudes toward out-groups members.”¹⁹⁰ In north Cyprus, Turkish immigrants are classified as out-group members. Increasing number of ‘guest’ workers have been understood as a threat to the “Cypriotness” by “native” Cypriots who have started to think that they would become a minority in their own country. Mr. Cuco mentions the same point by stating that, “the leaders of the Turkish-Cypriot opposition were also worried about the presence of the settlers, especially as the emigration of Turkish Cypriots meant that this Turkish presence might lead to the loss of identity of the Turkish-Cypriot community as such.”¹⁹¹

After the immigration process from Turkey to Cyprus, many people settled in villages different from those of Turkish Cypriots. As it is mentioned above, the low level of education among Turkish immigrants has become the major difference between Turkish immigrants and Turkish Cypriots. For this reason, the working area is also divided between Turkish immigrants and Turkish Cypriots. In addition, Erol Kaymak and Hannes Lacher rightly pointed out that “among these differences, diverging attitudes about the role of religion figure strongly. It should be noted that there was also an increasing differentiation of occupational roles; whereas settlers supplemented the

¹⁸⁸ Yenidüzen newspaper, Suçlu Türkiyeli Değil Göçmen Olandır, 22/12/2008.

¹⁸⁹ Social Identity Theory.

¹⁹⁰ Ahmet, Rustemli, Biran , Mertcan and Orhan Ciftci, In- Group Favoritism Among Native and Immigrant Turkish Cypriots: Trait Evaluations of In-Group and Out-Group Targets, *The Journal of Social Psychology*; Feb 200;140,1, Wilson Social Sciences Abstracts Pls Text, 26.

¹⁹¹ Cuco Report, para. 51, 7.

relatively thin population for the sake of agricultural production, Turkish Cypriots found employment in the public sector.”¹⁹²

The second generation of Turkish immigrants has been capable of having better relations with Turkish Cypriots despite their upper level of education. Moreover, the census results show that the number of marriages between Turkish Cypriots and Turkish immigrants is increasing day by day. According to the last census results, there are 10,361 children who were born from marriages between Turkish Cypriots and Turkish immigrants. In addition, when Turkish immigrants have close relations with “native” Turkish Cypriots, they start to behave in the same way as “native” Turkish Cypriots. For example, in the 2004 Referendum, Turkish immigrants voted in the same way as Turkish Cypriots did, where they have close relations. Christophorou pointed out that “while settlers from Turkey living in isolated areas were less likely to vote ‘yes’, attitudes and political behavior were different in areas where settlers had frequent contact with Turkish Cypriots or lived together in mixed communities. In these cases, their vote did not differ much from that of the Turkish Cypriots.”¹⁹³

It can be argued that, the extent of relations between Turkish immigrants and Turkish Cypriots will increase through marriages and internal migration process in north Cyprus.¹⁹⁴ It should be noted that, with some important differences in the practice of culture, there are lots of common practices between two groups and thus the relations

¹⁹² Hannes, Lacher and Erol, Kaymak, “Transforming Identities: Beyond the Politics of Non-Settlement in North Cyprus”, *Mediterranean Politics*, Vol. 10, No. 2, 147–166, July 2005, supra note 21, 163.

¹⁹³ Christophoros, Christophorou, “The Vote for a United Cyprus Deepens Divisions: The 24 April 2004 Referenda in Cyprus”, *South European Society & Politics*, Vol. 10, No. 1, April 2005, 102.

¹⁹⁴ Due to change in the TRNC law (ITEM Law) Turkish immigrants got the rights to sell their properties since 1995. This led to an important migration process in North Cyprus especially by Turkish immigrants. This internal migration might cause high level of integration between Turkish immigrants and Turkish Cypriots in near future.

between Turkish immigrants and Turkish Cypriots cannot be interpreted as two different cultures. Moreover, workers and settled immigrants should not be confused. While settled people see the TRNC as their home, workers generally see it as a temporary place to earn money. Certainly, the behaviors of these two different mentalities differ from each other.

3.4.6 Right of Return and Right to Property

After 1975 Vienna III Agreement, many Turkish Cypriots and Greek Cypriots were displaced. “According to official Greek Cypriot sources, 142,000 Greek Cypriots (close to 30% of the entire Greek Cypriots community at that time) were displaced from the northern to the southern part of the island; and, according to official Turkish Cypriot sources, 45,000 Turkish Cypriots (close to 40% of the entire Turkish Cypriots community at that time) relocated from the south to the north.”¹⁹⁵ There is an argument about whether these people and their descendants should return to their homes and places of origin.

As mentioned above, the abandoned properties have been allocated to Turkish immigrants when they arrive to Cyprus. Many of the properties were the properties of Greek Cypriots. Hence, there are two different arguments today on the right to property and return. Greek Cypriot side argues that the presence of Turkish immigrants is the most important obstacle to the right of return and right to property of the Greek Cypriot refugees or displaced people. Some writers underline that the right of return and property is recognized by many international agreements. Zachariades mentioned that the refugees' right of return is understood, not merely returning to one's country but also, to one home and international community recognize this right as a free standing

¹⁹⁵ Ayla Gurel and Kudret Özersay, “The Politics of Property in Cyprus Conflict Appeals to ‘Bizonality’ and ‘Human Rights’ by the Two Cypriot Communities”, *PRIO* Report 3/2006, 3.

autonomous right in and of itself.¹⁹⁶ However, this is a debatable issue and several writers argue just the opposite.¹⁹⁷ For instance, Benvenisti argue that there is no right of return for individuals.¹⁹⁸

On the other hand, Turkish Cypriot leadership argue that in 1977 and 1979, bi-zonality was accepted by the leaders of the two sides, so the right of return should be applied in a restricted way in Cyprus because of its special conditions. Moreover, Turkish Cypriot leadership demanded that the Property issue compensation and global exchange should be the basic parameters to solve the issue until 2004. It implies the exchange of Turkish Cypriots' properties in the south and Greek Cypriots' properties in the north. Compensation will be paid if necessary.¹⁹⁹

Today, Turkish Cypriot authorities take Annan plan as a criterion for negotiations, which means that for the property issue they demand a combination of compensation, exchange and restitution. However, Greek Cypriots demand that “it should be asked to the former owner” and they demand this according to the Pinherio Principles.²⁰⁰ The former UN Secretary General explained opposite arguments of two community leaders by pointing out;

Greek Cypriot wishes for displaced people to be able to return to their homes under Greek Cypriot administration. The Turkish Cypriot side spoke of only the most minor adjustments along the buffer zone, citing in particular the passage of 30 years, during which people have settled down, and putting forward long lists of criteria effectively ruling out any substantial transfer of territory. The Greek

¹⁹⁶ Michael A. Zachariades, “Transplanted Populations and the Problems Caused: Cyprus”, September 2002, 27. available at <http://www.aunitedcyprus.com/> Accessed on Data: 04/05/08.

¹⁹⁷ For example in 2004, UN did not prepare a plan which including full return of the refugees in Cyprus. It included partly return of refugees.

¹⁹⁸ See Eyal Benvenisti, *The Settlement of Refugee Claims in Peace Agreements*, unpublished legal report provided by the advisor of the thesis, 2009.

¹⁹⁹ Necati Munur Ertekun, *Inter Communal Talks and the Cyprus Problem* (Nicosia: Turkish Federated State of Cyprus State Printing Office, 1977), 30.

²⁰⁰ Kudret, Özersay, “Kıbrıs Müzakerelerinde Son Durum”, Presentation held in EMU, 16.12.09.

Cypriots, citing international human rights law, the principles of the (European Union) *acquis communautaire*, the realities of the modern world, and the need for the settlement to be perceived as just if it is to be durable, wished to see a settlement based on freedom of movement, freedom of settlement and the right of displaced people to return to their homes. The Turkish Cypriots argued that the distrust between the two sides, the need for security, the realities on the island, the numerical and economic disparities between the two sides, and the principle of bi-zonality meant that property claims should be liquidated by a global exchange and compensation scheme and that freedom of movement and residence should be strictly controlled.²⁰¹

According to several writers, the right of return and property is widely recognized and it is accepted as part of customary law. The Universal Declaration of Human Rights, 1966 Covenant on Civil and Political Rights are some of them which include this right. On the other hand, Stig Jagerskiold argues that the Article 12(4) of the 1966 Covenant on Civil and Political Rights and Article 13(2) of the Universal Declaration of Human Rights do not intend to support the right of return. This right is intended to apply to individuals asserting an individual right.²⁰² Moreover, some writers argue that the original owners of the property can only have expectation to get back to their properties which depends on peace agreements. Hence, it is not an absolute right but an expectation. “The original owners holding nothing more than the expectation of getting their property back, an expectation that is subject to the arrangements made when peace is concluded.”²⁰³ In addition, Benvenisti argues that “the violation of the right to property – which is not mentioned in the general human rights covenants of 1966, and covered (with significant limitations) only in a Protocol to the ECHR – certainly cannot be considered a violation

²⁰¹ Report of Secretary General on His Mission of Good Offices in Cyprus, 1 April 2003, S/2003/398, Par. 21-22.

²⁰² Eyal, Benvenisti, “The Right of Return in International Law: An Israeli Perspective”, (Presentation paper at the Stocktaking Conference on Palestinian Refugees Research in Canada, June 17-20, 2003), 5.

²⁰³ Eyal Benvenisti, and Eyal, Zamir, “Private Claims to Property Rights in the Future Israeli-Palestinian Settlement”, *The American Journal of International Law*, vol. 89, No. 2.(April, 1995), 303.

of a jus cogens norm.”²⁰⁴ Moreover, he stated that “the selfish desire to limit refugee flow into their countries, was the driving force behind the effort to repatriate refugees often against their will. But...this practice did not lead to the recognition of an individual right to return; at most it led to the recognition of state obligation toward other states to prevent the externality that is the flow of unwelcomed individuals”²⁰⁵ Hence, according to him, the right of return is not a right created in the favor of individual. It creates a responsibility for states to protect other states from unwelcomed immigrants.

