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POSSIBLE IMPACTS OF THE COMMON AGRICULTURAL POLICY OF THE EUROPEAN UNION ON THE ECONOMY OF NORTH CYPRUS*

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ABSTRACT

Relations of Cyprus and the European Union go back to 1962 when Cyprus applied for associate membership to the European Community with the consent of both communities on the island. However, since 1963 all the official talks were carried out with the Greek Cypriot Administration (GCA) on behalf of the whole Cyprus disregarding the representation of the Turkish Cypriot Community, one of the founding partners in the Republic of Cyprus. Association Agreement, which was signed in 1972 between the GCA and the EC came into force in 1973. Developments in early 1990's resulted in the negotiations for membership of GCA to the EU. Despite the fact that the Turkish Cypriots were not represented in any part of the process of membership, it is made clear by the EU officials that Cyprus's membership would only be possible after a solution to the Cyprus problem.

This study examines the static costs and benefits to the national income of North Cyprus after membership from the application of Common Agricultural Policy (CAP), which is one of the basic policies of the EU. The CAP would cause two types of income transfers between North Cyprus and the EU: (i) direct income transfers from Turkish Cypriot consumers to the European producers in the form of higher agricultural prices and (ii) budgetary transfers between North Cyprus and the EU. Using data for 1994 and 1995, it turns out that North Cyprus will have positive budgetary gains from the EU around $36 m. and net direct income transfers from Cypriot consumers to EU producers around $4.7 m. minimum and $9.3 m. maximum.

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The former well outweighs the latter and the total outcome is a gain for the national income of North Cyprus as a result of the application of CAP with a full membership to the EU.

However it is important to keep in mind that the first priority for the Turkish Cypriots is their security. Economic welfare comes after. Turkish Cypriots are not prepared to negotiate their security in return for an increased economic welfare. In other words Turkish Cypriots are not willing to sacrifice any of their security in return for any increase in their economic benefits promised to them.

1. INTRODUCTION

Since the early times, economic integration agreements are made by the countries, which geographically exist in the same region for the purpose of improving the economic welfare of their countries. Political situations very directly affect these economic decisions. Recently Greek Cypriot Administration (GCA) hoping political gains more than the economic benefits applied for full membership to the European Union (EU) in 1990. Evaluating the "opinion" of the European Commission on the application of GCA for membership to the EU in 1993, Council of Ministers welcomed the eligibility of "Cyprus" while they postponed reconsidering membership again in 1995. Later in 1995, Council of Ministers decided to start the accession negotiations for membership of Cyprus to the EU six months after the end of the intergovernmental conference.[1] Now the negotiations have started at the end of March 1998. It is important to note here that the Association Agreement made in 1972 and Customs Union Agreement made in 1987 were made with the GCA and the EU in the name of whole Cyprus without any representation of the Turkish Cypriots. The application for full membership in 1990 was also made by the GCA on behalf of the whole Cyprus. In all these events, Turkish Cypriots were not represented. GCA was taken as representing the whole island. Of course this was against the realities and could not be accepted by the Turkish Cypriots. Besides; the application of the GCA was against the Treaties Establishing the Republic of Cyprus and thus it is illegal.[2]

At the moment there are pressures and initiatives to get the Turkish Cypriots involved with the membership process. Yet, the modalities of participation of the Turkish Cypriots have not been made clear. However one thing remains certain that it would be very difficult for the European Union to accept Cyprus without a solution to the Cyprus problem. Authorities in the EU specifically expressed that EU is not willing to accept Cyprus as a full member unless a solution is found to the Cyprus problem. However

accession talks between GCA and the EU officials have started and it is expected to continue for many years until either a solution to the Cyprus issue is found or hopes diminish. Although a solution is not seen in the very near future, it appears that membership of North Cyprus to the EU could eventually be possible after a solution to the Cyprus issue. Polls carried out show that 94.9% of the Turkish Cypriots want to join the EU. 11% support joining without waiting for a solution, 42.2% after a solution to the Cyprus problem and 41.7% after a solution and after Turkey's membership.[3] Thus in this study the effect of Common Agricultural Policy (CAP) of the EU on North Cyprus is analyzed with this fact kept in mind. That is, the impact of CAP on North Cyprus is calculated after a federal solution to the Cyprus problem is found and after a full membership to the EU is realized.

Agriculture is the backbone of most of the developing countries. This has always been the case for North Cyprus throughout the history. Agriculture has been playing a vital role in the economic development of North Cyprus. Being a small island, Cyprus experiences the disadvantages of having small internal market and limited natural resources. In 1995 agriculture had a share of 10.2% in GDP of North Cyprus and 22.5% of the working population were employed in the agricultural sector. 57.7% of total exports are agricultural products including the processed agricultural goods. However, agriculture has not received adequate care in terms of investments. Between the period of 1977-1995, agriculture received only 8.4% of the total investments.[4]

In a possible membership, some sectors of the economy will benefit and some sectors will be adversely affected. The net effect to the economy is unknown and very difficult to estimate. This study aims to evaluate the effect of the CAP after membership on the national income of North Cyprus. The analysis focuses on the impact effect of the application of CAP. Using data for 1994 and 1995 the net income transfer between North Cyprus and the EU in 1995 is calculated as if the CAP had been in operation in North Cyprus. The analysis has been carried out within a partial equilibrium framework and contains two types of income transfers between North Cyprus and the EU: (i) direct income transfers from Cypriot consumers to the European producers in the form of higher agricultural prices and, (ii) budgetary transfers between North Cyprus and the EU arising from membership. In the study data refers to 1994 and 1995.

In the next section relations of Cyprus with the EU is traced historically from the application for associate membership (1962) up to the commencement of the accession negotiations between the GCA and the EU (1998). Third section gives a brief account of the objectives of the CAP

and the measures used to achieve them. Direct income and budgetar transfers between North Cyprus and the EU is calculated and net benefit o the CAP on North Cyprus is specified. So the final section concluding remark are made and policy implications are specified

2. CYPRUS-EU RELATIONS IN RETROSPECT

Cyprus has close cultural, political, social and economic relations with Europe. After being a part of the British Empire it has developed special trade links with Europe for more than 100 years especially with the UK. Since the establishment of the Republic of Cyprus in 1960, UK was the major trading partner of Cyprus and UK had been applying preferential tariffs to the imports originating from Cyprus. When UK applied for membership to the European Community in 1961, Cyprus in fear of losing UK market, had applied to become an associate member to the EC for membership in 1962 with the consent of both communities on the island. The Association Agreement was signed between the EC and the "Republic of Cyprus" at the end of 1972.[5] EC signed this agreement only with the Greek Cypriot authorities, which excluded the Turkish Cypriots from the government of the Republic by force after 1963. However the EC aimed at serving to all the citizens of the island and thus Article 5 of the Association Agreement states that "the rules governing the trade between the contracting parties may not give rise to any discrimination between the Member States or nationals or companies of Cyprus".[6]

2.1 Cyprus-EC Association Agreement

The Association Agreement, which entered into force by the beginning of June 1973, aimed at establishing a customs union between Cyprus and the EU. Customs Union would involve free movement of goods and services between Cyprus and EC, and Cyprus would apply the "common external tariff" of the EC to the goods and services coming from non-member countries. This would be achieved in two stages. The first stage, which was to be completed by the end of 1977, continued until 1987 with annual protocols because of the problems arising in 1974. After a coup by the Greek soldiers from Greece against the "President" Makarios; Turkey using its rights from the Treaty of Guarantee had intervened in 1974. Voluntary movement of Greek Cypriots to the South and Turkish Cypriots to the North was later formalized with an agreement between Makarios and

Denktaş.[7] Thus since then the island was divided for the second time, the first being in 1963.

Negotiations for the implementation of the second stage of the Association Agreement were carried out by the GCA and the EU and a Customs Union agreement was signed in 1987. In these negotiations Turkish Cypriots were again kept out of the official meetings. Customs Union agreement aimed to achieve the second stage of the Association Agreement and it involved two phases (10 years and 4-5 years) in which at the end (2002) a full customs union would be achieved between the "Republic of Cyprus" and the EU on all manufactured products and on some agricultural products like citrus.[8]

2.2 Application of the Greek Cypriot Administration for Full Membership

On July 3rd 1990 the GCA applied for full membership to the European Coal and Steel Community, European Economic Community and European Atomic and Energy Community in the name of the whole of Cyprus. The Council of Ministers sent the application to the European Commission in September 1990 and asked for their opinion as required by the treaties establishing the EU.

On July 1993, the Commission presented its opinion to the Council of Ministers.[9] The Council had accepted the opinion of the Commission and welcomed the eligibility of "Cyprus" for the membership. Furthermore the Council supported the Commission which expressed the willingness of the EU to build closer relationship with the "Republic of Cyprus" by the use of the tools included in the Association Agreement for the transition of Cyprus towards the unification with the EU in all areas. Special care would be given to enable the "Cypriot Authorities" to adopt the acquis communitare and implement it effectively throughout the island. The Council also stated that if the Cyprus problem was not solved in the near future by intercommunal talks, the Council would re-examine the application of "Cyprus" to the EU in 1995. Like the application and its acceptance the EU, the opinion and the decision of the Council of Ministers was totally rejected by the Turkish Cypriots. The main reasons for the Turkish Cypriots for rejecting the Commission's opinion and the Council's decision were: (i) the Greek Cypriots can not represent the whole island, (ii) the application was against the Treaty of Guarantee which prevents Cyprus to be a member to any economic or political organization in which guarantor states are not members, (iii) the application for full membership was against the Ghali's

$$\Delta Y^a = \sum_{i=1}^{n} (p_i^e - p_i^w) T_i^a$$

Where p_i^w and p_i^e are the world and the EU prices of the ith good and T_i^a is the volume of imports of Country A from the rest of the EU. ΔY^a indicates a net transfer of income from Country A to the rest of the EU.

With the application of the CAP, the gap between the EU and world prices will consequently cause a direct income transfer from North Cyprus to the EU. This transfer is expected to be fairly high because the agricultural imports of North Cyprus mainly include wheat, barley, sugar, milk products and beef which are highly protected in the EU. On the other hand exports of agricultural goods which are mainly citrus and potato are expected to have some increases in the incomes of the producers in North Cyprus. In this context North Cyprus will benefit from the EAGGF guarantee fund. Currently North Cyprus is selling its agricultural products (citrus and potatoes) to Eastern European Countries and the EU via Turkey.

The estimates of the direct income transfers from the Turkish Cypriot consumers to the EU producers are given in Table 1. As a member of the EU North Cyprus should either import these goods from third countries and pay the *threshold prices* or import them from the EU countries and pay the EU price. When imports originate from third countries, an import levy is imposed such that the import price plus the levy equals the threshold price. The import levy revenue goes to the EU budget. When imports originate from the EU countries, North Cyprus's cost, insurance, freight (CIF) import prices equals to the EU market prices plus the transport cost. The market prices of the EU are close to the *intervention prices*. Although the details for each product can be different, in general, if market prices fall below the intervention prices, then intervention occurs and supplies are withdrawn from the market, until the market prices become higher than the intervention prices. Thus the threshold prices are used to estimate the upper limit, and the intervention prices the lower limit of these direct income transfers. These prices are determined by the Council for most of the products every year.[14] The following estimates are based on the assumption that all the imports of North Cyprus originate from the rest of the EU. If these imports originate from non-member countries, North Cyprus will contribute to the EU budget by agricultural levies (which is the difference between the world price and the threshold price), resulting from agricultural imports from non-member countries. But in any case total effect on national income will be more or less the same. In the study it is assumed that all the imports of North Cyprus originate from the EU countries which cost cheaper. North Cyprus would not

have to pay the agricultural levies since it is assumed that no agricultural imports are coming from non-member countries. This assumption can hold true since agricultural imports of North Cyprus can be supplied from EU countries as the Union has surpluses in those products.

Table 1. Direct Income Transfers from North Cyprus to the EU for 1995 ($).[a]

1 Product	2 Quality (tones)	3 Avarage import price (c.i.f.)	4 Threshold price	5 Intervention price	6 Max. Income transfer (4-3)*2	7 Min. Income transfer (5-3)*2
Wheat	26,219.0	112.8	213.0	139.4	2,627,143.8	697,425.4
Barley	31,392.0	139.0	213.0	139.4	2,323,082.0	12,557.2
Sugar	2,500.0	400.0	826.4	684.5	1,066,000.0	711,250.0
Maize	43.0	114.9	213.0	139.4	4,218.3	1,053.5
Beef[b]	693.0	1,562.0	---------	3,985.6	1,679,554.8	1,679,554.8
Butter[b]	26.0	1,770.5	---------	3,555.1	46,399.6	46,399.6
Cheese[b]	409.0	2,285.6	---------	5,971.4	1,507,492.2	1,507,492.2
Olive oil[b]	35.0	746.5	---------	2,124.2	48,219.5	48,219.5
Total					9,302,110.2	4,703,952.2

Notes:

[a] Average exchange rate for 1995 is 1 ECU=$1.308.

[b] For these products intervention prices are used instead of the threshold prices.

Source:

1. TRNC Ministry of Economy and Finance (1996), *Import and Export Statistics 1995*, Nicosia, pp. 1-15.
2. European Commission (1996), *Agricultural Situation in the EU 1995 Report*, T/22-T/79. 3. TRNC Ministry of Agriculture Natural Resources and Energy (1996), *Summary of Agricultural Statistics 1975-1995*, Nicosia, pp. 51-73.
4. Author's interview with TRNC Association of Soil Products (1997), for the average import price of wheat and barley.

The direct income transfer from the consumers of North Cyprus to the producers of the EU is expected to be $9.302 m. when the threshold prices are used and alternatively $4.703 m. when the intervention prices are effective.

3.2 Budgetary Transfers

As a member of the Community, North Cyprus will have to contribute to the budget of the EU. These contributions will include:

1. Tariff revenue collected by applying the Common External Tariff (CET) of the EU,
2. Import levies on agricultural goods imported,
3. A percentage of the value added tax (VAT) revenue.

Countries with relatively large agricultural sectors are expected to benefit from the application of CAP. North Cyprus has a larger agricultural sector than the average EU member states. The share of its agricultural output to its total output was 10.1%[15] compared with 1.8% of the EU as a whole during the year 1994.[16] Furthermore North Cyprus is a Mediterranean country producing and exporting products which are supported mainly through the budget not through variable levies. Therefore North Cyprus can be expected to make net gains from the EU's budget.

Since North Cyprus is not currently a member of the EU, its contributions are estimated using relevant EC averages. For the EU as a whole, the percentage of its tariff revenue to total EU imports from non-member countries was 0.5% for the year 1995.[17] By applying these percentages to the imports of North Cyprus from non-EU countries (which is around $264.1 m.) North Cyprus would contribute $1.320 m. to the EU budget for the year 1995 ($264.1* 0.5%).[18]

In North Cyprus application of the VAT system began in July 1996. Since the country did not have a VAT system in 1995, its contribution to the EU budget can be estimated as a percentage of its GDP. This practice was followed for Greece and Portugal when they first joined the EU. For the EU as a whole, the ratio of the total VAT revenue of the EU budget to the EU-GDP was 0.70% for 1995.[19] Using this percentage for North Cyprus whose GDP was around $745.7 m., its contribution to the EU Budget would have been $5.220 ($745.7 m.* 0.7%).[20]

Since it is assumed that the agricultural imports of North Cyprus would originate from other member countries, there would be no contributions from North Cyprus to the EU budget in the form of agricultural levies.

So total transfers to the EU Budget would be around $6.541 m. (1.320+5.220). But this amount is the result of membership and not only the effect of CAP. Any member country does these contributions (positive or negative) to the budget of the EU. Thus for adjustment, this total is multiplied with the relative *CAP expenditure-EU budget* ratio (52.9%)[21] to

find the approximate payment in the context of the CAP. This amount was expected to be around $3.460 m. ($6.541 m.* 52.9%).

After membership, North Cyprus will receive funds under the CAP from the EAGGF guarantee and guidance sections. The guarantee section uses more than 92% of the total funds for market organization and price support measures.[22] As it has been mentioned before, the degree of support varies among agricultural products and some products are not subject to the CAP market organizations. Products like cereals, oils, sugar and tobacco absorb a large percentage of the EAGGF guarantee funds. On the other hand fruit and vegetables receive a small portion of the fund's total guarantee expenditure. Since the share of fruit and vegetables in total agricultural production is high for North Cyprus, it can be expected that its agricultural production would not receive significantly greater amounts of support from EAGGF relative to an average EU country.