Another argument of the Greek Cypriot authorities was that in order to claim the right of return and property, Turkish immigrants should be repatriated to Turkey. This was not accepted by Turkish Cypriot authorities by arguing that Turkish immigrants have also become a part of the Turkish Cypriot community through their long existence in the island. The same argument was supported by the Secretary General while he refused Papadapulos' demand that Turkish immigrants should not participate in the 2004 referenda²⁰⁶ since they were not part of the Turkish Cypriot community. However, on March 22, 2004, citizens of the TRNC who were registered as electors in the electoral list of the December 2003 general elections of the country were defined as eligible to vote in the referendum.²⁰⁷ Hence, Turkish immigrants as participators in the 2004 referenda were accepted as part of Turkish Cypriots. By attending the referenda and accepting the result of the referenda if it became valid, both Greek Cypriots and international community recognized their existence in the island as legal. After the

²⁰⁴ Eyal Benvenisti, *The Settlement of Refugee Claims in Peace Agreements*, unpublished legal report provided by the advisor of the thesis, 2009, 29-30.

²⁰⁵ *Ibid.* p. 64

²⁰⁶ For Papadapulos letter to Secretary General see Claire, Palley, *An International Relations Debacle The UN Secretary General's Mission of Good Offices in Cyprus 1999-2004*, (USA: Hard Publishing, 2005), Appendix 3, 265-269.

²⁰⁷ Özersay, *Separate...*, 389.

recognition of this right, it is not realistic to demand their repatriation. Turkish immigrants were accepted as part of the Turkish Cypriot community and this became the practice of the UN. It means that, after this time, any referendum without Turkish immigrants or a state which is not accepting Turkish immigrants as citizens of that state can not be accepted by Turkish Cypriot leadership. The Annan plan created a new dimension for the rights of Turkish immigrants.²⁰⁸

Furthermore, the Secretary General stated that “the fact that the events in Cyprus happened 30 to 40 years ago and that the displaced people (roughly half of the Turkish Cypriots and a third of the Greek Cypriots) have had to rebuild their lives and their economies during this time.”²⁰⁹ Michael R. Fischbach suggests that, even in the case of Palestine refugees problem, the United Nations focused on compensation and repatriation of “settlers”, however, at the end they focused on compensation instead of repatriation.²¹⁰ In addition, he points out that “repatriation was not feasible and refugee compensation must be in lieu of repatriation.”²¹¹

In Cyprus too, realities should be taken into account and the right of property should be solved by mainly compensation. There are two important reasons for that, first, the number of people who are going to be affected by the property issue is increased by the time. “With time, the number of individuals involved continues to multiply, as properties are transferred or change hands through inheritance or sale, or are transformed through

²⁰⁸ Interview with Kudret Özersay who is a member of the Turkish Cypriot negotiation team, Interview made on 13.12.2009.

²⁰⁹ Report of Secretary General on His Mission of Good Offices in Cyprus, 1 April 2003, S/2003/398, Par. 21-22.

²¹⁰ Michael, R. Fischbach, “The United States and Palestinian Refugees Property Compensation”, *Journal of Palestine Studies XXXI*, no. 2 (Winter 2002), 34.

²¹¹ *Ibid.* 36.

development.”²¹² Second, “history shows that in no case of massive relocation-either in accordance with an agreed plan or as a result of the horrors of war-have the refugees regained the property they left behind.”²¹³ Today we have the same conditions in Cyprus problem, thus both community leaders should focus on world practices. Compensation is the most suitable solution plan to solve the right of property issue in Cyprus.

Moreover, the right of return can be limited by converging the opposite arguments of the leaders of the two respective sides. There may be restrictions to the right of property/settlement. Leaders of both sides accepted that the Cyprus problem will be solved by the bi-zonality and this was accepted in high level agreements. Hence, Turkish Cypriots should have the “clear majority” of the land in the north. This is a result of the bi-zonality.²¹⁴

Furthermore, although there is no serious problem between communities after the opening of the crossing points,²¹⁵ this may not continue and there may be serious problems following comprehensive settlement. For example, there are 45.000 Turkish soldiers in the island whose presence is a real threat for Greek Cypriots. Moreover, there is no power sharing between communities before the settlement. Hence, it is not realistic to argue that everything will be same in the future Republic particularly with the absence of above conditions. Someone may argue that the tension between communities might increase in future Republic due to possible changes in the conditions.

²¹² Gürel and Özersay, 2.

²¹³ Benevisti, and Zamir, 324.

²¹⁴ Kudret, Özersay, “Kıbrıs Müzakerelerinde Son Durum” presentation held in EMU, 16.12.09.

²¹⁵ There is an exception. Although all Greek Cypriot immigrants or natives can visit North Cyprus, Turkish immigrants cannot pass to the south unless they are married with a native Turkish Cypriot.

3.4.7 The Possibility of Turkish Intervention

One of the arguments of Greek Cypriot leadership is that, through the existence of the Turkish immigrants, Turkey may intervene in the island by claiming that Turkey will protect its nationals and it can have influence on the future Republic.

A similar argument is mentioned by the Cuco Report by stating that many of the “settlers” were transferred to Cyprus as the result of a decision of the Turkish authorities and they feel indebted for their present situation. They are particularly sensitive to signals from the Turkish authorities, especially at election times.²¹⁶ Hence, this will mean that Turkey will have direct influence over the united Cyprus by the existence of Turkish immigrants. In addition, Greek Cypriots are afraid of the possibility of ethnic clash in the future Republic; Turkey will use “immigrants” as a pretext to intervene in the island. On the other hand, “it is paradoxically weak as a justification for the expulsion of the Turkish settlers. Even if all mainland Turks leave the island, there is still a substantial population – Turkish Cypriots that Turkey regards as its kin and claims to protect them.”²¹⁷

Whether immigrants will be expelled from the island or not Turkey have always had and will have close relations with Turkish Cypriots. The close relations between Turkish Cypriots and Turkey have been existing for a long time. Hence, the above arguments are meaningless in this sense.

²¹⁶ Cuco Report, Para. 93.

²¹⁷ Yael, Ronen, Status of Settlers Implemented by Illegal Regimes Under International Law, Research Paper No. 11-08, September 2008, 60.

3.5 Conclusion

In this chapter, I analyzed different and contradicting perspectives on Turkish immigrants. In addition, I tried to demonstrate that it is so difficult to provide clear data on Turkish immigrants.

The presence of Turkish immigrants in the island is an old and complicated issue. Their presence, motivations and conditions differ from each other. There is a big discussion about their presence, motivations and aims. While for some writers they are “settlers”, some others argue that they are immigrants. The appropriate term to be used for these persons, their aims, cultures are discussed above under different sub titles.

When an issue is suitable to be used for political aims, it becomes more complicated. The issue of Turkish immigrants is a political issue too. For this reason, it is very difficult to have a clear picture on this matter.

Chapter 4

PROVISIONS ON TURKISH IMMIGRANTS IN UN SETTLEMENT PLANS: A COMPARATIVE ANALYSIS WITH OTHER CASES AROUND THE WORLD

4.1 Introduction

The problem of Turkish immigrants has been a constantly debated topic for many years and it is one of the most important issues in the ongoing negotiations related to the Cyprus problem. It is interesting to see that the issue of Turkish immigrants had not been brought to the negotiation table until the 2002 Annan Plan, though there were previous attempts to solve the Cyprus problem and one of those plans was ‘Gali Set of Ideas’. It is with the Annan Plan that all relevant parties to the Turkish settlement problem had started to be discussed for the future status of Turkish immigrants in the island.

In this chapter, I will try to analyze and explain the Annan plan regarding the settlement procedures within the plan and I will then look at other settlement problems in the world which have similar aspects to the Cyprus problem such as Rhodesia, Palestine, East Timor and Estonia. The Annan Plan was of importance in terms of solving the issue of Turkish immigrants with its all dimensions such as property and citizenship as it has been the only plan which emphasized this problem. Moreover, different examples around the world will be explained and analyzed. In order to provide helpful data for the

solution of the problem such practices will be taken as examples. It is obvious that, if Turkish immigrant problem is solved in Cyprus it would be an example to the above mentioned cases and to other similar problems. Hence, the solution of this issue in Cyprus is important not only for the parties related to the Cyprus problem but also for other states which have similar problems.

4.2 UN Settlement Plans and Provisions on Turkish Immigrants

4.2.1 General Information

The problem of Turkish immigrants has been in the agenda of the United Nation for a long time. The UN always seeks ways to solve international conflicts in the world; and the Cyprus problem is one of them. Since the beginning of the Cyprus problem, the UN has encouraged both sides to solve the problem. Until today, the UN declared numerous resolutions and reports about the Cyprus problem including the settlement problem. The UN General Assembly Resolution 3395, on 20th November 1975, states “urges all parties to refrain from unilateral action in contravention of its resolution 3212 (XXIX), including changes in the demographic structure of Cyprus.”²¹⁸ Moreover, the same argument was supported in the UN General Assembly 37/253 Resolution which states “deploring all unilateral actions that change the demographic structure of Cyprus to promote faiths accomplish.”²¹⁹

The Council of Europe Parliamentary Assembly Report, 2 May 2003, pointed to a change in the structure of the North and the reporter arrived at the conclusion that “it is well established fact that the demographic structure of the island has been continuously modified since the de facto partition of the island in 1974 as a result of the deliberate

²¹⁸UN General Assembly Resolution 3395(xxx), 20th November 1975, available at <http://www.un.int/cyprus/Res3395GA.htm> Accessed on Data:12/11/08.

²¹⁹UN General Assembly 37/253 Resolution , available at <http://www.un.int/cyprus/Res37253GA.htm>

politics of the Turkish Cypriot administration and Turkey.”²²⁰ Same Report of the Assembly called Turkey and Turkish authorities stop the process of colonization by Turkish settlers²²¹. These reports demonstrate that the Council of Europe is aware of the debate about Turkish immigrants between parties and tries to give recommendations to solve it such as creating international funds to support the voluntary return of Turkish immigrants to Turkey.²²²

The UN always tried to solve the Cyprus problem and it has proposed plans regarding this issue and the most important one was the 2004 Annan Plan. The Annan Plan has been the only comprehensive solution plan for the Cyprus problem, and thus, it is unique. The Annan plan was prepared by UN former General Secretary Kofi Annan who gave his name to the plan. Kofi Annan tried to find negotiable points between two communities' opposing arguments. This plan was put in referenda in both sides of the island. According to Sözen and Çarkoğlu, this was the most important election in the history of the Republic since the division of the island in 1974. Approximately 140000 voters casted their votes in order to resolve the 30 years long bitter conflict.²²³ The Annan plan was supposed to establish the loose bi-zonal federation, including the two constituent states.

This solution plan was put into separate referenda in south and north Cyprus on 24 April, 2004. The Annan plan was rejected by Greek Cypriots with 75.8 percent and it

²²⁰Parliamnetary Assembly Report, “Colonisation by Turkish Settlers of the Occupied Part of Cyprus” Doc 9799, 2 May 2003. Available at [http://www.cyprus.gov.cy/MOI/pio/pio.nsf/All/F8A417A0530CA515C2256DC200389A3C/\\$file/2%20may%202003.pdf?OpenElement](http://www.cyprus.gov.cy/MOI/pio/pio.nsf/All/F8A417A0530CA515C2256DC200389A3C/$file/2%20may%202003.pdf?OpenElement) Accessed on Data:12.10.09.

²²¹Ibid.

²²² Ibid.

²²³Ali, Çarkoğlu and Ahmet, Sözen, “The Turkish Cypriot General Elections of December 2003: Setting the Stage for Resolving the Cyprus Conflict?” *South European Society and Politics*, 122.

was accepted with 64.9 percent by Turkish Cypriot community. After this clear cut rejection of the basic document of the plan by one side, it became null and void.²²⁴

Although this plan became null and void, it was an important document since it has been the first plan which included proposals to solve the Cyprus problem and it included common points of the problem accepted by both sides' representatives. Moreover, it has important aspects for this thesis since it has proposed solutions to the settlement problem in Cyprus. In addition, it is important because it was put into referenda in both sides and immigrants in both sides of the island were accepted as eligible to participate in the referenda. Özersay suggested that “the referenda were not conducted on the basis of the two communities...rather the referenda procedure proves that the term “Turkish Cypriots” and “Greek Cypriots” in the plan were utilized to refer to citizens of the Turkish Cypriot state and the Greek Cypriot state, respectively, both were established before the settlement”²²⁵ Hence, one may argue that Turkish immigrants were defined under the title of “Turkish Cypriot Community” by the Annan plan and this was recognized by both Greek Cypriots and international community since they recognized the results of the referenda. If both sides had said “yes” to the Annan plan, a new state would have been established which would have included many immigrants. Moreover, referendum is a type of self-determination right in which public opinion is asked in direct democracies. Turkish immigrants were seen as eligible to vote in the referenda, thus, it means that they are part of the “Turkish Cypriot Community” as their opinion was asked in such an important case.

²²⁴Kudret, Özersay, “Separate Simultaneous Referenda in Cyprus: Was it a “Fact” or an “ Illusion”?”, *Turkish Studies*, Vol. 6, No. 3, (379-399), September 2005, 379.

²²⁵ Ibid, 390.

Before the referenda were held, Papadopoulos send a letter to former UN Secretary Kofi Annan and demanded that Turkish immigrants should not participate in the referenda because they are not part of the “Turkish Cypriot Community”. Papadopoulos stated that “settlers should not be allowed to vote in the separate referenda to approve the settlement.”²²⁶ Moreover, he argued that the settlers have participated in formulating the will of Turkish Cypriots during the referendum of April 24, and this was against every norm of international law and practice.²²⁷

The Greek side supported the idea that persons who were members of the two communities in 1963, as defined in the 1960 Constitution, and their descendants should be eligible to vote in the separate referenda.²²⁸ However, it is not clear what the decision of the Greek Cypriot leadership was about the immigrants in the south. Did they participate in the referenda? In the southern side, there are also lots of immigrants. It seems from the letter of Papodopulos that he only meant the Turkish immigrants since they were accepted as illegal by the Greek Cypriot side.

The UN did not accept the proposal of the Greek side and acknowledge the power of each state to decide who would be eligible to vote in the referenda and it also acknowledged the decision of the TRNC Parliament. The TRNC Parliament decided citizens of the TRNC who were registered as electors in the electoral list of the last general election (December 2003) of the country to be defined as eligible to vote in the referendum on April 24, 2004. In addition, the same article underlined that the last

²²⁶ Claire, Palley, *An International Relations Debacle*, (USA: Hart Publishing, 2005), Annex II “Initial Reaction and proposals for trade-offs of the Greek Cypriots Side on the United Nations Revised Plan of 29 March 2004, article 9,” 263.

²²⁷ Letter of Mr. Papadopoulos to the Secretary General of the UN, June 7, 2004, p.4, para.4.

²²⁸ Report of the Un Secretary General to the Security Council, May 28, 2004, s/2004/437, para.62.

available at <http://daccessdds.un.org/doc/UNDOC/GEN/N04/361/53/PDF/N0436153.pdf?OpenElement>
Accessed on Data: 01/08/09.

election list would be amended. People who were aged 18 and above and had the right to vote, and people who became TRNC citizens after the last general election would be eligible to vote in the 2004 referendum and would be added to the list. On the other hand, if someone lost its citizenship right after the 2003 election would be omitted from the list. This decision was taken by the TRNC Parliament on 22 March 2004.²²⁹

4.2.2 The Annan Plan

The citizenship of the new state was one of the most important debate in the Annan plan period between the representatives of the two communities. It is important to look at the citizenship law proposed by the Annan Plan, because it was prepared by Kofi Annan as the mediator of the two opposite ideas, and the international law was also taken into consideration.

In the Annan plan the issue of “citizenship” was dealt under annex III attachment 4 titled as “Federal Law on the Citizenship of the United Cyprus Republic and for Matters Connected Therewith or Incidental Thereto”.

According to Annan Plan, people who were going to get the citizenship of the united Cyprus would be determined according to three criteria. According to the above mentioned Annex, the article 3.1 (the first criterion) prescribe that the people who were citizens of the Republic of Cyprus in 1963 and their descendants would get the citizenship of the United Cyprus Republic. The Annan Plan Annex III, Attachment 4, Article 3.1 states that “any person who held Cypriot citizenship in 1963 and his or her descendants and the spouses of such citizens.” To be more specific, people who were

²²⁹ Referandum Law for the solution of the Cyprus Problem (Special and Transitional Provisions), Law no 2/2004, article 5, 3. available at <http://www.cm.gov.nc.tr/index.php?kspage=802#> Accessed on Data: 04/03/09.

citizens of the Republic of Cyprus in 1963, their children, grandchildren, people who got married with these people, and children born from these marriages would automatically be citizens of this newly established Republic. There was not any other condition for this group of people to obtain the citizenship of the United Cyprus. For example, whether they were living in Cyprus at that moment or whether they had any other citizenship were not important. According to the second article, the second option to be able to be a citizen of the United Republic of Cyprus was being placed in the list that would be prepared by the Cypriot authorities according to certain criteria. According to this rule, a new list would be prepared for those who had not been in the first group. This list would consist of 45.000 people. As the article 3.b puts it; “any person whose name figures on a list handed over to the Secretary-General of the United Nations by each side no later than 25 March 2003. Each side’s list may number no more than 45,000 persons, inclusive of spouses and children, unless there are specific reasons preventing such spouses and children from being considered Cypriot citizens ...”²³⁰

The list of 45.000 people would be determined according to certain conditions. The same article states that “...applications shall be included on the list based on the following criteria and in the following order of priority”. According to Article 3. b.i persons 18 years of age or older who enjoyed permanent residence in Cyprus for at least seven years before reaching the age of 18 and for at least one year during the five years and their minor children who enjoy permanent residence in Cyprus shall be eligible to be listed. The first group consists of persons who are 18 years old or older and those who lived at least 7 years in Cyprus before attaining the age of 18. In addition, within the last five years they should have continuous residence (at least one year) in Cyprus. Little

²³⁰ Annan Plan Foundation Agreements, Annex III, Attachment IV, Article 3.b,

children would also be considered within this group. Erhürman points out that it is not clear what was meant by the phrase “7 years permanent residency”. He believes that this was one of the missing points of the Annan plan.²³¹ For example, whether a person who has left the island for a week was able to be placed in the list or not was not clear. However, when we look at other examples throughout the world, it is easy to conclude that one week absence from Cyprus would not be considered to be an obstacle to get the citizenship of the united Cyprus.

If the first group in any part of Cyprus was not able to fill the quota of 45.000, then second group would be filled in the list. According to the article 3.b.ii, the second group consists of “other persons who have enjoyed permanent residence in Cyprus for more than seven consecutive years, based on the length of their stay.” While this group of people tried to be enlisted in the 45.000 to be able to become citizens of the United Cyprus Republic, the long duration of residence would be given priority. In other words, people who had had longer residence would get the right to be placed in the list and the list would be filled from the longest residency to the shortest one until the list became full of 45.000 people. People who came to the island after 1974 and became TRNC citizens, Turkish nationals who got married with these people and became TRNC citizens and children born out of these marriages would be able to obtain the citizenship of the United Cyprus Republic by the list which would be prepared according to the article 3.b. According to this article, people who were born in north Cyprus and whose parents were both Turkish nationals would have priority to be listed in the list. Some may argue that this was because these people see north Cyprus as their home and it would be violation of international human rights in case they are not given the right of

²³¹ Erhürman, Kibris`ta..., 114.

citizenship. Those who were under the age of 18 were given priority to be enlisted since they had been born, grown up or spent their childhood in Cyprus, otherwise it would have been violation of the international law.

In addition, people who had been encouraged by Turkey to come and settle in north Cyprus were more protected than immigrants who had come to the island on their own initiative, because the article stated that longer term residence would have priority to be put into the list. State facilitated immigrants had come to north Cyprus between 1975-1979, that is, before the immigrants who came on their own initiative. In other words, “settlers” would stay in the island by all means but some individual immigrants might not be able to get citizenship had the list become full. Again, some may argue that the UN considered the immigrants who had come from Turkey not to be different. In other words, the UN treated all Turkish people in north Cyprus equally on objective criteria (duration residence).