A measure of the relative EU budget expenditure for agricultural production of North Cyprus can be constructed as follows:

$$F = \frac{\sum_i p_i^c Q_i^c E_i / \sum_i p_i^c Q_i^c}{\sum_i p_i^e Q_i^e E_i / \sum_i p_i^e Q_i^e}$$

where p_i^e and Q_i^e are the price and proportions of the ith good in North Cyprus and p_i^e and Q_i^e are the price and production of the i'th good in the Community. E_i is the percentage of the value of production of the i'th good which producers receive from the EAGGF guarantee section. If the proportion of the value of each agricultural product to total agricultural production for North Cyprus was equal to the EU average proportion of the same product, then this measure (F) would be equal to one and agricultural production of North Cyprus would have the same degree of support (in the form of receiving funds from the EU) with an average EU country. But, if products with a higher proportion of North Cyprus's total agricultural production than in the EU get a smaller percentage than the average, then value of this measure (F) is smaller than one. In this case the relative budget expenditure on agriculture of North Cyprus is lower than the relative budget expenditure on the EU average.

The measure of relative budget expenditure on North Cyprus's agriculture under the CAP can also be written as:

$$F = \left(\sum_i \lambda_i^c E_i \right) \Big/ \left(\sum_i \lambda_i^e E_i \right)$$

where λ_i^c and λ_i^e are the proportions of the ith good in the total agricultural production in North Cyprus and the EU respectively. Using the data, this measure for North Cyprus can be estimated. The percentage of the total expenditure of the EAGGF guarantee section to total agricultural production of EU was 16.0% ($\Sigma\lambda^c E_i = 0.160$).[23]

This has been calculated by dividing the total amount spent on the guarantee section by the value of total agricultural production. The same percentage for North Cyprus is estimated and found to be 22.5% (Table 2). Thus the value of measure of relative budget expenditure for 1995 would be 1.407; that is, the agricultural production of North Cyprus will receive funds from the EAGGF guarantee at a rate of 140 % of the funds, which the average EU country's agricultural production would receive.

Columns 2 and 5 in Table 2 give the breakdown of the agricultural production of the EU and North Cyprus respectively. Column 3 gives the amount spent for each category in 1994. In column 4 E_i shows the fund's expenditure on each product as a percentage of each product's value of production. Some products are highly supported through the budget. e.g. cereals. However the expenditure on fruit and vegetables, for the same year was very small in proportion to their value of production. In column 6, relative support to the agricultural sector of North Cyprus is calculated. It is important to note that the high share of cereals within agricultural production of North Cyprus is one of the important elements to reach the value of 22.5% at the end of Table 2. This percentage is higher than the EU average.

Table 2 Relative EU Support to the Agricultural Production of North Cyprus for the year 1995.

1	2 (%)	3 (m.$)	4 (%)	5 (%)	6
Product	λ_i^e	$p_i^e Q_i^e E_i$	E_i	λ_i^c	$(\lambda_i^c E_i)$*(100)
Cereals	8.7	19,063.0	74.9	18.5	13.9
Fruit & Vegitable	15.8	2,852.0	6.2	34.9	2.2
Milk Products	18.5	5,581.0	12.7	9.1	1.2
Beef/Veal	21.1	6,392.0	15.0	2.2	0.3
Sheepmeat/Goatmeat	1.9	2,194.0	38.8	6.1	2.4
Eggs & Poeltry	7.3	228.0	1.8	9.6	0.2
Others	35.7	11,952.0	12.6	19.6	2.5
Total	100.0	48,261.0		100.0	22.5152

Notes: Data in columns 2, 3 and 4 are for the year 1994.

Source: 1. Column 5 is obtained through an interview at the Prime Ministry with experts.

2. European Commission, *The Agricultural Situation in the EU-1995 Report*, pp.T/100-T/102.

In estimating receipts of North Cyprus from the EAGGF guarantee section, we can rewrite equation 3 as:

$$\sum_i p_i^c Q_i^c E_i = F(\sum_i \lambda_i^e E_i)\sum_i (p_i^c Q_i^c) = (\sum_i \lambda_i^e E_i)(\sum_i p_i^c Q_i^c)$$

Multiplying 22.5% with the total agricultural output of North Cyprus ($75.827 m. for 1995), total receipts are found to be $17.073 m.

North Cyprus will also receive funds from the EAGGF guidance section, to improve the productivity and strengthen the structure of its agricultural sector. The expenditure of this section of the fund in 1994 was 1.33% of the EU's agricultural production. However, Portugal and Greece received support

at the amount of 15.9% and 3.1% of their agricultural outputs respectively. The relative support of the guidance section to the agricultural sector of a member state is closely related with the agricultural productivity of that state. For example, Portugal has the lowest productivity and thus it has the highest relative share of support for its agricultural sector. The support received from the EAGGF guidance section by Portugal is around 15.9% of its agricultural output. Greece has the second lowest productivity and it receives the second highest contribution, which is about 3.1% of its agricultural output. The productivity of the agricultural sector of North Cyprus was $2740 per employed person in agriculture in 1994.[24] On the other hand Portugal's productivity was around $7448 which was 2.7 times higher than the productivity of North Cyprus.[25] So it will not be very optimistic to expect a support for the agricultural sector of North Cyprus at least twice the proportion received by Portugal. The relative share taken in our calculations is 30% of agricultural output of North Cyprus.

As a result, agricultural sector of North Cyprus is expected to receive around $22.748 m. ($75.827 * 30%) from the EAGGF guidance section to improve its productivity and invest in its infrastructures.

3.3 Total Income Transfers between the EU and North Cyprus under the CAP

An account of the budgetary transfers between North Cyprus and the EU is given in Table 3. According to this, if North Cyprus had been a full member of the EU in 1995, its net receipts from the EU's budget would have been around $36.371.

Table 3. Budgetary Transfers Between North Cyprus and the EU for 1995 ($)	
1. Budgetary payments	
Customs duties (0.5% *264.1m.)	1,320,500.0
Contributons as percentage of GDP (0.7% *745.741208 m.)	5,220,189.0
Total	6,540,689.0
Payments in the context of CAP (6.541 * 52.9%)*	4,460,024.0
1. Budgetary receipts from EAGGE	
(a) Guarantee (i) Market Organization (22.5% *75.8 m.)	17,072,673.2
(ii) MAC (0.000146 *75.827322 m.)[b]	11,070.8
(b) Guidance (30% *75.827322 m.)	22,748,196.0
Total	39,831,940.0
3. Balance	36,371,915.5

[a] 52.9% is the percentage of EAGGF/EU budget

[b] Monetary Compensatory Amount (MCA) is a mechanism which balances any loss or gain arising from the fluctuations between the green rates (the rate used to convert farm prices into national prices) and the actual market exchange rates.[26] MCA for North Cyprus is obtained by multiplying the ratio of total payments for MCA to the total EAGGF by the agricultural output of North Cyprus (75.8 m.).

Source: Estimates are based on the data from the sources mentioned in Tables 1 and 2.

This positive budgetary transfer of income from the rest of the EU to North Cyprus is slightly offset by the negative direct income transfer from the consumers of North Cyprus to the producers of the EU (Table 1). Net transfer of income is expected to be around $27.070 m. if the threshold prices are used and $31.668 m. if the intervention prices are used. This amount is 3.6% of the GDP, 40.2% for of the total exports and 35.7% for of the agricultural output of North Cyprus when the threshold prices are

considered. With the intervention prices, these figures are 4.3% of GDP, 47.1% of total exports and 41.8% of agricultural output for the year 1995.

These financial benefits to North Cyprus contributes an approximate amount of $150 per head with the threshold prices ($27 m. / population of North Cyprus which is taken as 180,000 for 1995). With the intervention prices per capita income contribution is $176 ($31.7 m./ 180,000). Considering that the per capita GNP of North Cyprus is $4,166 in 1995,[27] such contributions are not negligible.

4. CONCLUDING REMARKS

Although the possibility for North Cyprus to become a member to the EU with the prevailing political circumstances is quite low, the study investigated the expected impact of CAP of the EU on North Cyprus. Direct income transfer from the consumers of North Cyprus to the producers of the EU is expected to be between $4.7 m. (intervention prices used) and $9.7 m. (threshold prices used). Budgetary transfers from North Cyprus to the EU as a result of common external tariff and VAT payment will be $6.5 m. whose $3.5 m. is considered within the application of CAP. In return the EU is expected to contribute to the agricultural sector of North Cyprus through the guidance and guarantee sections of EAGGF a total of $39.8 m. As a result of these receipts and payments North Cyprus is expected to benefit from the CAP an amount between $26.7 m. and $31.7 m. This corresponds to 3.6%-4.3% of its GDP and allocates an increase in income per head of $150 - $170.

Since the beginning of the 1990's, CAP is experiencing radical reforms in order to decrease the amount spent on agriculture by the EU budget and to redirect the expenditures from very costly surpluses to more efficient areas. These reforms mainly have targeted the most costly sectors of the European agriculture like milk and beef, which capture little share in the agricultural production of North Cyprus. Also through the reforms the cereal prices are targeted to decrease more close to the world level. Considering the great share of cereals in the imports of North Cyprus, reforms of the EU in CAP has a favourable effect on North Cyprus. Reforms would mean fewer amounts of direct income transfers from North Cyprus to the EU.

On the other hand although the impact effect has possessed great amount of guidance funds received by North Cyprus, in the long run as the productivity and structure of North Cyprus agricultural sector improves,

EAGGF guidance support for North Cyprus is expected to fall.

Throughout the analyses, the dynamic aspects of the impact were not considered. The dynamic effects are much more difficult to estimate relative to the static effects. Furthermore the transfers within the interest groups, namely the government, consumers, producers etc. were not taken into account. Some other possible benefits to North Cyprus that could be obtained the EU budget were omitted as well, e.g. contribution from the European Regional Development Fund and Cohesion Fund. When all these are taken into consideration, the expected benefits for North Cyprus is expected to be higher.

In conclusion after the membership the EU is expected to channel resources to North Cyprus specificly to improve the productivity and the infrastructure of the agricultural sector. Many EU officials involved with the Cyprus issue indicates that North Cyprus would benefit substantially from the EU funds on becoming a member to the EU and this would increase the economic welfare of the Turkish Cypriots. It is very important to note here that the first priority for the Turkish Cypriots is their security in a possible solution to the Cyprus problem. Economic aspects are secondary. In other words, Turkish Cypriots are not prepared to trade their security with any amount of increase in their material well beings.[28]

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AVRUPA BİRLİĞİ'NİN ORTAK TARIM POLİTİKASININ KUZEY KIBRIS EKONOMİSİNE ETKİLERİ

ÖZET

Kıbrıs'ın Avrupa Birliği ile ilişkileri Kıbrıs Cumhuriyeti kurucu ortaklarının her ikisinin de onayı ile 1962 yılında yapılan ortaklık müracaatı ile başlamıştır. 1963 olayları sonrasında Kıbrıs-AB ilişkileri Kıbrıs Rum Yönetimi (KRY) ile AB arasında yapılan ve Kıbrıs Türklerinin müzakere dışı bırakıldığı görüşmeler ile sürdürülmüştür. 1972 yılında imzalanan Ortaklık Anlaşmasını 1987 yılında Gümrük Birliği izlemiş, 1990 yılında KRY tam üyeliğe müracaat etmiş ve gelinen aşamada 30 Mart 1998 tarihinde KRY-AB arasında tam üyelik görüşmeleri başlatılmıştır. Kıbrıs Türkü'nün onaylamadığı ve kendisini bağlı görmediği bu süreç içerisinde AB'ye üye olması düşünülemez. Ancak bir çözümden sonra ve Türkiye ile Yunanistan arasında bir dengenin sağlanması ile bir üyelik söz konusu olabilecektir. Bu üyeliğin olasılığı ise

bugünkü koşullarda zayıf görünmektedir. Bu gerçek göz önüne alınarak, çalışmada olası bir üyelik sonunda AB Ortak Tarım Politikası'nın (OTP) Kuzey Kıbrıs ekonomisi üzerindeki maddi etkileri araştırılmıştır.

Kuzey Kıbrıs'ın AB'ne tam üye olmasından sonra, OTP'nin Kuzey Kıbrıs ekonomisi üzerinde doğrudan gelir etkisi ile AB bütçesine katkı ve bütçeden yararlanma etkileri olmak üzere iki grup etkisi olabileceği belirlenmiştir. Kuzey Kıbrıs'ta tüketicilerin dünya piyasalarından daha yüksek fiyatlarla AB'den alımları ile AB üreticilerine transfer ettikleri doğrudan gelirlerin $4.7m. ile $9.7 m. arasında olması beklenmektedir. Buna karşın AB bütçesine verecekleri ortak gümrük ve katma değer gelirleri miktarlarına karşın, AB bütçesinden OTP yönlendirme ve garanti fonlarından (yapısal fonlardan alınabilecek katkılar buna dahil edilmemiştir) yardım alınacaktır. Söz konusu gelir ve giderlerin muhasebeleştirilmesinden sonra Kuzey Kıbrıs'ın AB bütçesinden $36.4 m. net gelir elde etmesi ve sonuçta doğrudan gelirlerin (AB üreticilerine transfer) bu rakamdan düşülmesi ile Kuzey Kıbrıs'ın AB'ne tam üye olması halinde OTP'ndan $26.7 m. ile $31.7 m. katkı alacağı hesaplanmıştır.

Çalışmanın sonunda Kıbrıs Türkü için güvenliğin mali çıkarların önünde geldiği ve refah düzeyinde gerçekleşebilecek herhangi bir artış için güvenliğinden en ufak bir ödün vermeyeceği vurgulanmıştır.

NASREDDİN HOCA İLE İLGİLİ BİR RUMCA KİTAP: MANZUM (ÖLÇÜLÜ ŞİİR) HİKÂYELER NASREDDİN HOCA

Oğuz YORGANCIOĞLU*

ÖZET

Nasreddin Hoca, dünya çapında bir Türk mizah ustasıdır. Rum toplumunda da iyi bilinir ve hakkında yayınlar vardır. Bu çalışmada Yuanni Hr. Malta adlı Rum yazarın *"Manzum (Ölçülü Şiir) Hikâyeler-Nasreddin Hoca"* adlı onyedi sayfalık Rumca kitabındaki yedi manzum hikâyenin Türkçe çevirileri verilmekte ve kısaca açıklamaları yapılmaktadır.

I. GİRİŞ

Türk Kültür hayatının en seçkin siması Nasreddin Hoca ince ve kıvrak zekâsı ile her derde her soruna çare-çözüm bulan bir kişidir. En sıkışık anlarda bile bu karmaşık sorunlara çözüm bulur. Bu bakımdan dünyaca ünlü bir kişiliktir.

Ancak Türkleri hiç çekemeyen, hiç sevmeyen Rum komşularımız böyle düşünmüyorlar. Nasreddin Hoca Kıbrıs Rum Halkı'nın dilinde yanyana yaşadığımız 1974 öncesinde "Aslani Hoca" adıyla bilinir. Hoca'nın işleri ve cevapları küçük görülür, "Vulyes du Aslani Hoca", "Aslani Hocanın işleri" diye alay edilir. Hikâyelerde ve konuşmalardaHoca'nın kişiliğinde Türklere ve Türklüğe hakaret edilir. Bu hep böyle olagelmiştir.

Harid Fedai Bey'in aracılığı ile elimize geçen bir küçük Rumca kitap bunun açık kanıtıdır. 14x20 cm ebadında, 1939-Lefkoşa-KIBRIS baskılı Yuanni Hr. Malta'nın hazırladığı; *Manzum (Ölçülü Şiir) Hikâyeler-Nasreddin Hoca* kitapçığı onyedi sayfalıktır. Elimizdeki nüsha sekizinci sayfadan

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başlamaktadır. (Kitabın Rumca aslının kapağı ile bazı bölümlerinin fotokopisi EK I,II,III olarak verilmektedir.)

8. sayfada	*Hoca ile Asırlık Adam*	(7 dörtlük)
9 -10.sayfalarda	*Hoca ile Karısı*	(18 beyit)
11-12.sayfalarda	*Hoca ile Kaz Dolması*	(15 beyit)
13-14.sayfalarda	*Hoca ile Arkadaşı Kadı*	(18 beyit)
15.sayfada	*Hoca ile Sofu Paşa*	(13 beyit)
16.sayfada	*Yorgun Hoca*	(8 beyit)
17.sayfada	*Fakirlik de Gerekir*	(7 beyit)

adlı manzum hikâyeleri yer alır.

Görüldüğü gibi 8. sayfadaki manzum hikâye, dörtlüklerle yazılmış diğerleri beyitler halinde verilmiştir.

II. KİTAPTAKİ MANZUM HİKÂYELERİN TÜRKÇE ÇEVİRİLERİ

Kitapta yer alan manzum hikâyeleri, bizzat yaptığımız çalışma ile Türkçe'ye çevirmiş bulunmaktayız. Bu çevirileri ve bazı saptamalarımızı aktarıyoruz.