Turkish Cypriot and Greek Cypriot authorities would have prepared similar lists both of which consist of 45,000 immigrant citizens. Although the controversy is generally concentrated on the Turkish immigrants, there are also considerable numbers of immigrants in the south side of the island. Mete Hatay points out that there are “110,200 foreign permanent residents in south (excluding 10,000-30,000 illegal immigrants). The non-citizen resident population in the south generally includes European Union (EU) citizens with second homes in Cyprus; workers from Bulgaria, Romania and Poland; Pontus Greeks from Russia and Georgia who settled in Cyprus during the 1990s and some of whom carry Greek passports; many persons from Eastern Europe; and a variety

of domestic workers from countries such as Sri Lanka and the Philippines”.²³² However, it should be noted that the effect of immigrants to the TRNC is more compared to the south, when we consider the ratio between the population of the two sides.

The list which would be prepared in TRNC did not only consist of Turkish immigrants but 8.000 foreigners (mostly British) would also be affected and tried to be placed in the list of 45.000 in order to be citizens of the united Cyprus. It is interesting to see that Turkish literature generally focused on the list of the Turkish immigrants and do not mention the fact that the same list would be prepared by the Greek Cypriot side. Foreign nationals in the TRNC would be in the list but this dimension has never become a part of the discussion in the island. Particularly, the media expressed that Turkish immigrants were going to be listed, and thus, it will be decided who would stay in the island and who would leave.

In addition, it was interpreted as a discrimination against Turkish immigrants by many writers. Moreover, the same can be said for the literature in the Greek Cypriot side, especially for the media. They generally focused on “how many Turkish immigrants would stay in the island”? However, they did not mention that the same list would be prepared in the southern too. It is a well known reality that the main aim of this article was to put certain limitations on the existence of Turkish immigrants in the island. In other words, they constituted the core of the discussion and they are the reason of this article in the citizenship law.

²³² Hatay, Is..., 48.

The Article further provided that the list would be made public, and individuals may appeal against their own omission or the inclusion of others. It should be pointed out that this list has never been made public in TRNC. Memet Ali Talat stated that “this list did not made public because Annan plan was not accepted. If the Annan plan was accepted then we will post the list to public.”²³³ Persons other than the 45,000 who received nationality may acquire Cypriot nationality by naturalization in accordance with the Draft Federal Law on Citizenship. The requisites for naturalization include nine years’ consecutive residence in the URC.²³⁴

With the information above, it has become clear that people who were citizens of 1960 Republic and their descendants and people who were in the list of 45.000 would have become citizens of Cyprus Republic. Then a question arises: what would happen to the remaining people? According to the second item of the Article 2 of the Federal Laws on Aliens, Immigration and Asylum, after the entry into force of the Foundation agreement Foreigners Committee would provide permit the constituent states to grant permanent residency rights. This would be possible up to 10% of their own population. It is stated in the Annan plan as;

The constituent states to grant permanent residence to nationals of Greece up to a level of 10% of the number of resident Cypriot citizens who hold the internal constituent state citizenship status of the Greek Cypriot State and to nationals of Turkey up to a level of 10% of the number of resident Cypriot citizens who hold the internal constituent state citizenship status of the Turkish Cypriot State.²³⁵

Persons who would not be able to get residency rights, could demand financial support in order to return to their country if they had lived 5 years or more in Cyprus. This

²³³ Interview with Mehmet Ali Talat who is president of the TRNC. Interview made on 25.12.2009

²³⁴ Ronen, 31.

²³⁵ Annan Plan, Federal Laws on aliens, immigration and asylum, Annex III, Attachment 5.

financial support would not be less than 10.000 Euro for a family which consisted of four members. This money would be paid within the first five years after the entry into force of the foundation agreement to people who were going to immigrate to their own state. These persons and persons who lived in Cyprus more than 5 years would be in the status of “aliens”. This status would mean that they had no citizenship or permanent residency rights. However, this would not mean that they had to leave the island.²³⁶

The second part that deals with Turkish immigrants is the article 12 of the Foundation Agreement which deals with past acts. This article states that;

Any act, whether of a legislative, executive or judicial nature, by any authority in Cyprus whatsoever, prior to entry into force of this Agreement, is recognized as valid and, provided it is not inconsistent with or repugnant to any other provision of this Agreement or international law, its effect shall continue following entry into force of this Agreement. No-one shall be able to contest the validity of such acts by reason of what occurred prior to entry into force of this Agreement.²³⁷

By this article, all past acts -judicial, legislative or executive- were accepted as valid regardless of the authority who did it. These acts would be valid even after the entry into force of the settlement. However, there was a condition that these should not be against international law and other articles of the Annan plan. From the first look it seems that this was the case then all kinds of property and citizenship rights created before the settlement should be valid according to this article. However, the same article includes a footnote as an observation and excludes matters of citizenship, immigration and property issues by stating “matters of citizenship, immigration, and properties affected by events since 1963 are dealt with in a comprehensive way by this Agreement; any validity of acts prior to entry into force of this Agreement regarding these matters shall thus end

²³⁶ Erhürman, 120.

²³⁷ Foundation Agreement, Main Articles, Article 12.

unless they are in conformity with the relevant provisions of this Agreement.”²³⁸ Hence, when the Annan plan entered into force, all citizenship rights given by any authority in Cyprus would have been void. Citizens of the new United Cyprus would be determined by the Article 3 of the Foundation Agreement explained above.²³⁹

As mentioned in the Annan Plan, both of the leaders of Greek and Turkish Cypriots prepared the list and submitted this list to the UN Secretary General, Kofi Annan, on 25 March 2003. Mete Hatay points out that “the Turkish Cypriots leadership was in fact unable to fill their own quota of 45.000 and in the end presented a list of only 41,700 persons.”²⁴⁰ As it is known, the Annan plan was put into separate referenda in the island and it was rejected by Greek Cypriots. Many writers believe that one of the main reasons of the rejection of the plan by Greek Cypriots was the belief that the presence of Turkish immigrants would prevent the restitution of properties used by “settlers.”²⁴¹ Moreover, Papadopoulos argued that Greek Cypriots rejected the plan since it protects the interests of Turks. He stated that “all these new provisions clearly serving Turkish interests and aims in Cyprus explain to a large extent why the Plan was overwhelmingly rejected by the Greek Cypriots.”²⁴² On the other hand, in the TRNC, many Turkish immigrants said “no” in the referendum, because they were not sure about their future status. In the TRNC, the issue of Turkish immigrants has become an indeterminate topic. Different political parties in the north interpreted the case of Turkish immigrants differently. Before the referenda, while some parties argued that many Turkish immigrants would return, others asserted that none of them would return. Hatay pointed to the same irony by stating “during the campaign period prior to the referenda, the CTP — the party

²³⁸ Annan Plan, Main articles 12 “Past Acts”, footnote 4, 15.

²³⁹ Erhürman, Kibris’ ta...,118, footnote 7.

²⁴⁰ Hatay, Is the ..., 11.

²⁴¹ Palley, 72.

²⁴² Letter of Mr. Papadopoulos to the Secretary General of the UN, June 7,2004, 3.

originally responsible for the discourse of ‘demographic danger’ —made an attempt to convince settlers that their numbers were not more than 45,000, that all would stay, and that they therefore should vote in favor of the Annan Plan. In contrast, right-wing parties such as UBP, which usually played down the number of settlers, attempted to convince settlers that their numbers exceeded the proposed quota, that many of them would be sent back to Turkey, and that they should vote against the plan.”²⁴³ Moreover, opposite arguments were expressed in the international level too. In July 2003, the Secretary-General’s Special Advisor’s own legal advisor stated that ‘the Plan does not foresee that anybody will be forced to leave’;²⁴⁴ and the Secretary-General in 2004 stated that; ‘about half’ of the settlers would have to leave the island.²⁴⁵

It can be said that immigrants were confused. This open box was created by politicians in order to use this gap in the elections to attract votes. Before the referenda, there was election in the TRNC and the main discussion topic during this election period was the Annan plan and its appropriateness to solve the Cyprus problem. Many academics in the TRNC wrote on the unacceptability of the case of Turkish immigrants, because they were being placed in the list and they described this model as a main discrimination against Turkish immigrants.²⁴⁶ They discussed the unacceptability of being placed in the list without any internationally accepted criteria. Although the Annan plan did not mention the name of Turkish immigrants, it was a well known fact that the main aim of

²⁴³ Hatay, Is...,11, footnote 40.

²⁴⁴ Palley, 70.

²⁴⁵ Report of the Secretary-General on his mission of good offices in Cyprus, UNSC document S/2004/437, para. 60 , Available at <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N04/361/53/PDF/N0436153.pdf?OpenElement> Accessed on Data: 20/12/2008.

²⁴⁶See Birol, Ertan, “Yavru vatan`da Türkiyeli Olmak”, available at <http://www.milligazete.com.tr/index.php?action=show&type=writersnews&id=18782> Accessed on Data: 05/04/2007.

this federal law was to resize the number of Turkish immigrants in the island. In other words, they formed the core point of the discussion.

In TRNC, 56% of the immigrants' villages voted against the Annan Plan in the referendum.²⁴⁷ On the other hand, Christophorou stated that 41% of the Turkish immigrants who lived separately from “native” Turkish Cypriots voted “yes”. In addition, in the mixed villages, Turkish immigrants generally acted in similar ways as did “native” Turkish Cypriots. In these kinds of places, 57% of Turkish immigrants voted “yes” to the Annan plan²⁴⁸.

4.3 Similar cases

In this part, I will examine other cases in the world similar to the settlement problem in TRNC. Undoubtedly, all cases in the world have different aspects and special conditions peculiar to themselves. However, there are also similar points in these special conditions. I will discuss cases from four different countries; namely, Palestine, Rhodesia, East Timor and Estonia. I have deliberately selected these states since in all these three (Rhodesia, East Timor and Estonia) there are problems of illegality under international law and a transitional period from an “illegal” regime to a new state. Since the TRNC is not recognized by the world and described by the UN as “illegal”, it is necessary to examine these regimes and compare them with TRNC. In addition, in all these three states, processes of transition from an “illegal” state to a legal one were experienced. In case of settlement in Cyprus the situation will be similar for the TRNC. Furthermore, in each case, there was a problem of immigrants and these people were accepted as part of the newly established state. Moreover, I have chosen Palestine as a case because it has a similar so called “problem of settlers” and there is a belief that any

²⁴⁷ Hatay, Beyond..., 56

²⁴⁸ Christophorou, 102.

kind of solution plan in Cyprus would form an example for the solution plan for Palestine.