Hoca İle Asırlık Adam
(Sayfa 8)

1- Kahvesinde Hoca'nın köyünün
Bir divan kurulur.
Bir konudur ki tartışılan
Çözümü zor bulunur.

2- Yüz yaşında adamın
Olur mu imiş çocuğu
Hele şu ak saçlı imamın
Sallanabilir mi beşiği?

3- Çoğu, "Tabii olur" diye bağırır,
Bir kısmı, "Delilik" diye çağırır
Bir kısmı da, "Bu yaşta ...
Bu, aptallık" diye böğürür.

4- Tam o anda Hoca kahveye girer
Niçin çekiştiklerini sezer

Ve döner gülerek bunlara;
Hayrola, dava nedir? Der.

5- İzah eder birisi ... " De bize ;
Sen ki çok gezersin, görürsün
Bir torbada kaç ceviz var,
Bir bakmada bilirsin ...

6- "Cevabını ver bu sorunun
Adam, yüz yaşına varınca
Bu kadar çok yaşlanınca
Babası olabilir mi bir çocuğun?"

7- "Olur, hem de nasıl olur!" Der gülerek,
"Kimsenin olmasın şüphesi bundan
Bundan doğal ne var ki? Olur olur ...
Hele de genç komşudan!"

Rum yazar Malta, bu şiirinde, Hoca'nın ağzından imamın (bir başka hocanın) karısını kötü göstermiş, hocaların kişiliğinde Türklere yine veriştirmiştir.

Hoca İle Karısı
Sayfa 9-10

1- Hoca'nın vardı bir karısı
Yaşı yirmibeş, saçı altın sarısı.

2- Hoca, elâlemin dilinde
Öyle bir kadın var diye talihinde.

3- Hoca fakirdi, kimsesizdi, mutsuzdu
Karısı da sevdalı, sabırlı, umutsuzdu.

4- "Bu benim alın yazım" diyordu,
Ve Hoca'yı, olduğunca seviyordu.

5- Günün birinde eve bir hacina gider
Ve utanmayı atarak, "Sen delisin" der.

6- Gençsin, güzelsin, tonla para kazanırsın
Eğer istersen, refah içinde, mutlu yaşarsın.

7- Uğurunda keseyi açacak niceleri var ...
İyi düşün, bana cevap ver, ey Dilber!

8- O kadar karıştırır ki hacina, bozar yuvayı

Kadın yolu şaşırır, artık saymaz olur Hoca'yı

9- Aşıklarından aldığı paraların hesabını bilmez
Artık evinden hiçbirşey eksilmez.

10- Ama Hoca, eski hayatına devam eder
Yine soğan, yine zeytin ve kuru ekmek yer.

11- Günlerden sonra bir gün karısı değişir
Sofrasında Hoca'ya, kızarmış bir tavuk verir.

12- Aç Hoca, "Bre", der "Allah aşkına şaşmayın hayretime
Bu mübarek, yolunu mu şaşırdı da geldi evime?"

13- Ve lüzum görmeden kimseyi beklemeğe
Başlar kızarmış tavuğu, parçalayıp yemeğe.

14- Ve zavallı Hoca'mız herşeyi yer, yutar,
Açlığını unutur, mesut, işin yolunu tutar.

15- Ertesi gün sofraya, kızarmış balık gelir
Hoca soru sormaz, oturur karnını doyurur.

16- Artık işin yolu bulunur, Hoca'ya yemekler sunulur
Hoca hiç soru sormaz, oturur karnını doyurur.

17- Bir gün karısı, denemek için, önüne soğan ekmek koyar
Bu beklenmedik olaya, Hoca çok kızar ...

18- Nasreddin bu işe, şiddetle isyan eder;
"_ Soğan ekmek; Pezevenklerin yemeği değil! " der.

Bu şiirinde de dikkat edilirse Hoca, kendi kendine "pezevenk" diye sövdürülüyor. Tabii önce, aç sefil ve zavallı gösterilip zemin hazırlanıyor.

Hoca İle Kaz Dolması
(Sayfa 11-12)

1- Hoca bir akşam, erkenden yatmış da uyuyordu,
Rüyasındaysa en nadide yemekleri yiyordu.

2- Rüyasının en tatlı yerinde sesler duyuldu,
Nasreddin'in kapısı, sarsılarak vuruldu.

3- Beni, hem rüyamdan, hem yemekten eden kim?
Hangi maskaradır yapan? Kaçtı benim uyukum.

4- Kalkar Hoca, hışımla açar kapıyı
Karşısında görür iki büklüm komşuyu

5- "Hocam," der komşu, "belki ayıp olacak
Kazanı istiyorum, biraz su ısıtacak

6- Hanımı sancı tuttu, nerdeyse doğuracak
Kusura bakma Hoca başka kapı yok başvuracak!"

7- Hoca: "Komşu", der "vermiyeceğim sana kazanı
Ben sevmem, beni yemekten alıkoyanı

8- Ben rüyamda, kaz dolması yerken neden geldin?
Kabarmış iştahımı, sen neden engelledin?

9- Ya bana yarına pişmiş kaz dolması getirirsin,
Ya da kazanı, zor götürürsün."

10- Razı olur komşu, getirsin dolmasını
Alabilmek için Hoca'dan, ihtiyacı olan kazanı.

11-İki gün sonra iade etmek kaydıyla
Hoca anlaşıverdi, sevmediği komşuyla.

12-Hoca: "Komşu", der "hani nerde kaz dolması?
Açlık başıma vurdu kalmadı beklemesi."

13-"Hocam," der komşu, "getirdim ya dün öğlen!
Ve kendi elinle aldın, dolmayla tepsiyi sen!"

14-Hoca şaşkın ; "Dostum, aklını kaybetmediysen eğer
Getirdiğini, mutlaka rüyanda görmüşsün", der

15-"Hocam," der komşu, "aslında herşeyi sen uydurdun
Kaz dolması yalandı, çünkü kapuyu çaldığımda uyurdun!"

Bu hikâyede gerçi sövgü yok ama Hoca, komşusuna yenik düşürülmüş, kendisiyle alay edilmiştir. Üstelik Hoca yine açtır, yine yetersizdir.

Hoca İle Kadı Arkadaşı
Sayfa 13-14

1- Hocamız Mehmet Kadı'yı merak eder
Bu, en iyi arkadaşını, ziyarete gider.

2- Hayrandı Hoca, Kadı'nın derin bilgisine
Hayrandı sohbetine, herşeye olan ilgisine.

3- Kadı'nın evinde bir gün odaya biri girer
Kadı'ya hitaben de "Bana yüz lira borçlusun," der.

4- "Sevgili Kadı, borcun bana yüz lira
Param yoktur, yüz lirayı getiriniz hazıra.

5- Birkaç sebepten bir bahçe var almak istediğim
Ki kaybedersem (alamazsam) inan çok üzüleceğim.

6- Budur, sana açıkça diyeceğim
İnan olsun paranı, ilk fırsatta iade edeceğim."

7- Kadı ona teşekkür eder,
Ve onunla yürüyerek, biraz ileri gider.

8- Dostuna istediği yüz lirayı vererek
"Para için senet istemem", der.

9- Yabancı çekip gidince evden
Aceleyle bir defter çıkarır Hoca cebinden.

10- Deftere başlar birşeyler yazmağa
Kadı'nın resmini deftere çizmeğe.

11- Kadı sorar: "Nedir deftere çizdiğin?"
Hoca: "Delilerin resmini yapıyorum" der... "Bildiğin..."

12- "Hele hele bir bakayım," der Kadı ve aniden
Çeker, defteri alır Hoca'nın elinden.

13- Kadı, görünce kendi resmini sakallı
Bir küfür sallar Hoca'ya, hem de okkalı

14- Beni bile, deli diye resmeyledin
Ama inan ben, senden delisini görmedim

15- Hoca: "Nasıl kıyar da yüz lirayı verirsin,
Senetsiz sepetsiz? Bunu nasıl ispat edersin?"

16- "Senede ihtiyacım yok Hocam, o benim dölüm

Aldığı gibi dönecek, yoğudu başka yolum.

17-Dönecek, geri getirecek o parayı
Kuşkum yoktur, gelmezse cellâda veririm kafayı."

18- Hoca der: "Getirirse eğer o, geri parayı
Seni silip, onun resmiyle, süsleyeceğim burayı."

Hocalar yerine ve durumuna göre, dini görevleri yanında öğretmenlik ve kadılık da yaparlar. Burada Kadı rolündeki Hoca üç kağıda getirilmiş çaresizliğe düşürülmüştür.Üstelik bir Hoca, öteki Hoca'ya (Kadı) deli diye hakaret edilmiştir.

Hoca İle Sofu Paşa
(Sayfa 15)

1- Hoca: "Ben artık gemici olacağım," der
Camiyi bırakır, çeker şehire gider

2- Kazandıramadığı için ekmeğini,
Değiştirmeğe karar verir mesleğini.

3- Bir gün sandalına bir Paşa biner,
Okumuş olan Paşa, Hoca'ya şöyle der:

4- "Biraz seyran etmek isterim
Eğer menun olursam, seni iyi öderim."

5- "Başüstüne," der Hoca, "hemen demir alayım
Memnun olmanız için gerekeni yapayım.

6- Seviyorsanız eğer savaş taktiklerini,
Önce şöyle görelim, İngiliz gemilerini".

7- Paşa der ki: "Bilir misin astronomi?"
"Hayır," der Hoca, "hatta tek kelimesini".

8- "Yazık," der Paşa, "ya geometriden ne haber?
Geometriyle çözülür, bu dünyada problemler.

9- Hayatın anlamını, bilimsiz nasıl çözer
Bunları bilmeyenler, üçte ikisiyle öder.

10- Bu kadar bilgisizsen, söyle neler yaparsın?
Sen bu cahil halinle, söyle nasıl yaşarsın?"

11- Aniden bir fırtına, çıkar da şiddetlenir
Paşa'nın sandalı da alt üst olur, devrilir.

12- Hoca, uzaktan dalgalar arasından
Uzatarak başını, sorar arkadaşını.
13- "_ Paşam, yüzmen var mı ki?" "Yok." diye cevap alır.
"_ Öyleyse," der, "Paşam senin, hayatın burda kalır."

Bu manzum hikâyede, bir Türk Paşa'sı, ancak gevezelik eden, yüzme bile bilmeyen ve boğulmaya lâyık görülen birisi olarak gösteriliyor.

Hoca hiçbir ilimden haberi olmayan cahil birisi olarak gösteriliyor.

Müslümanlık (Hocalık) kendini yürüten, anlatanların karınlarını bile doyuramayan bir sistem, müslümanlar da maddi güç olarak çok zayıf gösteriliyor. Bir hocalarına sahip çıkamayorlar, o da camii bırakıp meslek değiştiriyor. Tabii meslek değiştirme başkasının canına zarar veriyor.

Yorgun Hoca
(Sayfa 16)

1- Bir akşamüstü, Hoca dönerken işten
Hem üzgündür, hem kırgın, ayrıdır eşeğinden.

2- Bütün gün, babasının bağını çapaladı
Kullandığı paslı bel ellerini yaraladı.

3- "Ayakta duracak kadar, kalmadı mecalim
Allahım, bir eşek yolla, eve rahat gideyim."

4- Önünde o an, bir eşek belirdi, sırtında korkunç biri.
Baştan aşağı silâhlı, belinde de hançeri

5- Eşeğin arkasında şaşkın küçük bir sıpa
Güzel koşumlu, ama yorgun. "_Dur," der, ağa.

6- "Dur Molla, dur da sıpayı sırtına al,
Bunca yolda yoruldu, al da şehre öyle gel!

7- Sıpayı dinlendirirsen, seni memnun kılacağım,
Hatırın kalmasın, sana bir kırbaç eksik vuracağım."

8- Hoca üzgün, "Allahım," der, "yorgunum diye eşek istemiştim,
Eşeği, sırtımda taşımak için dilememiştim."

Şiirde bir din adamı olarak Hoca, dileğine ulaşmağa lâyık görülmüyor. Binmek istediği eşeği taşımak zorunda bırakılıyor. Üstelik kırbaçlanıyor, yani Hoca "Eşekten aşağı" gösteriliyor.

Hoca İle Fakirlik
(Sayfa 17)

1- Allah rahmet eylesin, Hoca, her zaman överdi
"Fakirlik benim hoşuma gider" derdi.

2- "Neye yarar yoksulluk, durmaz onu översin?
Parasız, söyle bize ne işlere girersin?

3- Fakirliği sevmek, bir nevi deliliktir,
Parasızlık, insanda en büyük eksikliktir."

4- Hoca "_Bre" der, "fakirlik gereklidir, göreceksiniz,
Bir gün bana siz, bravo diyeceksiniz."

5- Bir ay geçmeden aradan, belirtiler geldi havadan
Ertesi sabah, durulmaz oldu yağmur ve fırtınadan.

6- Parlak gökyüzünü, simsiyah bir bulut kapladı
Önce rüzgâr, yağmur ve yıldırımlar başladı.

7- Hoca'nın köyü alt-üst oldu sallandı
Köylüleri Hoca'nın köşe bucak saklandı.

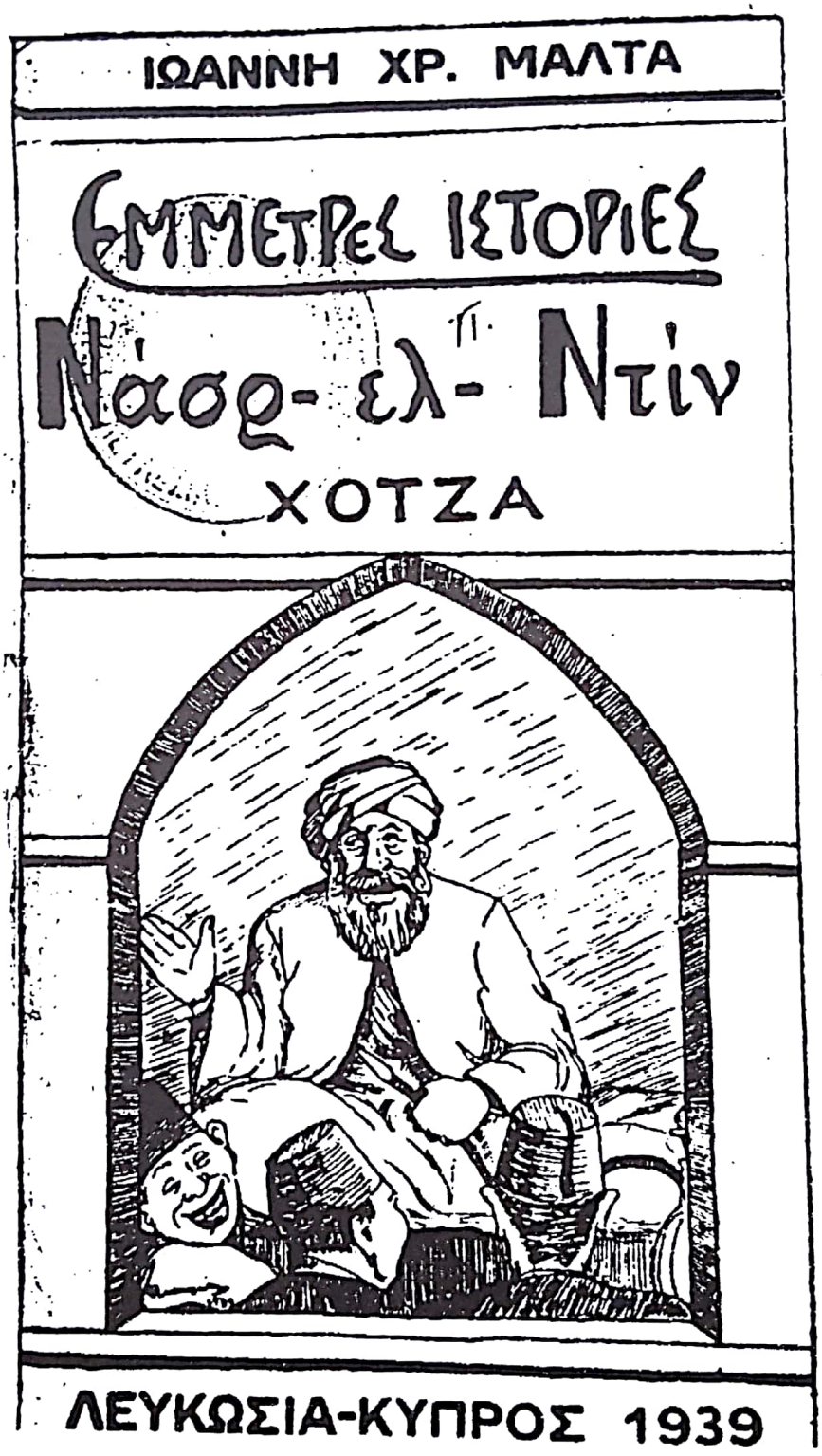
Şiirde Hoca yine zavallı, yetersiz ve fakirliği benimsemek zorunda kalmış birisi olarak gösteriliyor. Tabii "bre" şeklinde konuştuğu için de hemen üçüncü beyitte köylülerine Hocaları için "Deli" lâfını söyletiyor. Yani bu şiirinde de aşağılama tekrarlanıyor.

III. KISA BİR DEĞERLENDİRME

Görüldüğü gibi tüm hikâyelerde Nasreddin Hoca ve onun kişiliğinde Türkler küçük düşürülmektedir. Bu çalışmaya konu olan Rumca kitapçığı Türk diline kazandırmakla, bu konuyu daha derinliğine araştırmayı hedefleyen yazar ve araştırmacılara bir hizmet verdiğimize inanıyoruz.

EK I

Rumca Kitabın Kapağı



EK II

Rumca Kitabın 8'inci Sayfası

— 8 —

Ο ΧΟΤΖΑΣ ΚΙ' Ο ΕΚΑΤΟΧΡΟΝΙΤΗΣ

Μέν' τοῦ χωριοῦ τὸν καφενὲ
καθόνταν καὶ συζητοῦσαν
πάνω σ' αὐτὸ τὸ ζήτημα,
ποὺ νὰ τὸ λύσουν δὲν μποροῦσαν:

—«Ἄνθρωπος ἑκατὸ χρονῶν,
μπορεῖ ποτὲ παιδὶ νὰ κάμῃ;
Νά! καλὴ ὥρα σὰν κι' αὐτὸν
τὸν γεροντάκο μας Ἰμάμη;»

—«Μάλιστα, φώναζαν πολλοί,
κι' ἄλλοι ἀπαντοῦσαν: Τί βλακεία!
Ἄκαρπο δέντρο εἶν' ὁ καθείς,
σὲ τέτοια μεγάλη ἡλικία.»

Μὰ ξαφνικὰ τὴν ὥρ' αὐτήν,
ὁ Νάσρ-ελ-Ντὶν ὁ Χότζας μπαίνει
καὶ μ' ἕνα γέλιο πονηρὸ
ζητᾶ νὰ μάθῃ «τί συμβαίνει».

—«Ἐσὺ ποὺ ξαίρεις τὰ πολλά,
τοῦ λέν, κι' ὁ νοῦς σου κατεβάζει
καὶ βρίσκεις μ' ἕνα κοίταγμα,
πόσα καρύδια ὁ σάκκος βάζει,

πές μας λοιπὸν τὴ γνώμη σου:
Ὁ ἄνθρωπος ὅταν γεράσει
καὶ γίνει χρόνων ἑκατό,
μπορεῖ ποτὲ παιδὶ νὰ φτιάσῃ;»

—«Μπορεῖ, ναί, καὶ καλομπορεῖ,
τοὺς λέει ὁ Χότζας, καὶ σπουδαῖος
δὲν εἶναι λόγος, φυσικά!
ὁ γείτονάς του, ἂν εἶναι νέος.»

EK III

Rumca Kitabın 17'inci Sayfası

ΧΡΕΙΑΖΕΤΑΙ Κ' Η ΦΤΩΧΕΙΑ!

Ὁ καλὸς Νάσρ-ελ-Ντὶν Χότζας,—ὁ Θεὸς νὰ τὸν συγχωρέσῃ—
πάντοτ' ἔλεγε σὲ ὅλους πὼς ἡ φτώχεια τοῦ ἀρέσει!

«Τί ὠφέλεια φέρν' ἡ φτώχεια Χότζα μου καὶ τὴν ζητᾷς;
Πές μας, τί μπορεῖς νὰ κάμῃς ὅταν χρῆμα δὲν κρατᾷς;

Πρέπει νἄναι τέλεια βλάκας κεῖνος ποὺ θὰ προτιμήσῃ,
ἀντὶ χρήματα, τὴν φτώχεια, τὴν ἀνέχεια, ν' ἀποκτήσῃ!»

«Βρὲ χρειάζεται κ' ἡ φτώχεια, σᾶς τὸ λέω καὶ θὰ δῆτε
πὼς θὰ φτάσῃ κάποια μέρα π' ὅλοι Μπράβο! θὰ μοῦ πῆτε».

Δὲν ἐπέρασ' ἕνας μῆνας καὶ κατσούφιασ' ὁ καιρός·
ἀπὸ τὴν αὐγὴν ἐφάνηκ' ἄγριος καὶ βροχερός!

Μαῦρα σύννεφα σκεπάσαν τὸν γαλάζιον οὐρανό,
καὶ τῆς Φύσεως ἡ μάχη ἄρχισε μὲ κεραυνό,

ποὺ ἐσκόρπισε τὸν τρόμον εἰς τοῦ Χότζα τὸ χωριὸ
κι' ὅλοι ἐτρέξαν νὰ σωθοῦνε ἀπ' τὸ φοβερὸ στοιχειό!

A BOOK ABOUT NASREDDIN HODJA IN GREEK LANGUAGE

ABSTRACT

Nasreddin Hoca is a well known Turkish humorist around the world. He is also very well known in the Greek society where there are some publications about him. This paper presents seven stories written in rhyme and metre (translated from Greek To Turkish) taken from a Greek writer Juanni Hr. Malta's seventeen pages book called *Stories Written in Rhyme and Metre-Nasreddin Hoca* and gives a brief explanation about them.

A CONCISE EVALUATION OF HISTORY, HISTORIAN AND BIAS

Nuri ÇEVİKEL*

ABSTRACT

This paper concisely discusses the meaning of *history*, its subject and the task of the *historian* and then tries to make clearer the nature of *bias* with its causes and results. Thereafter, it answers the question of *objectivity*. Later, it evaluates the measures that can be taken by historians and all nations of the world as a whole against the subject matter, that is, *bias*. At the end, it brings a conclusion to the work.

I. INTRODUCTION

As a disciple of *history,* the author of this writing, who has so far mostly devoted himself to Cypriot studies, has often been in anguish during his explorations on works, whether in native or foreign languages, about Cyprus *history* under the influence of the writers' unacceptable level of bias. Besides *history*, that is also an essential fact for other social sciences and disciplines such as sociology, philosophy, law, politics, literature, etc. Frankly speaking, the author never feels free from the same general problem either, namely, the danger of to be overwhelmingly affected by his *bias* while preparing his writings. Therefore, in the *Journal for Cypriot Studies* (DAÜ-KAM) which can be said to be the most prominent and scientific periodical of the T.R.N.C., he wants to put forward this *bias* problem for discussion, believing that it should never be ignored or underestimated by any of the men of science and literature who are expected to solve the problems of a modern society.

The most important reason of the author's opening a discussion on such a subject is the fact that, leaving foreign historiography aside, there has been a

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crucial *bias* problem in both Turkish Cypriot and general Turkish *historiography* themselves. For the former, in Kemal ÇİÇEK's Ph.D. thesis[1] submitted to the Faculty of Arts of the University of Birmingham on the legal position of the Zimmis (non-Muslims) in Ottoman Cyprus (1698-1726) and Nuri ÇEVİKEL's article about the legality issue of the Turks' conquest of Cyprus (1570-71)[2] have depicted enough examples of the *bias* in historical works written especially by Greek and European writers[3] in the previous centuries. For the latter, a quotation belonging to today's great authority of the general Turkish *history,* Professor Halil INALCIK, given by Salih ÖZBARAN in an article evaluating the recent developments in the methodology of *history* in Turkey, may be sufficient to point out that there is something problematic related to *bias*:

Turkish history is a history which has been extremely distorted and destroyed. It is necessary to completely rewrite especially the Ottomans' social history... We have to present everything with undeniable documents.[4]

It is an established fact that, since the earliest times, mankind has been preoccupied by disastrous catastrophes like wars, fires, massacres, invasions and the like, most of which has broken out from national and international disputes among themselves. In fact, these conflicts did not start suddenly, but have come into being as a result of a gradual development. In this development many factors have been able to find playing grounds. One of them is *history*.

In the ancient times, *history* played its role not in the name of "*history*", but in the name of stories, epics, myths, and fictions, etc. *History* has been a good tool for various purposes for authors, individuals, or societies. It has been used, for example, to animate nationalistic feelings, to make some people conscious of their origins, and to gain political supporters, fame, and an academic career. In these usages of *history*, of course, consciously or not, the *bias* of the people who wanted to manipulate history, entered their written works in the name of *history*. Therefore, *history* became a main invincible factor of the disputes among societies. So it seems to be very necessary to know about *history*, *bias* and the importance of *bias* for the historian and his society in order to be able to do something against its harmful results.

II. HISTORY

Let us start to answer the question of the nature of *history*. What is *history*? If we look it up a dictionary we find that the word "*history*" means a branch of knowledge dealing with the past events, political, social, and economic, of a country, of a continent or of the world.[5] It may have different names, but it has the same meaning in most languages spoken in the world. For example, for the events which have happened in the past and for the knowledge which we strive to build up about our past, the same word is used: in English as "*history*", in French as "histoire", in German as "Geschichte", and in Turkish and Arabic as "târih", etc.

As a discipline, it has been used in various meanings, for it is a discipline which deals with and serves life and is open to change with time, with the influence of demands of society, and of thoughts and fears.[6] We can give certain definitions of *history* according to the great thinkers working on the subject. In his *The Power of History,* Professor Le Cordeur explains that *history* signifies the past itself and then as a second meaning, it means what has been written about the past.[7] Another contemporary historian, Raymond Aron, describes it as a reconstruction and an establishment of the facts starting from fiction, myth, or legend in accordance with the most rigorous techniques and methods.[8] Our third definition comes from E. H. Carr: "*History* is a process of mutual and continual interaction between historian and facts and it is an endless dialogue between the past and the present" [9] To sum up, *history,* generally speaking, is a collection of facts existing in various sources, which are to be reconstructed by historians who can apply a variety of methods to their works.[10]

In fact, there exists a great number of definitions of *history* that one could continue to enumerate. The reconstruction of the past has not come to an end because of the continuous emergence of new sources and methods and new understandings as time goes on and this work is inspired by a present interest, purposes, hopes, and so on. For example, on the one hand, every society wants to know its own *history* to establish its dignity, its social identity and its self-awareness. Moreover, all societies continuously feel in need of past experiences to make every kind of decisions related to their life. On the other hand, for the individual, intentionally or not, the past is a constant frame of reference for value judgements or points of view.[11] We also know that *history* has been used for politics as Macaulay and Bismark did in their countries in the last century.

Is *history* a science? As an answer to this question, it can be clearly said that an historian cannot demonstrate his study of human affairs, the subject

of *history*, but he can offer explanations which are a subjective and relative experience,[12] for the historian is unable to make experiments to produce constant laws. Consequently, in recognising the uniqueness of its subject matter and in failing to reduce it to instances of a law, *history* differs from natural sciences.[13]

Though *history* is not a natural science, it is fortunately accepted as a discipline which possesses certain methods to reach the truth through various steps such as research, criticism, comparison, testing the truth of claims lying in the sources by asking the questions "Why" and "How?" to find out consequences and relationships between events[14] and then interpreting the events. As the famous English historian Thomas Babington Macaulay (1800-1859) claims, *history* is on the frontier between science and art.[15]

III. THE DOMAIN OF HISTORY

Since *history* is a discipline, it must have a certain field of study. However, there are diverse ideas about the domain of *history*. Some claim that its subject must be human beings. For example, according to two French historians, Michelet and Fustel de Coulonges, *history* must be study of human beings as its nature necessitates.[16] And then Thomas Carlyle, the well-known British scholar, makes his appearance as a member of this group by urging that the subject matter of *history* is the great men who have achieved insurmountable works. Another historian of this group, which naturally consists of many historians, Raymond Aron asserts: "...Man is both the subject and object of historical knowledge".[17]

On the other hand, besides these historians who accept human beings as the subject of historical study, we have another group of scholars who mark men within their society as a whole as a subject of *history*.[18] Henry Prienne, for instance, claims that *history* must be the study of the development of human societies in space and time.[19] March Bloch then supports Prienne's thought by explaining that the subject of *history* is never merely individuals, but the organised societies in which man lives and it seems more wise to interpret *history* in both the thoughts, the origins of feelings and emotions lying in events.

In short, it can be claimed that *history* does not merely take interest in series of events, but in the events which are the outcomes of human activities; in other words, it takes as a subject for itself the social traditions directed by human beings and the events which emerge in time as expressions of men's thoughts. Then it makes its mission the discovery of laws which shape those events and to make clear the conditions and cycles of

development/decline and evaluation/distortion.

After having so far introduced the concept of *history* and its domain, this paper will discuss the historian's task, the importance of *bias* in *history,* its main causes and results. This paper will then try to answer the question of *objectivity* for the historian. Finally, the article will throw a glance at the possible measures that can be taken by historians themselves and all of the nations of the world as a whole in co-operation against this personal, national, and international nuisance, namely, *bias.*

IV. THE TASK OF THE HISTORIAN

What is the task of the historian? In fact, an historian inevitably has to respond to the demands of two things; the first one is his master, *history* as a discipline, and the second is his society. Toward *history* as his calling, he must insist on truth while he is trying to reconstruct the past. It is a fact that even if all the sources of *history* were ready, it would be impossible to depict the past absolutely as it happened.[20] But he must try to do so. The essential work of the historian, Prienne states, is to bring those episodes, those incidents into the light to show the relationships existing between events and to attempt to explain them.[21]

We now turn to Leopold von Ranke (1795-1886), the famous German historian and founder of modern scientific *history*, for an answer. He declares that the highest aim of an historian is to discover and relate *"wise es Geschehen ist",* that is, how it happened.[22] And to him, the ultimate objective is to try to access pure reality.

Arnold Toynbee, a representative of a different current, claims that an historian must not only insist on truth, but also give an aesthetic quality to his work by explaining that, "...the excellence of historical works is measured not only in terms of the "truth" of its statements, but also in terms of historical imagination".[23] From a slightly different viewpoint, in his *History,* B. Croce urges that the principal function of the historian is not to record, but to evaluate events.[24] Finally, according to Pieter Geyl, an historian primarily interprets the past.[25]

It is obvious that all these important scholars seem to be correct to a certain extent. In making his reconstruction under the light of the definitions above, it would seem fair that an historian should take the historical subject under consideration from the point of view of the past in order to do justice to the past.[26] M. Butterfield, Professor of Modern *History* at the University of Cambridge, points out that "...the primary function of the historian is to reconstruct the past in its own context, not in ours; to recover

a "sympathetic" understanding of what actually happened in Ranke's sense".[27]

In fact, all of these recommendations constitute the main requirements of *history* as a discipline. It is very interesting that facts and documents are of great importance, but without an historian to compose *history*, they would not mean anything.[28] On the other hand, it is widely acknowledged that the historian is simply an individual like any other and a product of his society whether he wants to be or not. Therefore, he has a mission to his society as well as to the individual for whom the past — the master of the historian — is a continuous frame of reference. Societies constantly draw attention to past experience in order to make decisions, from the most trivial to the most important.[29] It is for this reason that a society needs a *history* in order to establish its dignity, its social identity, and its self-awareness.[30] Actually, this clearly shows the position of the historian with respect to his society. We can give Macaulay, who spent great efforts to provide emotional reassurance to the British people, [31] as an example of the status of the historian.

V. BIAS

So far we have seen how the position of the historian is significant for both the individual and his society. Hence, the problem of *bias* needs to be dealt with more caution and sensitivity. We should first define the concept of *bias* in the context of *history*. *Bias* here simply means the personal aspirations and prejudices of an historian interfering with the quality of his work. To eliminate this *bias* is extremely difficult, for it permeates the whole of the historian's work through his judgements and interpretations of any historical event.