4.3.1 Rhodesia

4.3.1.1 General Information

Southern Rhodesia was a colony of the British until 1965s. The name of the south Rhodesia was changed to Rhodesia and then Zimbabwe which has been the name of the country after the establishment of the new state in 1980.

On 11 November 1965, the southern Rhodesian Government declared independence of Rhodesia unilaterally. Moreover, the Security Council defined the declaration of Rhodesia as “unilateral declaration of independence made by a racist minority in Rhodesia.”²⁴⁹ This decision was rejected by UN General Assembly and the Security Council, and all member states were called upon not to recognize this illegal authority and not to have any diplomatic or other relations with it.²⁵⁰ The General Assembly called this state as illegal because of this newly declared states “denial to the African majority of their fundamental rights to freedom and independence.”²⁵¹ No state recognized Rhodesia in the world as an independent state. On the other hand, there were fights in Rhodesia which resulted in a guerrilla war that has caused numerous deaths. In 1979, the Lancaster House Agreement was signed between Rhodesian and British leaders, and the

²⁴⁹ Security Council Resolution 216, (12 November 1965), available in <http://www.unhcr.org/refworld/category,LEGAL,,,ZWE,3b00f20f54,0.html> Accessed on Data: 20/07/09.

²⁵⁰ Security Council ,217 Resolution, (12 November 1965), article 6. Available in <http://www.unhcr.org/refworld/country,,,RESOLUTION,ZWE,456d621e2,3b00f20f78,0.html> Accessed on Data: 31.07.09.

²⁵¹ General Assembly Resolution 2022 (xx), twentieth session, 5 November 1965. Available in http://en.wikisource.org/wiki/United_Nations_General_Assembly_Resolution_2022 Accessed on Data: 12/03/09. Other resolution about case General Assembly Resolution 2024 (x), 11 November 1965.

new state called Zimbabwe was founded accordingly. It was established by Black majority rule.²⁵²

4.3.1.2 Settlement in Rhodesia

Between 1960s and 1970s, there were a significant number of white, Asian and Coloured immigrants in south Rhodesia. Zinyama describes this as “the numbers of immigrants coming into the country were steadily increasing annually through the late 1960s and early 1970s, with net migration gain reaching a peak of 10,168 in 1971. Overall, during the period 1965 to 1975, there was a net gain from migration of 47,121 whites, Asians and Coloureds, a substantial addition in a country where their total number was only 252,414 at the 1969 census.”²⁵³

While the new state of Zimbabwe was being established, there was a discussion about who would get citizenship of Zimbabwe. In other words, there was a discussion about immigrants whether they should be citizens of the new state or not. There was a discussion, because the Government in southern Rhodesia encouraged white people from Britain and Europe to come and settle in south Rhodesia. States provide special services for these immigrants to attract them such as housing, custom concessions, tax relief, job placement expenditures, social service provision, language programs for non English speaking immigrants.²⁵⁴ By the policy of encouragement of the state, the demographic composition of Rhodesia dramatically changed in the favor of the white population.²⁵⁵

²⁵² Ronen, 10.

²⁵³ Lovemore, M. Zinyama, “International Migration to and from Zimbabwe and the Influence of Political Changes on Population Movements, 1965-1987”, *International Migration Review*, Vol. 24, No. 4 (Winter, 1990), 751.

²⁵⁴ Zinyama, 751.

²⁵⁵ Ronen, 9.

In Zimbabwe, all citizenships were accepted as valid to be able to be a citizen of the Zimbabwe. However, the Popular Front (PF) which was the representative of the black population, rejected this idea by claiming that supporters of the illegal regime would create security threat in the newly established Zimbabwe and new immigrants were supporters of Rhodesia. “The PF was particularly concerned that validating citizenships granted since 1965 would create large population of dual nationals of both Zimbabwe and south Africa, which was then an island of white minority dominance over a Black majority.”²⁵⁶ PF underlined that by the existence of dual citizenship, south Africa would be able to control/ influence Zimbabwe by claiming protection for its nationals. PF argued that people must select one of the two states to be its citizen (Zimbabwe or south Africa) within one year, but this was not included in the agreement. All Rhodesian citizens were accepted as citizens of Zimbabwe. In addition, people who were not holding Rhodesian citizenship but entitled to it under the existing law would have an unqualified right to claim Zimbabwean citizenship within five year after the independence of Zimbabwe.²⁵⁷

In Zimbabwe, white immigrants were encouraged to immigrate from Zimbabwe through several funds.

4.3.1.3 Comparing the Case of Zimbabwe and TRNC

There are important differences and similarities between the state of Zimbabwe and the TRNC in terms of their respective settlement issues.²⁵⁸

²⁵⁶ Ibid.

²⁵⁷ Ibid.

²⁵⁸ This comparison will be made with Annan plan because there is no other plan for the settlement of the Turkish Immigrants problem in TRNC.

First of all, both Zimbabwe -while its name was Rhodesia- and the TRNC -even today- experienced the problem of non-recognition. In both cases, there have been aims to replace the existing state with a new one. However, there is an important difference between the TRNC and Zimbabwe in the sense that Zimbabwe became an independent state, but the TRNC which was claiming its independence would be a part of a federated state and the power of the TRNC would be replaced with Turkish Cypriot Constituent state which would be a part of the United Cyprus Republic.

Moreover, in both cases, the problem of settlement has been experienced. In both cases, immigrants have been considered as security threats by other communities. In the case of Zimbabwe, the black majority population saw white immigrants as a threat since they were supporters of the old regime, Rhodesia. In the TRNC, some Greek Cypriots see Turkish immigrants as a security threat since they were considered to be soldiers of Turkey.

In Zimbabwe, all immigrants who used to have the citizenship of Rhodesia were accepted as citizens of the newly established state without consideration of any other criteria. On the other hand, in the Annan plan, citizenship of the immigrants would be contingent on certain conditions.²⁵⁹ If any person did not meet these conditions she/he would not be able to get citizenship of the United Cyprus Republic. Moreover, the citizenship right of immigrants would be limited to 45.000 people. If this list got full then other people would not be able to get the citizenship of the new state. In the case of the TRNC, there was no problem to complete the list since the authorities were not able

²⁵⁹ These detailed conditions are explained under title 4.2.1 Annan plan, pp. 4-11.

to exceed the limit of 45.000. The Annan plan shows an important difference in this way, because it has set certain limits on the citizenship right of the immigrants.

In both cases, immigrants are tried to be encouraged to return to their respective states through the help of a fund.

4.3.2 East Timor

4.3.2.1 General Information

The Portuguese were the first Europeans settled in Timor at the beginning of the sixteenth century.²⁶⁰ East Timor was the colony of the Portugal until 1975²⁶¹. After decolonization started throughout the world, East Timor gained its independence.

Indonesia, which is a neighbor state of East Timor, rejected the independence of East Timor and invaded the country on 7 December 1975²⁶² and annexed East Timor as its 27th province.²⁶³ Portugal resisted this occupation and this occupation was seen as a violation of the right of self determination and independence of native people.²⁶⁴ Moreover, the United Nations General Assembly Resolution 31/53 1 December 1976 article 5 rejected “the claim that East Timor has been integrated into Indonesia.”²⁶⁵ Following the rejection of this annexation by international community on 30 August 1999, the UN-monitored referendum was carried out in order to decide about the

²⁶⁰ S. F. Wittouck, “Exploration of Portuguese Timor”, *The Geographical Journal*, Vol.92, No. 4(Oct., 1938), 343.

²⁶¹ Judith, Hippler, Bello and Peter, H. F. Peker, “East Timor (Port v. Austl.)”, *The American Journal of International Law*, Vol.90, No. 1 (Jan., 1996), 94.

²⁶² George, J. Aditjondro, of “In the Shadow of Mount Ramelau: The Impact of the Occupation of East Timor” Reviewed by Geoffrey, Robinson, *Pacific Affairs*, Vol. 68, No.4 (Winter 1995-96), 619.

²⁶³ Ronen, 13.

²⁶⁴ United Nation General Assembly 31/53 (1 December 1976), available in <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/302/36/IMG/NR030236.pdf?OpenElement> Accessed on Data: 03.08.09

²⁶⁵ United Nation General Assembly 31/53 (1 December 1976), available in <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/302/36/IMG/NR030236.pdf?OpenElement> Accessed on Data: 03.08.09.

political future of East Timor.²⁶⁶ Nearly 80% of the population rejected the special autonomy within the Indonesian state and support the independence option.²⁶⁷ On 20 May 2002, East Timor became independent.

4.3.2.2 Settlement in East Timor

During the Indonesian rule, East Timor became one of the most popular migration destinations for numerous Indonesians.

We can divide these immigrants into two main categories. The first one consisted of state forced immigrants under the policy of “transmigration”. In this policy, dispersion of the population from densely populated and poor Java to outlying island so the immense archipelago²⁶⁸ The second group consisted of voluntary Indonesian settlers in order to access its better economic incentives provided to immigrants. Miller states that “Dr. Tirtosudanno estimated that 5,000 families had been relocated to East Timor, the former Portuguese colony and erstwhile independent state, since its military occupation by Indonesian troops and unilateral annexation. However, many more Indonesian settlers had arrived outside of transmigration policy.”²⁶⁹

In addition, the native Indian population decreased nearly 20% because of mass killing of the Indonesians and famine.²⁷⁰ Indonesian population used to consist of 20% of the East Timor population before the referendum. The Indonesian used to constitute the elite

²⁶⁶ James, F. Glassman, “Structural Power, Agency and National Liberation : The Case of East Timor”, *Transactions of the Institute of British Geographers*, New Series, Vol.28, No.3 (Sep., 2003), 264.

²⁶⁷ Ibid.

²⁶⁸ Mark, J. Miller, “Demography and Security (M.I.T Center for International Studies, December 11-12,1998)”, *International Migration Review*, Vol. 33, No. 1 (Spring, 1999), 195.

²⁶⁹ Miller, 196.