VI. THE ORIGINS OF BIAS

Since bias is so important a matter, I think we should first identify the factors which, consciously or not, cause the historian to allow *bias* to enter his work, so that we can determine what measures can be taken to prevent or at least reduce it to an acceptable level. In fact, there are three main factors at work in this problem: the existing order, the social order or society's pressure on the historian, and the susceptibility of *history* to manipulation. The historian is naturally a part of society[32] and, as his society marches like a regiment in ceremonial order, the historian will also

automatically move together with it. Consequently, any of the social and political movements in his society would inevitably influence him. For example, most of the historians in the Western world around 1914 were supporters of the existing order, working in the service of the theme of the foundation of national greatness.[33]

Another factor, as Professor Cordeur states, is the demand society puts on its historians. Every society expects supervision from historians in determining the country's destiny and future plans. Moreover, the historian's religion, economic conditions, status, and education in his society all affect his value judgements and feelings.[34]

In addition to the social order and the demands of society, there emerges one more factor. Macaulay's claim that *history* is on the frontier between art and science has already been mentioned. Therefore, history would naturally include literature as well. Indeed, since there is considerable literature used by historians, relativism inevitably comes into the picture. Literature, of course, can easily cause misunderstandings and misinterpretations. To prevent these is so problematic that Emperor Napoleon Bonaparte is said to have declared: "Bring me a sentence which cannot be interpreted and I will sentence you with it." Consequently, it is also true that the lack of adequate knowledge of what has happened is a factor that forces the historian to resign himself to *bias*.[35]

VII. THE CONSEQUENCES OF BIAS

It is indeed true that each of the factors mentioned above have a different fatal outcome. The first and probably most important one is distortion in the historian's work. This distortion will damage the historian's moral achievement, which is the unique measure of importance of any historical and scientific work. And by giving his society a distorted frame of reference to use for decision-making, for finding its dignity and destiny, he will naturally contribute to international disputes that may gradually lead to wars, by way of misunderstandings.[36] In addition, *bias* will strike a blow on the efforts of those who try to enable *history* to gain a respectable place in the scientific arena with same status as other sciences.

Thus, it is understandable that the problem of *bias* has great personal, national, and international effects on human affairs. Now, the author sees it suitable to touch upon a controversial side of *history* by trying to answer the question of the historian's *objectivity* and to determine the extent to which an historian may be successful in avoiding being resigned to *bias*.

VIII. IS OBJECTIVITY POSSIBLE?

To give a satisfactory reply to this question may be possible insofar as human nature is known to a certain extent. It is a widely accepted fact that man has a complex nature with various inner faculties such as feelings, ambitions, and the like. As mentioned before, the historian is a product of his society. In this respect, and through his personal faculties, the historian is bound to his nation, which has certain characters, traditions, and a system of beliefs. As a result, as he is working on a subject, the historian cannot help but imagine he is acting on behalf of his family, nation, state, or religion, which are not only greater than himself, but also outside himself. Then he will be more inclined to feel self-righteous.[37] This may lead him to act selflessly like a soldier in a war. In short, since it is impossible to completely eliminate feelings and judgements – the faculties by which humans differ from other creatures existing on Earth – to be thoroughly objective like a camera seems unattainable.

Without any doubt, that is the essence of the matter, for it is valid not only for historians, but for all human beings. This factor shows itself in the historian's work, method, point of view, in his selection and interpretation of events and documents, all of which are connected to one another. The famous British historian Arnold Toynbee notes: "An historian cannot make a demonstration of the study of human affairs, but he can give an explanation which is a subjective experience and also relative".[38] According to the present author's research, there is not a single outstanding man of thought, whether philosopher or historian, to claim that to be thoroughly objective is possible. It is because, as Von Laue, for instance, briefly explains; "...the direction of their [historians'] search will always be determined by the interests and needs of communities to which historians, like other creative minds, are tied".[39]

IX. OBJECTIVITY, TO WHAT EXTENT?

After having determined the impossibility of total objectivity as a fact, what I want to bring under consideration here is what historians should do concerning this problem. Since we know that it is inevitable to prevent our personal *bias*es from entering our work, it seems that disciples of *history* can correct or reduce them to a reasonable rate by recognising their own *partiality* as they certainly can, provided that they are sufficiently sceptical.[40] In fact, relativism can be accepted to a certain extent. Raymond Aron, in his *Relativism of History,* writes:

If the totality of an historical reconstruction is oriented by questions asked on the value of reference, the total reconstruction will bear the mark of the historian's chosen principles of selection and will be self-consistent from a single point of view which at best can be recognised as legitimate and fruitful, but it is not necessarily true...

And he continues:

Nevertheless, this relativism which the very history of historical science evinces does not seem to be destructive of scientific history as long as it is correctly interpreted.[41]

X. POSSIBLE MEASURES AGAINST BIAS

As mentioned above, *bias* has a great effect not only upon the individual, but also upon the society which looks to the historian for an interpretation in order to use it as a guide in making decisions or determining its destiny. This means, of course, national and international disputes, which may, in time, gradually lead them into a war. If we want to live in a better, more peaceful and progressive world, soon it will be necessary to do something about *bias*.

First of all, the bulk of the responsibility falls on the historians. They should be aware of the vital significance of the problem. While working on their subject matter, they should never forget that the results of their work will not only affect themselves, but also humanity, indirectly, through their own society. Therefore, it is crucial for them to be aware of their own prejudices and convictions in order to be able to prevent them from influencing their work, and to see their *bias* as it is through moral and intellectual efforts.[42] Another thing for historians to do, as suggested by Henry Prienne, is to use the comparative method which can reduce racial, political, and national prejudices.[43] This method enables *history* to appear in its true perspective. Consequently, it can be asserted that the degree of truth of any historical work will remain as a measure for moral and scientific achievements.

Although the greater part of the mission falls upon historians, it seems very clear that this is not sufficient for the solution of the problem of *bias* due to the variety and greatness of the factors leading the historian to be *biased*. For example, it is known that the teaching of *history* can be manipulated by a central agency for potent political purposes and by

individuals for more obscure reasons. Therefore, this condition necessitates an international front against the issue. Fortunately, there a co-operative project was initiated in the 1920's under the auspices of the League of Nations through the International Committee for Intellectual Co-operation; it is continued by UNESCO today.

XI. CONCLUSION

To sum up, *history* is the study of human affairs and a dialogue between the past and the present in which the latter takes the initiative. We have tried to explain so far that, for the historian as well as for other human beings, to be absolutely objective seems to be impossible due to human nature. The historian's *bias* can be acceptable as far as he is in conscious of it and of its immediate results. His main aim should be to reach the highest truth and to serve freedom as much as possible. For all nations, the task is to accept that every human being is created equal and to understand that this ageing world is, for all the members of all societies, the home where they have to live together. It is human beings themselves who make this world a heaven or a hell at their will.

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TARİH, TARİHÇİ VE ÖNYARGI ÜZERİNE ÖZET BİR DEĞERLENDİRME

ÖZET

Kuzey Kıbrıs'ta tarih yazımcılığının, özellikle Doğu Akdeniz Üniversitesi bünyesinde faaliyet göstermekte olan Kıbrıs Araştırmaları Merkezi'nin 1995 yılından beri yayımlamakta olduğu Kıbrıs Araştırmaları Dergisi'nin yayımlanmaya başlaması ile birlikte, daha ölçülü ve bilimsel bir nitelik kazanmaya başlaması, konu ile ilgili araştırmacıların dikkatinden kaçacak bir husus değildir. Bilimsellik ölçüsü çerçevesinde tarih yazımcılığına teşebbüs edildiğinde dikkate alınacak en önemli husulardan birisi de mutlaka tarih metodolojisi olacağı gerçeğinden hareketle bu makalede, gayet özet olmakla birlikte bir başlangıç olması açısından tarih, tarihçi ve bu ikisinin doğruluk ve kıymetini belirleyen en önemli bir unsur olan önyargılılıkkavramları üzerinde bir değerlendirmede bulunulmaya veya bu konularda tartışılmakta olan noktaların altı çizilmeye çalışılmıştır.

KIBRIS TÜRKLERİ'NİN KÜLTÜREL İLİŞKİLERİNİN TARİHİ

Harid FEDAİ*

ÖZET

Kıbrıs'ta bir Kıbrıs Türk Halkı'nın oluşması, 1571'de Kıbrıs'ın fethinden sonra uygulanan plânlı iskân politikası ile başlar.

Bu çalışmada 1571'den başlayarak Kıbrıs Türkleri'nin tarihsel süreç içindeki kültürel ilişkileri irdelemekte ve şu sonuçlara varılmaktadır:

1. İnsanlar benzer, çünkü kültürleri benzer: Anadolu Türk'ü ve Kıbrıs Türk'ü benzer; çünkü kültürleri benzer.
2. İnsanlar farklıdır, çünkü kültürleri farklıdır: Kıbrıs Türk'ü ile Kıbrıs Rum'u farklıdır; çünkü kültürleri farklıdır.
3. İnsanlar değişir, çünkü kültürleri değişmektedir; çünkü insan, kültürünün ürünüdür.

Yazar 1963'ten bu yana Anadolu Türk'ü ile Kıbrıs Türkü'nün kültürel bakımdan daha yakınlaştığı; Kıbrıs Türk'ü ile Kıbrıs Rumu'nun daha da uzaklaştığı sonucuna varmaktadır.

GİRİŞ

Hacettepe Üniversitesi Sosyoloji Bölümü öğretim üyelerinden Nihat Nirun ile M. Cihat Özender, *"Türk Sosyo-Kültür Yapısı İçinde Normlar ve Fonksiyonları"* [1] adlı ortaklaşa yazılarına şu cümle ile başlarlar: "Kültür, evrensel olan, sosyal yapıların muhtevasını teşkil eden ve bu sebepten her milletin sadece kendisine has olan olgudur". Hemen arkasından da Atatürk Kültür, Türk Dil ve Tarih Kurumu Başkanlığı'nın 25.12.1986 tarihli raporundan 'kültür'ün tanımını aktarırlar: "Kültür, bir milletin duygu, düşünce, davranış kalıplarını; belirli dönemlerde bilgi ve beceri birikimlerini; kendi varlığı hakkındaki tarih bilincini ve milletin belirgeleşen objektif sosyal yapısına sahip olan sistemler bütününü; din, ahlak, hukuk, dil, sanat,

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edebiyat ile teknolojik kurumların biçim ve fonksiyon içeriklerini kapsayan bir bütün halindeki hayat tarzlarıdır".

Türk Kimliği[2] adlı kitabın yazarı Bozkurt Güvenç ise bir başka eserinde[3] 'kültür' üzerine şunları söyler:

"Kültür sözcüğü çağımızın çokça kullanılan ama az anlaşılan yüklü kavramlarından birisidir. Yalnız bilim, sanat, felsefe değil; insanlığın her davranışına ve yarattığına 'kültür' deniyor. Kültür, ayni zamanda, bir insan ve toplum kuramı (teorisi)dır. Kimi sosyal-bilimciler insanların,

1. neden benzer; ya da
2. neden farklı olduklarını,
3. neden-nasıl değiştiklerini

kültür ile açıklıyorlar."

Sonra da gelinen noktayı şöyle belirler:

1. İnsanlar benzer çünkü kültürleri benzer
2. İnsanlar farklıdır çünkü kültürleri farklıdır
3. İnsanlar değişir çünkü kültürleri değişmektedir; çünkü insan, kültürünün ürünüdür."

Adı edilen çalışmada Nirun ve Özender sosyo-kültürel yapı içinde yer alan normları şematize eder ve kültür içeriğini bu normların oluşturduğunu açıklar. Biz de ortaya çıkan kültür şemasını baz alarak Kıbrıs Türkleri'nin Fetih'ten bu yana oluşturduğu nirengi noktalarından hareketle kültürel ilişkilerini yazımızın dar çerçevesine sığdırmağa çalışacağız.

OSMANLI FETHİ SONRASI

Kıbrıslı araştırmacı Mahmut İslâmoğlu[4] , Kıbrıs Türk Federe Devleti Millî Eğitim Bakanlığı'nca yayımlanan *Kıbrıs Tarihi Notları'na*[5] dayanarak Ada'nın 1571'de bütünlükle Osmanlı egemenliğine girdiğini belirttikten sonra Sultan II. Selim tarafından 21 Eylül 1572 tarihli fermanın sadeleştirilmiş metnini verir. Ferman, Anadolu, Karaman, Rum ve Zülkadiriye kadılarına yazılmış olup kendi bölgelerinden toplam 5720 hanenin 'sürgün' yoluyla adaya gönderilmesini öngörmektedir. İslamoğlu alıntılarını sürdürür:

"Padişah buyruğuna uyulmasının ardından ayrıca Aydın, Eskişehir, Kırşehir, Çorum, Akşehir, Çankırı, Niğde, Darende, Samsun, Ankara, Zülkadiriye, Konya ve Kayseri'den de aileler seçilip Kıbrıs'a yerleştirilmiş ve böylece sürgünler XVIII. yüzyıla değin devam ettirilmiştir."

"Yerleştirilme işi sistemlice yürütülürken ada Osmanlı yönetimince bağımsız bir eyalet ilân edilerek Alaiyye (Alanya), İçel (Silifke), Tarsus ve Sis (Kozan) *sancakları da Kıbrıs eyaletine bağlandı. Böylece Kıbrıs'ta kurulan*

Lefkoşa, Mağusa, Baf ve Girne sancakları ile birlikte Kıbrıs eyaleti sekiz sancaktan oluşuyordu".

"Yönetim bakımından sancaklar kazalara, kazalar nahiyelere ve nahiyeler de köylere ayrılıyordu. Ada, Osmanlı yönetiminin ilk döneminde altı kazaya ayrılıyordu. Sancakların başında Sancak Beyleri; Paşa sancağı olan Lefkoşa'da Beylerbeyi bulunurdu. Kaza ve nahiyelerde kadı ve naipler vardı".

"Kısa zamanda her yönüyle bir Türk ülkesi haline gelen Kıbrıs'ta, Prodocatora, Lala Mustafa Paşa'nın 17 Eylül 1570'de Kıbrıs'ta 1500 Yeniçeri (piyade) ile 3000 sipahi (süvari) görevlendirdiğini yazar".

"Martinengo'ya göre 1575 yılında adada 20 bin sivil Türk, Cotovecus'a göre 1599 yılında asker ve memur zümresi dışında 6 bin sivil erkek bulunmaktaydı".

"1777 yılında Ada'da 564 köy bulunduğu ve 10487 ailenin yaşadığı bilinir. Ada'da bulunan 84 bin nüfusun 47 bini Türk, 37 bini de Rum ve diğer etnik guruplardan oluşuyordu".

1950'li yıllarda adaya gelip araştırmalar yapmış ve buradaki Türkler hakkında beş inceleme yazısı yayımlamış Prof. Beckingham da bu göçlerle ilgili olarak şu bilgileri veriyor:

"Kıbrıs'a gelip yerleşenler daha çok güney Anadolu'dan çoğu Latin asilzadelerine, Venedik devletine, Roma kilisesine ait veya askerî ya da manastır malı topraklara yerleşmişler ve onların torunları bir çekirdek oluşturmuştu. Bunların, şimdiki Kıbrıslı Türk toplumunun büyük çoğunluğunu oluşturduğuna inanılmaktadır. Bu oluşuma rağmen nüfus XVIII. yy.'ın ortasına kadar azalmış, sonra iyileşmeye başlamış ve Kıbrıs İngiliz denetimine girdiği vakit önemli ölçüde artmış bulunuyordu"[6].

Kıbrıs eğitimine katkıları olan, Lârnaka'daki misyoner okulunun (American Academy) uzun yıllar müdürlüğünü yapmış Dr. W.W.. Weir, 1950'lerde Kıbrıs hakkında,

"Ehalinin yaklaşık beşte dördü, çoğu otoritelerce, Yunan olarak tanımlanır; beşte biri ise Türktür. Ermeni, Maronit, İngiliz, Musevi gibi gurupların sayısı ise oldukça azdır. (Halbuki Ada'ya gönderilen) ilk Yüksek Komiser, çoğunluğun Yunan olduğunu kabul etmiyordu"[7]

dedikten sonra sağlam bir kaynaktan[8] Yüksek Komiserin sözlerini aktarıyordu:

"Kıbrıs'ın İngilizlerle iskân edilmediği ve de Ada'ya yerleşenlerin Doğu kökenli bir halk olduğu unutulmamalıdır. Çoğunluğun Rumca konuştuğu gerçek olsa da bunlar ırk ya da soyca Yunanlı değillerdir. (Ada'da) sayıca kabarık iki azınlıktan biri Hıristiyan'lar, diğeri Suriye ve Anadolu kökenli Müslüman'lardır. Yanısıra bir üçüncü kesim daha bulunur ki onların

kendilerini belli bir ulusa bağlamak niyetleri yoktur."[9]

Bu üçüncü kesim, Linobambaci'lerdir. Tabir, Rumca'da 'keten' ve 'pamuk' sözcüklerinin birleşmesinden oluşturulmuştur ki Türkçe'ye 'pamukipliği' olarak çevrilebilir. Bu insanlar için görünüşte Müslüman, uygulamada Hıristiyan denildiğine göre, tabir, her iki dine olan bağlılıklarının zayıflığını anlatmağa yetiyor demektir. Pamuk ipliğinin kolayca koptuğu da anımsandığında bu deyimsel ifade daha iyi anlaşılır. 1904 tarihli A Handbook of Cyprus'ta onlardan şöyle söz edilir:

"Linobambaci (keten-pamuklu)"ler dış görünüşlerinde Müslüman oldukları halde gizliden gizliye Ortodoks-Hıristiyan dinini izlerler. Latin Hıristiyan'lar soyundan gelmeleri muhtemel olup Müslümanlık ile kılıç arasında tercih yapmak zorunda bırakılmışlardır. Sayıları azalmaktadır."[10]

Costas Kyrris'e göre, adadaki Latin kökenli eski yönetici sınıftan çoğu, bazen gönüllü olarak, bazen de zorla İslâm'ı benimsemiş, ya da muhtemelen Ortodoks mezhebine bile geçmiş ve derhal yönetici sınıf saflarına katılmıştır.