²⁷⁰ Ronen, 15.

in East Timor. However, after the referendum, significant numbers of Indonesians emigrated from East Timor. Their number was around 250.000.²⁷¹

After East Timor gained its independence, the conditions for the citizenship of the state were determined by the new constitution. In the constitution, the Section 3 of the Part I pertains to citizenship. The original citizenship will be granted to people according to the following three conditions²⁷²;

- a) Children of father or mother born in East Timor;
- b) Children of incognito²⁷³ parents, stateless parents or parents of unknown nationality;
- c) Children of a foreign father or mother who, being over seventeen years old, declare their will to become East Timorese nationals.

The article 3 of the same section reads that; irrespective of being born in a foreign country, children of a Timorese father or mother shall be considered original citizens of East Timor. It states that²⁷⁴;

- a) Children of an East Timorese father or mother living overseas;
- b) Children of an East Timorese father or mother serving the State outside the country.

As it is understood from the articles above, original citizenship of the East Timor would be given to people whose fathers and mothers had been born in the East Timor territory. According to this article, only the third generation of the Indonesian people would be

²⁷¹ Ibid.

²⁷² Constitution of the Democratic Republic of East Timor, Part I, Section 3(Citizenship), available in http://www.constitution.org/cons/east_timor/constitution-eng.htm Accessed on Data: 11/05/09.

²⁷³ It means that “Without being known; in disguise; in an assumed character, or under an assumed title; using especially of great personages who sometimes adopt a disguise or an assumed character in order to avoid notice.”

²⁷⁴ Ibid.

able to get the right of citizenship in East Timor. The same article of third option gives immigrants' children the right to get citizenship of East Timor by declaration. "In addition the nationality law provides for discretionary naturalization on the basis of long term residence for persons who have been usual and regular resident of Timor-Leste for at least ten years prior to 7 December 1975 or 20 May 2002."²⁷⁵ Indonesian immigrants can get the citizenship right like other foreigners but the period in the Indonesian administration would not be calculated while the legal residence period is calculated.

4.3.2.3 Comparing the Cases of East Timor and TRNC

In both the TRNC and East Timor, there has been the problem of immigrants who had come and settled in the country. However, in the case of East Timor, immigrants became the elites in the state, while in the TRNC the situation just the opposite.

In both cases there were state facilitated immigrants/"settlers", but the number of settlers in the TRNC was less than those in East Timor. In both cases, citizenship of the immigrants created problem and citizenship of the new state would be given to immigrants according to certain conditions, while it would be given the native people and their descendants without any condition. In both cases, the priority was given to the second generation of immigrants (people who had been born in the place and who were at the age of 17/18). In the case of East Timor, they could get the citizenship by declaration, however, in the Annan plan they would get citizenship if their names are listed in the special list which would consist of 45,000 people, and those who were 18 years old would be able to get the right of citizenship first.

²⁷⁵ Ronen, 16.

In the case of East Timor, many people emigrated from East Timor after the new state declared independence. In both cases, the citizenship rights which had been granted by the former regimes would be considered to be void and the citizenship in the new state would be determined according to the laws of the new regime.

4.3.3 Estonia

4.3.3.1 General Information

Estonia is one of the Baltic states.²⁷⁶ Estonia gained its independence in 1918²⁷⁷, but the country was under the Soviet rule between 1940 and 1990. There was a symbolic state functioning under the control of the Soviet Union. In 1990, all Baltic states renewed their independence through domestic legislation.

In the period of Soviet rule, there had been an important number of immigrants from the Soviet population. There is a claim that this migration process was created by the Soviet Union in order to achieve the Russification ideology. After the number of state-facilitated immigrants increased in Estonia, the number of Estonians decreased dramatically. The Estonians were 93% in 1936 while it decreased to 62% in 1989. On the other hand, the percentage of Russians increased from 4% to 30%.²⁷⁸

4.3.3.2 Settlement in Estonia

After Estonia renewed its independence in 1990, it modified many laws especially those pertaining to the issue of citizenship.

²⁷⁶ Estonia, Latvia, and Lithuania are called Baltic states.

²⁷⁷ Kendall, Metcalf, "International Pressure for Minority Accommodation in Independent Estonia" Paper presented at the 2004 International Studies Association Annual Convention, Montreal Quebec, Canada, March 17 - 20, 2004, 2.

²⁷⁸ Metcalf, 7.

They felt the necessity to change their citizenship laws because “the Russians in Estonia” did not see themselves as ‘immigrants,’ since they had no expectation of integrating into another culture, but rather aimed to reproduce their original society in a new land.”²⁷⁹

Because of this reason, “the 1938 Law on Citizenship re-entered into force on February 26, 1992. As a result, the government adhered to jus sanguinis principles for citizenship. With this modification Russians living in Estonia could only become citizens through the naturalization process. Some difficult conditions were created for naturalization. Applicants had to have their permanent place of residence in Estonian territory for at least two years before and one year after the day of application and had to demonstrate fluency of Estonian”.²⁸⁰ The aim of these changes was to regulate the structure of their state and get rid of the Soviet effect which had been established in Estonia through Russians.

In 1995, Estonia enacted a new law to regulate naturalization. Under the Article 6 of the new statute, applicants for citizenship must be at least 15 years of age; have resided in Estonia for at least five years; pass a four-part language exam; correctly answer 16 of 20 questions on the Constitution and the Law on Citizenship; and verify a permanent loyal income. In addition, an applicant must pay a state fee²⁸¹ Moreover, applications for citizenship would not be accepted from foreign military personnel in active service, persons who have been employed in security and intelligence organizations of the Soviet Union, persons who have been convicted of serious criminal offenses or who have a

²⁷⁹ Ibid, 6.

²⁸⁰ Ibid, 9.

²⁸¹ Ibid.

criminal record of repeated convictions for felonies, or persons lacking a steady income.²⁸² Especially Soviet Military Personnel were seen as security threat in Estonia. The fact that the Russian-speakers were privileged in the labour market and housing matters before 1991 also reinforced the cleavage.²⁸³

After these changes in the law, Estonian society can be categorized as follows: “Estonian Citizens (including 75,000 ethnic Russians in 1992), Citizens of the Russian Federation (with resident permits in Estonia), Stateless persons (Undetermined Citizenship, mostly ethnic Russians), Citizens of other States (Ukraine, Byelorussia, etc).”²⁸⁴

Estonia tried to get rid of the influence of Russia, and in order to achieve this, they created a long process to be able to get the citizenship through naturalization.

4.3.3.3 Comparing the Cases of Estonia and TRNC

Both Estonia and the TRNC were under the influence of a second state for different reasons.

In both cases, there were similar arguments which are “Russification” and “Turkification”. In the case of TRNC, there was an argument raised by Greek Cypriot authorities that Turkey encouraged its own nationals to immigrate to the TRNC in order to continue its influence on the newly established state. The same argument existed in Estonia for the Russian immigrants in order to create “Russification” in the state. In both

²⁸² Metcalf, 11.

²⁸³ Haris, G. Mylonas, “Explaining intra-state variation in *ethnic* group mobilization The Estonian State Restoration and the Political Mobilization of the “Russian-speakers” category” Prepared for delivery at the 2003 Annual Meeting of the American Political Science Association, August 28 - August 31, 2003, 18.

²⁸⁴ Ibid.

cases, there were state facilitated immigrants from Turkey and Soviet Union, respectively. In both cases, the percentage of the “native” population changed in negative way after the immigration processes.

In the issue of “citizenship”, Estonia gave the citizenship right only to people who had had citizenship of Estonia before the Soviet occupation and to their descendants and excluded all others. Moreover, in the case of the Annan plan, people who had had citizenship of the Republic of Cyprus, and their descendants would get the citizenship of the newly established state without taking into consideration any other criteria. However, it did not exclude all others; it provided 45.000 immigrants to get citizenship of the newly established state according to certain conditions. In Estonia, Russian citizens could only use naturalization to become citizens. Naturalization process was more difficult in Estonia compared to the Annan plan. One of the criteria for the naturalization process was to be fluent in Estonian. In the case of the TRNC, this could not have been put as a criterion since mother tongue of all people (whether “native” Turkish Cypriots or Turkish immigrants) in north Cyprus was Turkish. In Estonia, the naturalization was rendered more difficult in 1995 by adding an examination process.

Naturalization process is difficult in Estonia compare to TRNC. For example; in the Estonia the naturalization processes were forbidden for people who had worked in military services of Soviet Union, but there was not restrictions for naturalization process in the Annan plan. In the case of Estonia, permanent loyal income was asked to applicants, but this was not the case in the Annan plan.

4.3.4 Palestine

4.3.4.1 General Information

British was the ruling power in the territory of today's Palestine and state of Israel until 1947.

After the decentralization started in the world, the British took the decision to leave the region as an occupying power. There were two kinds of people in the region in this period. First, the indigenous population of the region who were Palestinians. The second one was the huge number of Jews settled in the region after immigrating from all around the world. Immigrant Jews bought certain lands in the region and settled there. After Britain took the decision to leave the region there was an important question about the future status of the region. There were two different perspectives about the future status of the region. Palestinians were arguing that they must be the owner of the new state as native inhabitants²⁸⁵. On the other hand, Jews wanted to have their own state especially after the 1918 Balfour declaration which promised a Jewish state on the “national home” by Britain.

Britain conveyed the problem to the United Nations to be solved. Moreover, the UN prepared a Partition plan on November 1947 which projected a two-state structure in the region. In addition, Jerusalem would be internationalized. After this partition plan, the Israeli state was declared on 15 May 1948. This newly declared state was recognized by the world community just after its declaration. However, it was not recognized by Arab states. In 1967, Arab states (Jordan, Egypt and Syria) attacked on Israel. This war ended with the victory of Israel. Moreover, Israel annexed more lands such as Gaza and the

²⁸⁵ Some writers use the term of “native” for these kinds of persons.