Kyrris'in zorla İslama geçirilme düşüncesini sorgulayan Halil İnalcık, Müslüman yapılanların sipahiler olarak Osmanlı yönetici sınıfına girmiş olabileceklerini kabul eder.[11]

Dr. W.W.Weir'ın yine adı edilen kitabında bir başka kaynaktan[12] yaptığı ve "farklı bir görüş" şeklinde takdim ettiği bir diğer alıntı da aslında, İngiliz Yüksek Komiseri'nin bu konuya bakışı doğrultusundadır:

"Kıbrıs'ın yerli halkı başlıca iki ana kesimden oluşmaktadır: Hıristiyan Rumlar ve Müslümanlar. Birinciler Ada'nın en eski yerleşikleri ile Yunanistan'dan gelen İyonyalı istilacıların karışımından oluşmuşken, ikinciler ise Türk istilâsı zamanında ve sonrasında muhtelif defalar Ada'ya yerleşmiş Osmanlı Türkleri'nin torunlarıdır".

"Lusignanlar döneminde Fransızlar, Venedik döneminde İtalyanlar gibi yabancı ve küçük bir idareci sınıf Kıbrısı ele geçirip 1192-1570 arası yönetmişlerse de günümüzde "Linobambaci"ler gibi önemsiz bir halk kesimi dışında bunların izine rastlanmamaktadır."[13]

Yüksek Komiser, her nasılsa Lusignan döneminden artakalmış, yapılanmış çevrenin tacı sayılan Gotik eserleri hepten unutmuşa benziyor. Bu konuya yeri geldiğinde değineceğiz.

Prof. Beckingham[14], *"Kıbrıs'ta toplumlararası evlilik şimdi seyrek görülmektedir; ama bu her zaman böyle olmamıştır"* dedikten sonra Pecocke'dan naklen şu sözleri aktarır:

"Müslüman erkekler çok sık olarak Hıristiyan kadınlarla evlenmekte ve karılarıyla birlikte oruç tutmaktadır. Bu erkeklerin çoğunun Hıristiyanlığa karşı olmadığı düşünülmektedir."[15]

Ve Prof. Beckingham şu sonuca varır:

"Bu (Latinlere ait) emlaki işgal eden ve en azından onlara sahip olan

yerleşikler homojen bir toplum haline geldiler. Aralarında Osmanlı hükümetinin güvenmediği, örneğin yörükler veya Anadolu göçerleri gibi, bazı kişilerin bulunmasına rağmen hiçbir Kıbrıs Türk köyü, halen yörük yerleşim bölgesi olarak bilinmemektedir."[16]

Din ayrılığı konusuna ise şu yorumu getirmektedir:

"Ayni veya yakın köylerde Hıristiyanlık ve Müslümanlığın yanyana uygulandığı Doğu Akdeniz'deki birçok insan için bu dinler, kendilerini, iki karşılıklı inanç sistemi olarak değil de daha çok birbiriyle uzlaşan doğa-üstü güçlerin iki yolu olarak takdim etmektedir."[17]

Bunun da en çarpıcı örneği Türk ve Rum kültürlerinin adak yerlerinde örtüşmesidir. Şu alıntılar ise Rupert Gunnis'tendir[18] :

"Apostolos Andreas: Manastır binaları ile kilise çağdaştır. Aslında St. Andrew (Ay. Andrea) kültürünün Kıbrıs'ta yakın bir geçmişi vardır. Denize inen yamaçta XV .yy. dan kalma orjinal Gotik şapel yer alır...

"... St. Andrew'ya hem Hıristiyanlar hem de Müslümanlar dua eder ve mucizevi şifalarının kanıtlanmış örnekleri hakkında köylerde bitmez tükenmez öyküler anlatılır".

"Askas...: Köyde bir de Kutsal Haç Kilisesi vardır. ... güney duvarında St. George'un (Aya Yorgi'nin) ve şehit edilişinin geç döneme ait bir tablosu vardır. Bu tabloda, bağışta bulunanlar Türk giyisileri içinde resmedilmişlerdir."

"Ayios Epiktitos (Çatalköy-H.F.) (...) Deniz kıyısında Hazret-i Ömer Tekkesi yer alır. Burasının, mezarları hâlâ gösterilen yedi Müslüman azizin türbesi olduğu söylenir; ancak bunların kim olduğu ve nereden geldiklerine dair bir gelenek de yoktur. Bu türbe hem Türkler hem de Rumlar için kutsal olup Rumlar buraya Ayii Phanontes derler".

"Köyü, St. Stephan, St. Nicholas ve İlyas peygambere adanmış yıkıntı halinde küçük kiliseler çevreler. İlyas peygamberin kendisi, hem de güpegündüz olmak üzere, köylüler tarafından sık sık görülür. Görüntüsü kırmızı bir cüppe içinde beyaz bir eşeğe binmiş haldedir".

Ayni kaynakta, Galataria köyündeki her iki kilisede birden Rumlar ile Türklerin, hayvanları hastalandığında ya da süt vermediğinde adak adadıklarından da söz edilir.

"Timbu: Derenin ötesinde Türklerin Kırklar... Türbesi vardır. Türbe, hem Müslümanlar hem de Hıristiyanlar için kutsaldır. İnanmayan insanların vay haline; çünkü burada görülmeyen bir elin kullandığı bir kılıç bulunur. Bir keresinde bu kutsal insanlarla alay eden bir Ortodoks papazın boynu vurulmuştur."

Apostolos Andreas ile Kırklar Tekkesi ve Hz. Ömer'i karşılıklı ziyaret olgusu Prof. Beckingham'ın Kıbrıs Türkleri[19] ile Kıbrıs'ta İslâm ve Türk Milliyetçiliği[20] adlı incelemelerinde de vardır; fazla olarak, Müslümanların

Stavrovuni'deki Kutsal Hac'tan da medet umdukları belirtilmektedir.

Yine Rupert Gunnis'te[21] şu tespitler vardır:

"Templos:... Köyden yaklaşık dört kilometre ötede ufak bir Phaneromeni kilisesi bulunur. Kızları evde kalan ve kızlarına komşu köyün delikanlılarınca yüz verilmeyen Rum ve Türk kadınlarınca pek sık ziyaret edilir. Bakire (Meryem'e) dualar ederler. O da rüyasında onlara muhtemel ve uygun bir damadın adını ifşa eder".

"Tersephanou... Köyden yaklaşık iki buçuk kilometre uzakta, terkedilmiş olan Aperak St. George kilisesi yer alır..."

"Kilisenin içinde bazı resimler bulunur; en ilginci ise kilisenin parasını bağışlayan kişi ile sekiz kişilik ailesini kilisenin bir maketini bir meleğe sunarken betimleyen resimdir.."

"Tüm giysiler belirgin bir Türk etkisi gösterir. Resim XVIII yy. ortalarında zengin bir Kıbrıslı ve ailesi tarafından giyilen giyisileri ayrıntılı olarak aktarması bakımından son derece ilginçtir".

Rum kadınlarının siyah yemenilerine karşılık Türk kadınlarının yemenileri beyazdı. Rum erkeklerinin dizlik (şalvar) kuşakları ve başlarına bağladıkları mendil siyah iken Türklerinki beyaz ya da kırmızı idi. Bu suretle, yolda yürürken ya da bir toplantıda iki halkın bireylerini ayırmak kolay olurdu. "Kırmızıyı deliler sever" atasözünün Rumlar arasında çok yaygın olduğu da, yeri gelmişken, belirtilmelidir.

Balfour'un gözlemi[22] iki halkın ortak davranışlarını sergileyen çarpıcı bir örnektir:

"Kıbrıs yaşamının simgesi dik arkalıklı iskemledir. Bu, oturma yeri hasırdan olan, yekpare ayakları ve dayanmak için bir ya da iki arka parçası bulunan, katı görünüşlü bir mutfak iskemlesidir. Kıbrıslı, daha rahat olan bir mobilya üretmeyi gerekli görmemiştir. İskemlenin üzerine, ayaklarını açarak güzelce oturur ve gevşediği ender anlarda iskemleyi arka ayakları üzerinde dengeleyerek bir duvara dayar. Kıbrıs iskemlesi ayni zamanda, üzerine bir tepsi yerleştirebilen bir masa olarak da işe yarar.

Keyif düşkünü olanlar aslında birkaç iskemle birden kullanırlar: Birini oturmak, ikisini kollarını ve ikisini de bacaklarını dayamak ve birini kahve fincanını koymak için. Dolayısıyle, ben köyden yürüyerek geçerken Kıbrıs'lılar oturuyorlardı. Otururken de gözlerini dikmiş bakıyorlardı."

Kültür örtüşmesiyle ilgili örneklerimizi sürdürüyoruz: Jeffery [23], Baf'ta yaptığı tesbiti şöyle aktarır:

"... yedi bölümlü bir mağaradan hâlâ bahsediliyor olması henüz açıklanabilmiş değildir. Geç ortaçağ döneminde Hıristiyan hacıların yazdığı kitaplarda da 'Yedi Uyur'un ya da 'Yedi Bakire'nin veya benzerlerinin mağaraları olarak farklı şekillerde bahsedilen bu konunun yanısıra

günümüzde Palaipaphos'ta (Eski Baf'ta) ... yedi odalı bir mezara rastlanmaktadır."

Arkasından da yorumunu ekler:

"Yedi Uyur', ortaçağın... garip bir öyküsü idi(...) 'Yedi Uyur' efsanesi Kur'an'a da alınmıştır. Bu efsane Kıbrıs'ta yerleşmiş ve geç ortaçağ döneminde, her zamanki gibi gizemli bir şekilde güncelleşmiştir."

'Yedi Uyur' efsanesi Anadolu'nun çoğu yerlerinde de bilinmekte ve Hızır Aleyhi's-selâm gibi Hıristiyan-Müslüman ortak kültür etkisini yansıtmaktadır.[24] Jeffery'den[25] bir alıntı daha yapalım:

"Bir Müslüman köyü olan Pigaena'da kilise vardır. Denildiğine göre bu kilise yakın zamanda onunla ilgili bir 'panagiri' ya da panayır yerinin kurulmasını teşvik etmek amacıyla Müslüman köylülerin paralarıyla onarılmıştır."

Yine, Hala Sultan'a eskiden beri Türklerin yanısıra Rumların da adak adadığı 1974 Barış Harekatı'na değin gözlemlenegelmiş bir olgudur.

Şimdi de Prof. Beckingham'ı[26] dinleyelim:

"Lârnaka yakınındaki Hala Sultan Tekkesi'nde Hıristiyan ziyaretçiler için bazı ciddi kısıtlamalar vardır. Orada bile şimdi, eskiden olduğunun aksine, Müslüman olmayan kadınların, mezarı olduğu öne sürülen odaya, yani fazla miktarda perdelerle kapatılmış üçken şeklindeki taşın çok yakınına girmesi mümkün olmaktadır."

Yeri gelmişken Türkler ve Rumlar hakkında yine Beckingham'ın iki görüşüne daha değinmek istiyoruz:

"... Kıbrıslı Türklerle Türkiye arasındaki bağlar, Kıbrıslı Rumlarla Yunanistan arasında olanlardan daha yakındadır[27].

İnanış olarak değilse bile yetiştirilme şekli olarak Ortodoks kilisesine bağlıdırlar ve kendilerini Yunan (Greek) addetmektedirler." [28]

İslâmoğlu'nun adı geçen araştırmasında[29] Kıbrıs Türkleri ile Rumların kan grupları da ele alınır. Kıbrıs, Türkiye ve Yunanistan'da, türlü tarihlerde, bilimsel araştırmalar sonucu oluşturulan tablolarda Kıbrıs Türkleri ile Türkiye Türkleri'nin kan gruplarının, neredeyse örtüşecek denli, birbirlerinin benzeri olduğu ortaya çıkmıştır. Bir başka sonuç ise Kıbrıs Rumları kan gruplarının, Yunanistan'dan çok, Kıbrıs Türkleri'ne yakınılığıdır.

Mahmut İslâmoğlu'nun çoğunu türlü etkinliklerde sunduğu ve sonradan *Kıbrıs Türk Kültür ve Sanatı* adlı kitapta topladığı;

- Kıbrıs Türk Mutfağı ve Etkileri
- Rum-Yunan Mutfaklarında Türk Ürünleri
- Türk Dili-Türk Halk Edebiyatı'nın Kıbrıs Rum Halk Edebiyatı Üzerindeki Etkileri
- Dipkarpas Rum Folklorunda Türk Folklor Unsurları

adlı bildirileri / araştırma-inceleme yazıları iki unsurdan birinin diğeri üzerindeki etkilerini somut örnekler ve ayrıntılarla gözler önüne sermektedir. [30]

Türk dilinin Rumca üzerindeki etkisini göstermek için İslâmoğlu yukarıda sıraladığımız 3. bildirisine konu olarak Dragoman (Tercüman) Hacı Yorgacis adına düzenlenen ağıtı seçmiş ve dizelerdeki sözcüklerle, deyişlerin, söylemlerin, açıklamalarını yapmıştır.

Türkçe'den Rumca'ya geçen sözcükler üzerinde bir sözlük hazırlama çabalarına girişmişken ancak 1. bölümü yayımlanan eserinde Hüseyin Şafi Alper Fi harfine kadar bir dilden öbürüne 400 sözcük geçtiğini tepit etmiş bulunuyor. [31]

Bu bağlamda, Rum dilindeki en güzel küfürlerin Türkçe olduğunu, ve Rum halkının sövüşürken bunları ağızları dolu dolu, şaşılacak bir hazla kullandıklarını da, ayrıca belirtmeliyiz.

Bir başka araştırmacı, Erbil Çinkayalar, Türk ve Rum halkoyunlarının ad ve figür olarak nasıl örtüştüklerini sergilemiştir. [32]

Dr. Servet Sami Dedeçay[33] ise Rum ve Türk şairlerinin Kıbrıs Türkleri'yle ilgili konularda yazıp söylediklerinin bir listesini verir. Listede, çoğu Rum olmak üzere, 31 sanatçının 49 eseri bulunuyor. Dedeçay'ın konuyla ilgili olarak düştüğü notta ise şunlar vardır:

"Birinci Dünya Savaşı ertesine kadar Kıbrıslı Rum veya Kıbrıslı Türk ozanların kahvelerde okudukları Rumca destanların bir kısmı Eski Türkçe harflerle yazılıp yayımlanmıştır."

Bunun gibi, Rum halk şairi Haralambos M. Azinas'ın Atatürk'ün ölümü üzerine yazdığı Rumca destan Lefkoşa Stavrinides Matbaası'nda Rumca, Birlik Basımevi'nde ise Türkçe-Latin harfleriyle basılmıştır.[34] Destan, ilkin Kıbrıs'ta yer alan bir sempozyumda sunulmuş, [35] sonra da Türkiye'de yayımlanan bir güldesteye alınmıştır.[36]

Karşılıklı etkileşim açısından Avusturya Dükü Salvator'daki[37] *"Türk ezgilerinin sözleri Rumca'dır"* gibi bir genellemenin doğru olmadığına inanıyoruz. Ancak Rumların Türkçe, Türklerin de Rumca şarkı/türkü söylemeleri de çok doğaldır. Kaldı ki Ahmet An'ın şöyle bir tespiti var: *"...Kıbrıs Türk kültürünün Rumlar üzerinde en etkili olduğu alan halk müziğinde olmuştur. Kozan Marşı, karşılamalar, zeybek ve oyun havaları ile birçok halk türküsü Rum'lar tarafından zevkle dinleniyordu. Bunların çoğuna Rumca sözler yazılmış ve (bunlar) günümüze kadar, özellikle kırsal bölgelerde, söylenmiş gelmiştir."*[38]

Türk döneminden sonra Rum'larda destan söyleme geleneğinin sürdürüldüğüne Balfour da tanıklık eder: [39]

"(Phini köyünde) kahkahalar dinince, kendi kendine mırıldanan tıknaz, kır saçlı bir köylü, haydutların serüvenleri hakkında uygun bir şarkı

terennüm etmeye koyuldu. Köyün öğretmenine göre bu şarkı Türk döneminden kalmaydı ve kendi halkı tarafından Türk'lerden kurtarılıp dağlarda saklanan haydutlardan söz ediyordu."

Yine Kıbrıs'taki destan ve şiir geleneği hakkında Balfour şunları söyler:

"Bu tür destanlar (balad'lar) duygusal temelde Latinden ziyade Greek (bizce Akdeniz-H.F.) kökenli olup Kıbrısta hâlâ güçlü olan bir geleneği temsil ederler. Âşıklar (trubatorlar) hâlâ kırsal alanda dolaşıp, köy panayırlarında büyük bir dinleyici kitlesi toplarlar. Daha güncel olaylara değinen destanlar hâlâ bestelenmektedir. Kıyıda köşede kalan köylerdeki aile fertlerinin hâlâ birbirleriyle ölçülü-uyaklı söz dizinleriyle konuştukları söylenir. Kıbrısın epik ve lirik şiirinde güçlü bir Homer çeşnisi bulunmasının yanısıra, bunlar Grek dilindeki en eski soneleri de kapsar."

RUM İSYANLARI VE OSMANLI YÖNETİMİ

Sir George Hill'in[40] Kıbrıs tarihi üzerine yayımladığı dört ciltlik eserin dördüncü kitabı Türk dönemine ayrılmış bulunuyor. Sonuncu ciltteki isyanları Ahmet An Türkçe'ye çevirerek yayımlamıştır.[41] Bu yazılar incelendiğinde 1572-1670 yılları arasındaki isyanların her 10-15 senede tekrarlandığı görülür. Sir George Hill'e göre 1640'daki gibi büyük açlık, arkasından veba salgını, kuraklık, çekirge sürüleri, korsan saldırıları, ağır vergiler yaşamsal önem taşıyan başlıca sorunlardı. Sözgelimi, 1648, 1665, 1669, 1680, 1712, 1764, 1775, 1779, 1796, 1806 tarihleri XVII .yy. ortalarından XIX .yy. başına kadar hep bu türden olaylara, rahatsızlıklara işaret eder. XIX. yüzyılın ilk çeyreği de yine bir dolu olaylara gebedir:

- 1810'da Kipriyanos başpiskopos olur.
- Varsayımlara göre Elence konuşan, etnik bakımdan Elen olan bölgelerin bağımsızlık ve birleşmelerini öngören Filiki Eteria (Dostluk Birliği) 1 Ekim 1820 tarihli oturumunda bu uğurda Kıbrıs'ın da mücadeleye katılmasını onaylar.
- 1821'de Yunanistan'ın bağımsızlığını sağlayacak Mora isyanı başlar ve bir hafta içinde çoluk çocuk, kadın ihtiyar demeden 20 Türk katledilir.
- Bu isyanın hazırlayıcısı olarak suçlu bulunan İstanbul'daki Rum Ortodoks Patriği Grigoris 10 Nisan 1821 tarihli Ferman üzerine Fener Meydanı'nda idam edilir.
- İsyan hareketi Kıbrıs'ı da etkiler ve Osmanlı'ya karşı savaşmak üzere Kıbrıs Rumları'ndan da gönüllüler gider, Mora'ya gemiler dolusu yardım gönderilir.
- 1789 Fransız İhtilali ile bağımsızlık savaşlarına önem vermeye başlayan Batı dünyası, Kıbrıs'taki konsoloslukları aracılığıyla Rum halkının adeta

hamisi kesilir hatta bu türden olayların kışkırtıcısı, destekleyicisi olur.

- Patrik Grigoris'in idamından hemen sonra, Kıbrıslı bir keşiş iken Yunan bağımsızlık savaşına katılan Theofilos Theseus bir Yunan ticaret gemisiyle Ada'ya gelip halkı isyana çağırır. Ayaklanma girişimlerinin tehlikeli boyutlara ulaştığını gören müsellim/muhassıl Mehmet Silahşör/ Küçük Mehmed'in önerisi üzerine Başpiskopos Kipriyanos ile Girne, Larnaka ve Baf mitropolitlerinin ve bunlarla birlikte sayıları 486'ya varan suçluların idam fermanlarıİstanbul'dan alınır; idamlar zincirine 21Temmuz'da başlanır.
- 1829 yılına gelindiğinde Yunanistan bağımsız bir devlettir artık. İsyanın başladığı 1821'den 1829'a kadar Kıbrıs'tan Mora'ya 20-25 bin Rum göçmüş olsa da papazların yakın ilgisi üzerine çok geçmeden bunların geri gelmesi sağlanacaktır. Olaylar yüzünden nüfuzu hayli sarsılan Kıbrıs Kilisesi de ağır ağır toparlanmaya başlar.
- 1830'da Yunanistan'ın egemen bir güç olarak Osmanlı hükümetince tanınması; Kıbrıs Rumları'nın umutlarını yeşertecek ve Ada'nın Yunanistan'a bağlanması için girişimde bulunmalarına yetecekti.
- 1831 yılında ekonomik durumu hayli bozulan halk ayaklanarak Saray'ı yıkar ve muhassıl Halil Said'i öldürür.
- 1833 yılına gelindiğinde Kıbrıslı Hıristiyanlara Yunan uyruğuna geçme hakkı tanınır; ardından da yabancı konsolosların parmağıyla 3 isyan birden patlak verir. Üç isyancıdan biri Baf'lı Gavur İmam olup Âşık Kenzi'ye ünlü Kıbrıs Destanı'nı yazdırtan da işte bu üç isyandı. [42]

1840'lı yıllardan itibaren artık isyanların görülmediği gözlemlenir. 1839'da Tanzimat, 1856'da Islahat Fermanı'nın ilânı, 1871'de Vali Said Paşa öncülüğünde çekirge afatının ortadan kaldırılması gibi olaylar, iki halkı birbirine daha da yaklaştırmağa yeterli olabilirdi. Ancak uzun yıllar ayni toprakları paylaşmalarına, bir bakıma Akdenizli olmalarına, hatta çoğu başkaldırılarda ortak hareket etmelerine karşın; 1821 yılında başlatılan ve dalgalanmalarla sürdürülen Megali İdea (Büyük İdeal), yani Kıbrıs'ı Yunanistan'a bağlama çabaları Ada'da Osmanlı egemenliğinin sonuna kadar, (1878) iki halkın birbirlerine işkilli/kuşkulu bakmalarına yetecekti.

Beckingham adanın İngiltere yönetimine bırakılması ile ilgili düşüncelerini şöyle ifade eder:

"Rumlar bu değişikliği (Ada'nın İngiltere yönetimine bırakılmasını–HF)Krallığa (Yunanistan'a) katılma yolunda atılmış ilk adım olarak hoş karşıladılar" [43]

Bir başka alıntıda da şunlar var:

"1878 yazında Ada'nın ilk İngiliz Yüksek Komiseri Sir Garnet Wolseley, Lârnaka limanına ayağı basar basmaz, kendisini Rum Ortodoks Kilisesi

Başpiskoposu başkanlığında bir Rum heyetinin beklediğini gördü. Başpiskopos, Wolseley'e 'hoş geldiniz' derken, konuşmasının en önemli bölümünü şu sözler oluşturuyordu: "Biz bu yönetim değişikliğini hoş karşılıyoruz, çünkü İngiltere'nin, daha önce Yunan Adaları'nı verdiği gibi Kıbrıs'ı da Yunanistan'a, Anavatanımıza bırakacağından eminiz"[44]

İşte bu görüş açısına yönelik olan Rumların girişimleri, taşkınlıkları, sömürgelerin toleransını da fırsat bilerek, bundan böyle dur durak tanımayacak, ayni toprakları paylaştıkları Türk halkını ürkütecek, üç çeyrek yüzyılı aşkın bir süre gerilimli yaşamaya mahkûm edecekti.

Yüzyılımızın ilk yarısında Kıbrıs Türk halkının kalkınması için özverili çalışmalar göstermiş, bir ara Lefkoşa'nın ilk ve son Türk belediye başkanı olmak imkânını bulmuş, Kavanin Meclisi üyesi, Vatan gazetesi (1911-12 yılları) sahibi ve başyazarı, Larnaka Kaza Mahkemesi yargıçlığından emekli Bodamyalızade Mehmet Şevket Bey (öl. 1956) bir makalesinde Kavanin Meclisi'ndeki bir Rum üyenin şu sözlerini nakleder:

"Eğer Osmanlılar Ada'ya fetih tarihlerinden elli yıl sonra gelmiş olsalardı burada Rum Ortodoks adından eser kalmayacak, İtalyan mezalimi ile doğrudan silinecekti."[45]

Sir George Hill ise şunları yazar:

"Şu gerçeği belirtmeliyiz ki ada piskoposlarının din alanında etkilerinin tekrar önemli ölçüde artmasıyla eğitimde de gelişmeler kaydedildi"[46]

Fetih sonrasında Osmanlı İmparatorluğu'na ait geleneksel kurumların, yönetim şeklinin buraya da taşınıp aktarılmasıyla, başka yerlerde olduğu gibi, Kıbrıs'ta da Rumların dinlerine, yaşam biçimlerine karışılmadı; 'millet anlayışı' içinde baskıdan uzak yaşamlarına özen gösterildi.[47] Nitekim Rum Ortodoks Kilisesi'ne tanınan aşırı ayrıcalıklar hakkında H. Fikret Alasya ayrıntılı bilgiler vermektedir.[48]

Yine, Gazioğlu, ayni eserinde, İngiliz diplomatı William Turner'e bir papazın *'Kıbrıs'ta Türkler, Hıristiyanlara karşı çok dostça ve toplumcul bir yaklaşım içinde davranmaktadırlar'* dediğini Excerpta Cypria'dan naklen aktarmaktadır.[49]

İngiliz işgal kuvvetleriyle Ada'ya çıkan subaylardan Yüzbaşı J. Orr, sonradan yazdığı kitabında; işgalden önce uzun yıllar Ada'da yaşamış ve zaman zaman da konsolosluk yapmış bir İngiliz'in şu sözlerini aktarır:

"Tüm Türk eyaletleri içinde Kıbrıs, belki de en iyi yönetilen yer olmuştur."[50]

YAPILANMIŞ ÇEVREDE OSMANLI ETKİSİ

Kıbrıs'ta yapılanmış çevreye bakıldığında Osmanlı etkisi belirgin bir şekilde kendini gösterir. Başkent Lefkoşa bunun en çarpıcı örneğidir. Lusignan,

Venedik, Osmanlı ve İngiliz yapılarından oluşmuş Başkentin pitoreski 1940'lı yılların sonuna kadar devamlılığını sürdürmüştür. Ama ağırlık, yine de Lusignan ve Osmanlı eserlerinde idi. Birinciler için Jeffery[51] *"...Magosa Katedrali'ni (şimdiki Lala Mustafa Paşa camii) ve St. George (Magosa'da) kilisesini inşa edenlerin Kıbrıs'a getirdikleri gerçek Avrupa Gotik Stili'nden"* sözeder.

Osmanlılar bu yapıların çoğunu camiye çevirerek ibadet yeri olarak kullanmakla koruma altına almış oldular. Jeffery[52] Lefkoşa mahallelerinden 16'sının Türkçe adlar taşıdığını belirterek haklarında ayrı ayrı açıklamalarda bulunur.

Yapılanmış çevrenin önemli bir öğesi de Osmanlı mezar taşlarıdır. XVIII.-XIX .yy.daki mezar taşları Türk sanat işçiliğiyle işlenmiş ve kitabeler Türk edebi ananelerinin bir uzantısını oluşturmuştur.[53] Hanlar ise anakara ile Kıbrıs arasındaki kültür akışını sağlayan gruplar arasındaydı.[54]

Daha Orta Asya'da iken su öğesine büyük önem veren, suyu kutsal sayan Türk insanı, İslamiyet'le birlikte bu inancını dinsel temizlik anlayışına dönüştürmüş ve Osmanlı döneminde de bu geleneği su ile ilgili tesisler, yapılar inşa ederek sürdürmüştür. Bu kültürel tema'nın Kıbrıs'taki en güzel yansımaları vakıf su kanallarıdır.

Bunlardan,

- Kıbrıs muhassılı Silâhdar Mustafa, Arap Ahmed, Arif Paşa Lefkoşa'ya
- Kıbrıs Beylerbeyisi Cafer Paşa Mağusa'ya
- Ebubekir Paşa Lârnaka'ya
- Elhac Ali Efendi b. Ebubekir Efendi Lefke'ye yeni kaynaklardan su getirtmişlerdir.

Ayrıca Baf'ta Sancak Beyi Mehmet Bey Ebubekir'in su vakıfları vardır.[55] Yine, Baker'in,

- Lârnaka su sistemiyle
- Poli'deki yapay kanallardan
- Piskobu'daki su kaynaklarından
- Lefke değirmenleri ile su kaynaklarından;

Mariti'nin,

- Lârnaka su kemerleri ile
- Lefkoşa çeşmelerinden;

Drummond'un,

- Lârnaka su kaynaklarından söz ettiklerini; kendi eserlerinden ve *Excerpta Cypria*'dan naklen, Gazioğlu vermektedir.[56]

Cenevre'de düzenlenen uluslararası bir kongrede Kıbrıs'ın Osmanlı dönemi su yolları ile ilgili bir bildiri sunulmuş,[57] sonra da metin Kıbrıs'taki su yolları ile ilgili olarak genişletilerek yerli bir dergide yayımlanmıştır.[58]

Lefkoşa'da Mağusa kapısı ile Baf kapısı arasında uzanan çarşı kültürel/ekonomik yaşamın belkemiğidir. Anadolu'nun tipik bir Osmanlı kentine benzer şekilde çarşının 23 ayrı bölümü vardır. [59]

Salvator'un yanısıra Jeffery,[60] Scott-Stevenson[61] ve yakın zamanlarda Suat Bergil[62] de Kıbrıs'ın çarşı konusuna değinmektedirler. Salvator'a[63] göre (cami, tekke, türbe, medrese, çarşı, han, hamam, çeşme... gibi) Osmanlı dönemi tipik Türk yapılanmış çevresinin öğeleri burada da mevcuttur. Ayrıca (kemer, sütun, sütun başlığı... gibi) Bizans öğelerinin varlığı da sözkonusudur.

Geçtiğimiz yüzyılın ortalarında Kıbrıs'a gelen Salavator,[64] yerli özelliklerin, giyim-kuşamın, adetlerin yanısıra evlerin iç mekânlarını da incelemek olanağı bulmuş olup şu tespitler O'ndandır:

- *Türk halkı ileri gelenlerinin oturdukları anlaşılan Lefkoşa evlerinin birinci katları "tipik Osmanlı dönemi Türk evi" özellikler göstermektedir.*
- *Rum evlerinin yan pencerelerinde de kafes bulunuyor.*
- *Türk evlerinin giriş kapısı üzerinde ay-yıldız motifinin yer alması sözkonusudur.*
- *(Türklere ait) evlerde 'divanhane' mekânları vardır.*
- *Türk evlerine özgü 'divanhane' mekânlarına Rum evlerinde de sık sık rastlanıyor.*
- *Türk evlerindeki mutfakta ocağın konumu Anadolu'daki gibidir.*
- *(Evlerde) Türk stili ahşap ve oyma işleri yer alıyor.*

Şu gözlemler de Patrick Balfour (Lord Kinross)'dan: [65]

"Kentin Rum mahallelerinde kafesler ve kapılar ardına kadar açık durup temiz, iyi döşeli odalara merakla bakmaları için sanki gelip geçenlere cesaret vermektedir... Ne var ki Türklerin evlerinde kapalı duran kafesler, kadınlarını halkın bakışlarından uzak tutar."

Çarşı ve konak gibi Türk-İslâm kökenli yapılanmış çevre öğelerine, kentlerin yanısıra, kırsal alanlarda da rastlandığının güzel bir örneğini verir Jeffery: [66]

"Poli... çok ilginç bir sit alanında kurulmuş olan, ancak zamanımıza kadar sadece kısmen incelenmiş bulunan bir köydür... Çarşı yerinde St. Nicholas kilisesi (XIX .yy.) yer alır. Yakın zamanlara kadar Poli'de Venedik ya da daha eski dönemlerde inşa edildiğini düşünebileceğimiz eski bir 'konak' yapısı mevcuttu."