West Bank. Israel settled its citizens on these occupied lands and encouraged many Jews to come and settle in the region. This issue has not been resolved yet. It is one of the longest-lasting and critical problems that have not been solved although numerous attempts have been made.²⁸⁶

4.3.4.2 Settlement in Palestine

The state of Israel was seen as illegal by many Arab nations because of its establishment. They argued that Israel was illegal since they declared their state on the land that they had bought on personal bases. Moreover, after the UN partition plan, many Jews immigrated and settled in the region and many Palestinian people moved or forced to move from the region. The places of Palestinian people were replaced by Jews who had immigrated to Israel mainly from Europe after the WWII. The Israeli state encouraged Jews to immigrate since they had been desiring to establish a Jewish state. Blecher points out that; the Israeli government implicitly endorsed this act of ethnic cleansing, failing to return the Palestinians to their homes, or even condemn the settlers' aggression verbally.²⁸⁷ In order to encourage this flow of Palestinian people, some of them were transported by buses under the name of "Free Passage to Amman".²⁸⁸ According to estimations; "from December 1947 to September 1949, some 600,000-760.000 Palestinians left, ran away, or were expelled from the territory in which the state of Israel was established."²⁸⁹ And "by 1990 there were about 2.4 millions Palestinian refugees."²⁹⁰

²⁸⁶ Susan, M. Akram, "Palestinian Refugees and Their Legal Status: Rights, Politics, and Implications for a Just Solution", *Journal of Palestine Studies XXXI*, Vol. 31, No.3 (Spring, 2002), 36.

²⁸⁷ Robert, Blecher, "Living on the Edge: The Threat of "Transfer" in Israel and Palestine", *Middle East Report*, No.225 (Winter, 2002), 23.

²⁸⁸ *Ibid.* 24.

²⁸⁹ Eyal Benvenisti and Eyal Zamir, "Private Claims to Property Right in the Future Israeli- Palestinian Settlement", *The American Journal of International Law*, Vol. 89, No. 2,(Apr., 1995), 297.

²⁹⁰ *Ibid.*, 298.

Palestinian refugees were settled in temporary refugee camps by Arab countries, but they refused to absorb them permanently. The aim of this was to reject the declaration of the Israeli state and to resettle these refugees in their own lands and places. The demographic composition of the region changed dramatically after these immigrations in favor of Jews. Jews destroyed what Palestinians left behind. “Most estimates mention between 360 and 429 destroyed villages.”²⁹¹ Courbage explains this process as “one country was built and another destroyed by migratory movements.”²⁹²

The UN proposed various resolutions to this problem and called for the right of return of displaced persons. The Resolution 2452A (XXIII) of 19 December 1968 which called for rapid return of the displaced Palestinians and asked the Israeli Government to take “effective and immediate steps for the(ir) return without delay”.²⁹³ Moreover, the UN General Assembly Resolution 194 (III), on December 11, 1948 states that;

Resolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid or the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.²⁹⁴

Although many UN resolutions and writers called for the right of return of the Palestinian refugees, at the end, even the UN focused on the compensation.²⁹⁵ Especially

²⁹¹ Michael, R. Fischbach, *Records of Dispossession*, (New York: Columbia University Press, 2003), 4.

²⁹² Youssef, Courbage, “Reshuffling the Demographic Cards in Israel/Palestine” *Journal of Palestine Studies*, Vol.28, No. 4(Summer,1999), 26.

²⁹³ UN General Assembly Resolution, 2452 , December 19, 1968, available in <http://www.jewishvirtuallibrary.org/jsource/UN/unga2452.html> Accessed on Data: 12/10/09.

²⁹⁴ UN General Assembly, Resolution 194, December 11, 1948, available in <http://www.jewishvirtuallibrary.org/jsource/UN/unga194.html> Accessed on Data: 10/09/09.

²⁹⁵ Michael R. Fischbach,, “The United Nations and Palestinian Refugee Property Compensation”, *Journal of Palestine Studies XXXI*, No. 2, (Winter 2002), 34.

the USA and Israel supported the idea that deportation was not feasible.²⁹⁶ Settlement of a huge Jewish population into the Palestine territories was considered to be an occupation by settlers and called for resettlement by the Palestinian population. Arab states advocated the displaced persons right of return and applicability of the 1949 Geneva Convention Article 49 to the Israeli occupation. They argued that the Jewish people who settled in the region as a result of the Israeli state's policy should be called “settlers”. Hence they demand everyone should return to their original places. On the other hand, Israel and the USA supported the idea that refugees should be “resettle them in the surrounding Arab host countries, with no more than token repatriation to Israel.”²⁹⁷

The problem of settlement has not been solved in Palestine yet. While Palestinians argue that they have the right to return their places and this right is protected by international law.²⁹⁸

4.3.4.3 Comparing the Case of Palestine and TRNC

Both Jews in Palestine and Turkish people in the TRNC were seen as illegal and called “settlers” by some writers. Moreover, both Israel and Turkey were seen as occupying powers in these territories. However, there is an important difference between these two states in the sense that while Israel has been called “occupying” power by the UN

²⁹⁶ Ibid, 36.

²⁹⁷ Ibid ,45.

²⁹⁸ Ziad, Abuzayyad, “The Refugee Question”, *Palestine-Israel Journal*, Vol 15 No. 4 & Vol 16 No. 1, 08/09 available in <http://www.pij.org/details.php?id=1215> Accessed on Data:02.01.2010.

resolution²⁹⁹, there is no such UN Security Council resolution for Turkey`s presence in the island.

Moreover, in both cases there have been discussions about the applicability of the 1949 Geneva Convention article 49 which states that the occupying power cannot transfer its citizens to the occupied territory.

While there have been discussions in both cases on settlers, the number of “settlers” was much more in Israel than in the TRNC. The number of state facilitated immigrants’ is estimated to be around 11.000 in TRNC while this number is around 700.000 in the case of Israel. In both cases, the settlement problem has not been solved yet. The settlement problem in the TRNC is especially important for the Palestine problem many writers believe that this solution plan will be a precedent for the future solution plan in the Palestine. Palley states that “ the “settlers question” in Cyprus, as dealt with by the UN in the Annan Plan, would also have provided a convenient precedent for Israel and West Bank...”³⁰⁰

On the other hand, there is an important difference between Turkish immigrants problem and the settlement problem in the West Bank and Gaza. In the case of Israel, immigrants came and settled in the region quickly after the 1947 Palestinians were forced to move from the region. However, Greek Cypriots did not become displaced as a result Turkish immigrants movements. They displaced as a result of 1975 five agreed points between two communities leaders.

²⁹⁹ See UN General Assembly, in many resolution call Israel as occupying power. For example, Resolution 726 (January 6, 1992) article 1 state that “Strongly condemns the decision of Israel, the occupying Power, to resume deportations of Palestinian civilians; ...” Accessed on data: 11/11/09.

³⁰⁰ Palley, 76.

4.4 Conclusion

In this chapter, I tried to examine the characteristics of the UN proposal for the Turkish immigrants by explaining the Annan plan which is the only comprehensive plan that has been prepared to solve the Cyprus problem and that pertains to the problem of Turkish immigrants. Moreover, I examined other countries in the world which had similar settlement problems and I compared these states with the TRNC.

The Annan plan gave Turkish immigrants the right to be citizens of the newly established United Cyprus Republic by two ways. First, being placed in the list of 45.000 people which has not been fully filled by the TRNC authorities. Second, using naturalization process unless they are working for Turkish military service.

The Annan plan was criticized by some academicians and politicians. They saw Annan plan as creating discrimination for Turkish immigrants since they were going to be in the list. However, this list was also prepared by the Greek Cypriot side with the same principles. This side of the coin was not mentioned in the media of both north and south side. We can say that people were confused. If the Annan plan was explained to the public before the referenda, the “yes” vote in the north would have been increased. Many Turkish immigrants voted against the plan, because they believed they would be forced to leave the country in case the plan was accepted.

It is interesting to see that in the case of the Annan plan, people who were encouraged by the state to come and settle in Cyprus were more protected than immigrants who had come to the island on their own initiative.

If the Annan Plan was accepted, no one would leave the island if they did not want to do so but people would be encouraged to return their state of origin by a special fund. The settlement problem in Cyprus is not unique in the world. Similar problems existed in Rhodesia, East Timor, Estonia and Palestine. Each of these states tried different methods to deal with the settlement problem since they have special circumstances. East Timor and Estonia gave the right of citizenship to immigrants with naturalization. On the other hand, Rhodesia accepted all citizens of the old regime as its citizens without making any discrimination. It can be argued that when there is a threat that other states may influence their citizens, states become more reluctant to grant citizenship to foreign nationals such as in the cases of East Timor and Estonia.

We can argue that in the case of the Annan plan, the provisions were in line with the established practices in other areas and the world except the preparation of a list approach. Definitely, this list was prepared in order to satisfy the Greek Cypriot side in terms of the number of Turks in the island. On the other hand, it did not create any problem for the TRNC since they were aware of the number of Turkish immigrants in the TRNC. They knew that all Turkish immigrants were not citizens of the TRNC.

Chapter 5

CONCLUSION

The issue of Turkish immigrants is one of the most important and controversial topics of the Cyprus problem. Lack of reliable information on the exact number of these immigrants and on their motives in settling in north Cyprus aggravates the situation for researchers. A discussion of Turkish immigrants with regard to their future after the settlement forms one of the main chapters in ongoing Cyprus negotiations. This is also related to the future state of affected properties, which is accepted as the core of the Cyprus problem.

This thesis is divided into five chapters. In the first chapter, a brief historical background of the Cyprus problem is presented. Moreover, some of the main debates that are discussed in detail in the whole thesis are summarized in the same chapter. Methodology and important research questions are also presented for this thesis. At the end of the first chapter, each chapter of the thesis is briefly summarized. Therefore, in the first chapter, there is a framework of this study.

The second chapter focuses on the rules of international law concerning the rights of immigrants, especially long-term immigrants. It is important because such rules are applicable in each part of the island. Hence, any decision which does not conform to relevant rules of international law may cause further complications of the matter. I focused on the ECHR Article 8, a "right to respect for private and family life"; Article 3

of the same convention which is about the prohibition of inhuman/degrading treatment; the ICCPR Article 17, an arbitrary or unlawful interference with someone privacy, family, home; the ICCPR Article 13 on the protection of lawful aliens in a state and the Fourth ECHR Protocol Article 4 on the prohibition of collective expulsion of aliens and prohibition of discrimination. In this chapter, I found out that long-term immigrants whose presence in the island is legal and those who have social ties with the existing society have the right to stay in this country even after the settlement. In addition, if any member of the family is forced to return by the state authorities, this would affect the “effective family life” and it is seen as contrary to the Article 8 of the ECHR. In addition, states have the responsibility to prohibit the expulsion of aliens to the countries in which they might be tortured. Furthermore, international law prohibits the expulsion of aliens as a group. However, expulsion is acceptable if it is conducted on individual basis depending on circumstances. Moreover, states have to avoid discrimination on the basis of color, nationality and so on. In addition, states have the obligation to protect people from discrimination from any state authority or individual. Hence, long-term immigrants in particular are under such protection. However, this protection is not an absolute one, each State has the right to protect itself from unwelcomed immigrants. However, even as they try to protect themselves, they must act in accordance with international law and respect the rights of immigrants. At the end of this chapter you will find the application of the above-mentioned rights to the TRNC.

In the third chapter, I tried to show different and contradicting perspectives on Turkish immigrants. First of all, I discussed the circumstances after the 1974 military operation. I then tried to explain the way in which Turkish immigrants came to the island and how they settled. After 1974, Turkish immigrants were encouraged by the state authorities to come and settle in North Cyprus. They were allocated the vacant/abandoned properties,

many of which had been owned by Greek Cypriots. Many people applied to come to Cyprus on an individual basis. According to the 2006 census, the number of immigrants was 11,925 until 1979. There is strong support in the literature for the idea that immigrants came for economic reasons and that the intention of the Turkish authorities was to reshape the life in north Cyprus. I attempted to explain the aim of the Law for Housing, Allocation of Land and Property of Equal Value, which is called ITEM. According to this law, the abandoned properties are allocated to immigrants. I discussed and analyzed all arguments that exist in the current literature from all different perspectives. This part of the chapter was divided into seven sub-categories. The appropriate name for this group of persons in North Cyprus was discussed and it is concluded that the term “immigrants” is the best among others since the number of immigrants is far more than the number of “settlers”. The approximate number has attempted to be found despite the existence of confusing data. Their number has been estimated to be 60,000 or 100,000 by some writers. Turkish Cypriot authorities give their number as around 42,000. I discovered that there are nearly 95,000 Turkish nationals in North Cyprus, which has a de-facto population of 265,000. There are approximately 178,031 citizens in TRNC which 54,518 of them have Turkish nationality. I discussed the applicability of the Geneva Convention to the 1974 Turkish military intervention and whether Turkey violated Article 49 of the same convention or not. Findings of the research show that the Fourth Geneva Convention is applicable to the presence of Turkish army and the Turkish intervention on the island convention since it is an international armed conflict and both Turkey and Greece are party to that convention and as such they are obliged to apply its rules.

Furthermore, there is an argument raised by Greek Cypriots that Turkish immigrants are the soldiers of Turkey waiting on the island for war conditions and this is why they are

generally males with military training. However, research has shown that the main motive behind the settlement of the Turkish immigrants is related to economic reasons. It is clear that they are workers employed in difficult jobs with lower wages in comparison to Turkish Cypriots.

Another argument was that, Turkish immigrants have a very different culture from Turkish Cypriots, creating dissatisfaction among Turkish Cypriots. However, it should be underlined that Turkish Cypriots and Turkish immigrants share the same language, religion and culture, thus differences in practice cannot be called two different cultures. Moreover, one should understand the difference between immigrants who accept Cyprus as their home and workers. Both have different intentions and life standard.

Then, I discussed the right of return and right to property. This is one of the controversial issues in the Cyprus problem. Greek Cypriots have seen the presence of Turkish immigrants as one of the main obstacles to the solution of the Cyprus problem since many of them hold the properties of Greek Cypriots.

There are two different perspectives in the literature about the right of return and property. Some academics support the idea that the right of return and property is one of the customary rule of international law and that Greek Cypriots have the right to return and reclaim their properties. On the other hand, some writers underline that there is no consistent world practice, which supports the practice of the right of return and property. In Cyprus, the bi-zonality principle has generally been accepted by the parties of the dispute, which means the clear majority of the land ownership by each community in one federated unit. Hence, in Cyprus, it seems the compensation and partial return will

be applied. Return of all refugees is not feasible, practical and possible according to the agreements.

Lastly, I discussed the possibility of Turkish intervention with the pretext of the presence of Turkish immigrants in the island. This is one of the arguments of the Greek Cypriot leadership. However, it should be pointed out that Turkey does not need Turkish immigrants in order to claim the protection of and intervene in Cyprus. Turkey already has these ties with Turkish Cypriots.

In the fourth chapter, I discussed relevant provisions for Turkish immigrants in the UN settlement plans and compared the TRNC case with world examples. The most important attempt of the UN was the Annan plan in which they tried to solve the issue of Turkish immigrants. In the Annan plan, the citizenship part is very closely related to Turkish immigrants. According to Annan plan, citizenship in the united republic would be given according to certain criteria. People, who are not 1963 Republic of Cyprus citizens or their descendants, would get the citizenship of the United Cyprus Republic by a list, consisting of 45,000 people. This list would be prepared on both sides of the island. There would be some conditions and an order of priority during the preparation of the list. These people would get the citizenship after the Annan plan was entered into force. People not on the list were not obliged to leave the island. They could remain under the permanent residency right or under the title of aliens. There were certain limitations for permanent residency. It could be up to 10% of the constituent state population. It would be possible up to each constituent state population. All past acts are valid under the new state of affairs, as long as they are not inconsistent with international law and any law in the Annan plan. However, in the footnote, it excluded matters of citizenship, immigration and property issues. So citizenship given by the TRNC would be invalid if

the Annan plan became valid I believe that the Annan plan provided different examples than the other world examples do with the preparation of the list. The Annan plan gave priority to people who were 18 years 18 years or younger since not giving citizenship to these people would be in violation of the rules of international law. When we look at immigrants, we notice that long-term immigrants are under more protection compared to short-term immigrants. We can understand this from the rules for seen for the compilation of the list.

Although the TRNC citizens accepted the Annan plan with a 65% majority, many Turkish immigrants said no to the Annan plan. The most important reason for this was that they believed they would be expelled from the island if the Annan plan was accepted, although this was not the case according to the provisions of the plan. From the practices of the UN, particularly its approach in the referenda, it can be inferred that Turkish immigrants are accepted as part of the Turkish Cypriot community. At the end of this chapter, I explained and compared the cases of Rhodesia, East Timor, Estonia and Palestine with the Annan plan. In the first three cases, there were problems of settlement, which have since been solved. These three cases were also similar to the TRNC because of the fact that they were not recognized by the world. Furthermore, I explained and compared the case of Palestine with the TRNC which has many similar aspects. In the last chapter of this thesis, I summarized all chapters and explained my findings.

One of the most important missing points in the literature of the Turkish immigrants is that all people who have Turkish nationality are generally considered under the same title, which is not correct. There are different categories of people who came from Turkey. I categorized them under five different titles. These are: the TRNC citizens, university students, workers, soldiers and their families and instructors. This

categorization is made according to their present conditions within the TRNC de facto population. The TRNC citizens are totally different from all other groups, because they have citizenship which means they can influence politics in the TRNC. Some difficult conditions were created for naturalization in TRNC, such as demanding 10 years residency on the island. Hence, a question arises: what would happen to new comers? They will stay in the island, they will work in banks, construction, hotels and other needed areas. They will pay their taxes, a major revenue source in the TRNC, under the status of aliens, but they will not be citizens of the TRNC so they will not be able to influence politics of Cyprus. It should not be forgotten that the TRNC, as a small state, needs qualified workers in many fields and as an unrecognized state does not have many options other than to accept the employees coming from Turkey. This is not a result of colonization but only of being unrecognized by the world. Although this is the case, there are important numbers of foreigners (other than Turkish citizens) in the TRNC with citizenship (8000), which means that the TRNC welcomes all immigrants and it grants citizenship without any special legal treatment to Turkish nationals.

Mehmet Ali Talat stated that the preparation of the list for Turkish immigrants was the worst part of the Annan Plan.³⁰¹ When we look at the other settlement plans, we can easily see that preparation of the list for the immigrants has not been an internationally accepted practice. The criteria itself objective but the way it formulated was not such as preparation of the list for the immigrants. In these ongoing negotiations it should be changed.

³⁰¹ BRT Ana Heber Bülteni, 26 Kasim 2009.

The problem of Turkish immigrants has remained unsolved due to some mistakes made by Turkish officials, international organizations such as the UN and Greek Cypriot leadership. Although Turkish Cypriot leadership was aware of the problem of Turkish immigrants, they were not prepared well for the negotiations. The Turkish leadership did not ensure reliable data on the number of immigrants and this created infirmity. In addition, the case of Turkish immigrants is seen as a sub-title of the Cyprus problem by many academics but the human rights dimension has not been properly researched by them until now. Furthermore, I believe that there are important mistakes made by the international community especially by the UN. The UN as an experienced international organization in Cyprus problem has been aware of the Turkish immigrant problem since the beginning. During the census in 2006, Turkish authorities announced that they would welcome any kind of monitoring in this census but it did not send experts to monitor. None of the international organizations or states came to monitor. This would not be a recognition of the TRNC. However, if they came to the north to monitor the census, then today we would not be discussing whether the 2006 census was conducted in an appropriate way or whether the numbers found by the census are correct. International observers would have said that this was an appropriate census or not. Then we would understand whether the results of the 2006 census are meaningful or not. Unfortunately, today the census results are meaningful for the Turkish Cypriot leadership but not for the other side. This uncertainty could have been eliminated by international monitoring.

The issue of Turkish immigrants is a problem which has economic, cultural, social political dimensions. It is the same in all world examples and it is suitable to use for political aims. In time it might even turn into a blocking factor in the search for a solution in Cyprus. There are rights of displaced persons but the new user rights also must be protected. The most confusing dimension of the Turkish immigrants issue is

international law. There are legal ambiguities in this topic. The ideal solution to this problem is to find a compromise between divergent positions of the two sides and bring a legal status to the Turkish immigrants. If the issue of Turkish immigrants is not solved, it will become more complicated in future.

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