Ve nihayet Balfour[67] Türk mimarisinin Ada'ya vurduğu damgayı şu cümlelerle özetler:

"Türkler Ada'ya en azından zarif bir mimari stil kazandırdılar. Lefkoşa, stil açısından, bir Türk kentidir. Düzgün Venedik surlarının içine, daracık

sokaklardan oluşmuş bir labirent halinde sığdırılmıştır... Yılan gibi kıvrılarak uzanan; bisikletler, arabalar, kamyonlar ve kaldırımlardan yollara taşan dik arkalıklı iskemlelerin karmakarışık bir halde doldurduğu ana sokağı tanımak imkânsızdır. Türkler, kent plânlaması olmaksızın, istedikleri her yere ve istedikleri her şekilde inşaat yapan bireyci kimseler olup, yüksek duvarların ve kafesli pencerelerin arkasında komşularının meraklı bakışlarından kaçınmağa çalışmışlardır... Biçimli bir stilin sınırları dahilinde kalmak koşuluyle, her biri kendi ahşap ve sıva bezeme motifini; pembe, gri veya bej renkler arasından da kendi badana rengini seçmesini bilmiştir."

Yakınlarda yer alan uluslararası bir kongrede Kıbrıs Türk Mimarisi'nin yanısıra, hat ve oymacılık sanatı ile dokumacılık toplu olarak konu edinilmiştir. [68]

KIBRIS'TAKİ YUNANCA VE TÜRKÇE

Kıbrıs'taki Türk kültürünün etkilerini ise Beria Remzi Özoran, 1969 yılında yer alan Kiproloji Kongresi'ne sunduğu tebliğinde anlatmıştır.[69] Osmanlı kaynaklarına gereği gibi inemediklerinden olacak, Batı dünyasının bu konudaki görüşleri adeta bir karşıtlık ölçüsüne varır. Bunlardan birini alıntılayalım:

"Entellektüel açıdan Osmanlı dönemi verimsizdi ve her iki toplumda da eğitim düzeyi düşüktü. Kıbrıs Kilisesi Hilarion Kigala'dan sonra (1624-1682) başka önemli bir din adamı yetiştirmemiştir ve 1738'de Pococke Ada'yı ziyaret ettiği zaman papazların Ahd-ı Cedid'i (New Testament) bile Yunanca olarak anlayamadıklarını ortaya çıkarmıştır."[70]

Ama böyle diyenler XIX .yy. ortalarında, hem de bir Batılı gözüyle, İstanbul'dan sonra en güzel Türkçe'nin Lefkoşa'da konuşulduğunu,[71] ve bunun da ancak bir kültür birikiminden çıkabileceği gerçeğini gözden kaçırmış olmalıdırlar. Rumlardaki eğitim düşüklüğünü gösterirken papazların din konularındaki yetersizliği baz alındığına göre bunun nedeni de, herşeyden önce, Kilise'ye verilen özerkliğin iyi kullanılmadığında aranmalıdır diyoruz.

İNGİLİZ İŞGALİ SONRASI

Kıbrıs'ın kendine özgü, yaşadığı süreçten dolayı, takdir edilmelidir ki, Ada yönetiminin İngilizlerin eline geçmesinden 1974 yılına kadar burada bir

kültür tarihinden ziyade ancak bir siyasi tarihten söz etmek olanağı vardır. Bu dönemde kültür ağırlıklı türlü girişimler, kıpırdanmalar ve üretimler muhakkak olmuştur; ama siyasi "gidişattan" dolayı meydana gelen kopmalar, kırılmalar, gerçek anlamda bir birikimin oluşarak ileriye köprü kurmasını engellemiştir. Sonuçta, biz de, sözkonusu dönemi daha çok siyasi tarih yaklaşımıyla gündeme getirmek zorundayız:

Bir oldubitti getirilip Kıbrıs yönetiminin İngilizlere tesliminden (1878) memnun kalmayan, çoğunu aydınların oluşturduğu Türk halkından yedi bin kadarı *"Bizi ağyare teslim ettiler"* deyip Ada'dan ayrılır. Geriye kalanlar ise yeni yöneticilere hep geçici gözle bakmış, Osmanlı idaresinin yeniden dönmesini beklemişlerdi. 1. Büyük Savaş'ta İmparatorluğun Merkez Güçler'den yana savaşa girmesiyle İngilizler 5 Kasım 1914'de Kıbrıs'ı tek yanlı olarak kendi topraklarına kattıklarını duyururlar. Daha, 1878'de ikilemli bulunan kişiler de bu kez yetişkin çağa gelmiş çocuklarını da yanlarına alarak ikinci göç dalgasını oluşturdular. 1911 Trablusgarb, 1912 Balkan Savaşlarını fırsat bilerek 1913'te Girit'in Yunanistan'a katılmasıyla yeniden umutlanan Rumlar gemi azıya alacak, Enosis çabalarına büyük hız vereceklerdi. Sömürgeler Bakanlığı Müsteşarı (sonradan ünlü Başbakan) Winston Churchill'in Ada'ya gelişinde (9 Ekim 1907)[72] taşkın gösterilerde bulunmalar, Yunanistan'dan öğretmen kimliği altında gönderilen Kadalanos gibi militanların da kışkırtmalarıyla bir yıl sonra Mağusa'daki Lala Mustafa Paşa Camii'ni işgal etmeler,[73] Hamidköy ile Leymosun'daki (1912) kanlı olaylar, Kavanin Meclisi oturumlarında Rum üyelerce Enosis'i gündemden indirmeyen konuşmalar, meydanlarda ardı arkası kesilmeyen mitingler... bunlardan sadece birkaçıdır. (İlginç olaylar, bu arada Enosis etkinlikleri, Kıbrıs gazetesinin yayın yaşamına atıldığı 11 Temmuz 1988'den bu yana *"Eski Basınımızdan"* sütununda, o günlerin basınından aktarma günümüzün diliyle, tarafımızdan yayımlanmaktadır)

Araştırmacı-yazar Haşmet Gürkan, Kıbrıs Türk halkının Enosis karşısındaki tutumunu köşe yazılarının birinde şöyle yansıtmıştı:

"Dün olduğu gibi bugün de biz Türkler Enosis fikrini kabul etmiyoruz, katiyen benimsemiyoruz. İngiliz devrinde Enosis tehlikesi, başımızda Demokles'in kılıcı gibi asılı durmuştu. Bu tehlike bizi haklı derin endişelere sevketmişti. Türk idaresinin çekildiği yerlerde kalan Türklere hayat hakkı tanınmadığı veya çok müşkil, dayanılmaz şartlarla karşılandığı gerçeği, bizi Rum vatandaşlarımızın Enosis özlemleri karşısında uyanık bulunmaya zorluyordu. 80 yıllık siyasî, iktisadî, hatta içtimaî tarihimiz hep bu tehlikeye karşı tedbir düşünmek, derlenip toplanmak, kurtuluş yolları aramakla geçmiştir."

Gürkan en azından, 1960 Cumhuriyetiyle gelen yeni dönemde olsun, Türk halkının gözardı edilemeyeceği gerçeğini de birkez daha vurgulamaya

gidecekti:

"Cumhuriyetle beraber yeni bir devir açılmıştır. Cumhuriyeti bir vakıa olarak kabul ediyoruz. Türk toplumu, Kıbrıs devletinin siyasî, içtimaî ve iktisadî hayatı içinde vazgeçilmez bir unsurdur. Bu gerçeğin iyice benimsenmesinde büyük faydalar vardır. Türk toplumunun hissiyatını, görüşlerini dikkate almamak, hakkında iyi temennilerimiz olan Cumhuriyet rejiminin geleceği için hayırlı bir tutum sayılamaz" [74]

Ne ki, Rumlar açısından, yaşam, tıkalı kulaklarla, 'ayni minval üzre' sürdürülmekte devam edecekti.

Kıbrıs'ın tek taraflı ilhakıyle Osmanlı'nın bir kez daha Ada'ya gelemeyeceği artık iyice anlaşılmaya başladıktan sonra Türkler için tek çare kalmıştı: İngiliz yöneticileri ile iyi geçinmek... İngiliz'lere yanaşmada, Kıbrıs'ı atlama taşı olarak kullanıp Avrupa'ya geçmek isterken sömürgenlerden yüz bulan Jön Türkler'in de büyük payı vardır. Bunlardan kimileri hükümetten iş temin ederek, kimileri de yerli halktan düşünce birliği içinde onların desteğiyle uzun sayılacak bir süre Ada'da kalmışlardır. Birincilere örnek olarak Viyana ve Madrid sefirliklerinin eski ataşemiliterlerinden, Mısır'da Ali Kemal ile "Türk" gazetesini yayımlayanlardan Sermed Bey,[75] İngiliz okulu Türkçe öğretmeni Vizeli Rıza b. Emin[76] ve Mağusa kalesindeki İngiliz garnizonununda görev yapan Sadettin Fikri[77] verebilir. İkinci guruptakiler ise Lefkoşe Yenicami'deki kahvehanenin "müdavimlerinden" olup Kıbrıs'lı Üzengici-zade Tahsin Bey'in[78] koruyuculuğunda, bir süre Kıbrıs'ta kaldıktan sonra Larnaka Limanına uğrayan Fransız vapurlarıyla Marsilya'ya gönderilenlerdir.

Dört yıl gibi uzun bir suskunluk döneminden geçerek Birinci Büyük Savaş sonrasında çıkmaya başlayan ilk gazete, *Doğru Yol'u* (Eylül 1919) 1920'li yıllarda bir dolu gazete izleyecek; Kıbrıs Türkü II. Meşrutiyet'in ilanı ardından Bulgar sınırındaki askerlere (Hediye-i Şitaiye) [79] ve Donanmaya[80] olduğu gibi Balkan "muhacirlerine," [81] Kurtuluş Savaşı'na[82] da maddî-manevî katkılarda bulunacaktı. 1923 Lozan Antlaşması'nın 20. maddesiyle Kıbrıs'ın Büyük Britanya İmparatorluğu'na katılmasının resmen tanınması, 21. maddeye göre de Kıbrıs Türkleri'ne iki yıl içinde Türkiye Cumhuriyeti yurttaşlığına geçme tercihinin verilmesi Ada'dan üçüncü göç dalgasının başlamasına neden oldu. Bechingham iki dünya savaşı arasında Kıbrıs'tan göçen Türk nüfusunun 6 ile 8 bin arasında olduğunu yazar. [83]

Anadolu'da genç bir Türk devletinin kurulmasından güç alan Kıbrıs Türkleri örgütlü bir çatı altında toplamak özlemiyle 1925 yılı başında Cemat-i İslâmiye Teşkilatı'nı kurarlarsa da sömürgenlerin el altından kundaklamalarıyla bu girişim sonuçsuz kalır. [84] Ayni şekilde, 1. Büyük Savaş sonrası dünya haritasını yeniden çizmek için toplanacak Paris Konferansı'na bizden de temsilci göndermek maksadıyla 11 Aralık 1918'de yapılan

Kongre'de bir sonuca vardırılamayacaktı. [85]

Ne var ki Türkiye'de başlatılan sosyal alandaki devrim Kıbrıs'ta hiç zorlukla karşılaşmadan, hem de çok kolaylıkla, yaşama geçirilecekti. Sömürge yönetiminin bu konuda köstek değil, hatta destek olduğu söylenebilir. Lozan Antlaşması'nın ardından gelen ortamda Türk-İngiliz dostluğunun yeniden başlamasıyla Kıbrıs Türkleri'nin rahat bir nefes alması beklenirken Vali Ronald Storrs'un olumsuz tutumu Türk haklarının, verilecek yerde, bir süre daha askıya alınmasına neden olmuş; Mora başkaldırısından 100'ü aşkın yıl sonra 1931 Rum isyanıyle gelen sıkıyönetim, Türkleri de sarmalına alarak, 1940'lı yılların başlarında hafiften kemer gevşetmelerle, II. Büyük Savaş'ın bitimine dek sürdürülmüştür.

1930'lu yıllara gelindiğinde Con Rifat Türk halkı için şöyle bir durum değerlendirmesi yapar:

"Gayr-i kabil-i inkârdır ki İngiliz idaresi bizleri, Osmanlı hükümetinden zengin, mes'ut bir halde tesellüm eylemiş idi. Osmanlı idaresi bizleri, İngiliz'lere, ellerinde bir emanet olmak üzere terk eylemiş idi; kendileri de bilirler ki bu emaneti hüsn-i muhafazaya lüzum hissetmediler; bugün bizleri perişan hale getirdiler." [86]

Savaşın sona ermesi yaklaştığında, Rum'ların Enosis hareketlerine hız vereceklerini kestiren sömürge yönetimi, Ada'da denge sağlayabilmek için, el-altından teşvikte bulunarak, 1943 yılının 18 Nisanında Katak'ın (Kıbrıs Adası Türk Azınlığı Kurumu) kurulmasına vesile olur. Vali Sir Winster'in Anayasa tasarısı ile Kurucu Meclis çalışmaları başarısızlığa uğrarken 15 Ocak 1950'de Kilise'nin Enosis için yaptığı 'plebisit'e Rum halkından %96'sının olumlu yanıt verdiği açıklanacaktı.

XX .yy.'ın ortalarına gelindiğinde İngiliz İmparatorluğu'nun Ada'da artık son demlerini yaşadığı sezilmeye başlanmıştı. Üç çeyrek yüzyılı aşkın gibi uzun sayılan bir sürede sömürgenlerin kendi dillerini dahi Kıbrıslılara öğretmediği ve en az ile yetinildiği, II. Büyük Savaş sonrası İngiltere'ye yüksek öğretim için giden Kıbrıs'lı gençlerin İngiliz Milletler Topluluğu'ndan gelen öğrencilerle dil bakımından kendilerini karşılaştırdıktan sonra iyice anlaşılacaktı. Ve de Kıbrıs Türk halkının o günlerde hâlâ daha 'renkliliğini' korumakta olduğuna da Balfour tanıklık edecekti:

"Türklerin arasında zengin olanlar, özlü bir Müslüman vakfından para ve toplumsal hizmet sağlamak suretiyle, daha fakir olanlara destek verirler. Türklerin kendi köyleri vardır. Buradaki evler taştan ziyade kerpiçten yapılmadır. Hıristiyan köylerindeki Türk mahallelerinde ise bayram günlerinde kehribar rengi ışık bilezikleriyle süslenen, kurşun kalemi gibi minareler, sade görünmeleriyle, Rumların gösterişli çan kuleleriyle zıtlık yaratırlar. Türkler arasında yoksulluğa, bilinçaltından gelen bir asaletle razı olunur. Beyaz sakallar ve kuşaklar, parlak mendiller ve zarif davranışlar,

kahvehaneleri ile sokaklarına solmuş bir çıtkırıldımlık havası verir. Kankırmızı bayrağın üzerindeki beyaz hilal, Rumların gökmavisi çubukları ile haçına meydan okur. Lefkoşa'da dervişlerin hâlâ sema yaptıkları tekkeleri vardır. Biftek ve kızarmış patates gibi İngiliz yemekleriyle bozulmamış, yolcuların; ballı çöreklerin ve hoş kokulu kebapların, pirinçle doldurulmuş ve üzerine yoğurt dökülmüş asma yaprakların, kabakların ve patlıcanların tadını çıkardığı mütevazı lokantalar işletirler. Kuşlardan hoşlanırlar ve evde kuş beslerler."[87]

1 Nisan 1955'de yeraltı tedhiş örgütü Eoka'nın saldırıları başlatmasıyle yeni boyutlar kazanan gerilim 1963'ün Kanlı Noel'inde soykırım girişimiyle Türk ve Rum halklarının birbirinden kopma sürecinin başlangıcı olacaktı.

1940'lı yılların sonunda Kıbrıs'a karşı Türkiye'nin yeniden 'gerçek' ilgisi; Ada'da yeni okulların açılmasını, eğitimci/öğretmen desteğini, Kıbrıs'lı gençlerin parasız yatılı/burslu, Türkiye'de yüksek öğretimden geçirilmesini, kültür hizmetlerinin sağlanmasını getirdi.

1930'lu yıllarda dil ve edebiyatımızda başlayan kıpırdanmalar, yeni filizlenmelerle yüzyılımızın ilk çeyreğindeki durağanlığı gidermeye doğru yol açacak; 15 Temmuz 1974'de başgösteren hükümet darbesinin ardından garantörlük hakkını kullanan "hami devlet" Türkiye Cumhuriyeti, soykırımından kılpayı kurtardığı Kıbrıs halkını sürekli bir barış ortamına kavuşturacaktı.

Ada'nın yönetimi İngilizlere geçtikten sonra dahi karşı sahildekiler Kıbrıs'a "müzaharet"lerini hep sürdüregelmişlerdir. Bunun en belirgin örneği 1924-1950 arası Türkiye'ye giden Kıbrıs'lı gençlerden %80'inin orta ve yüksek öğretim kurumlarında parasız/yatılı okutulmaları;[88] iki büyük savaş dışındaki yıllarda Türkiyeli eğitici/öğretmenlerin ortaöğretim kurumlarında kesintisiz hizmet vermeleridir. 1950 sonrası olanaklar, eskisiyle karşılaştırılmayacak denli artmış, Türkiye eğitim sistemi Kuzey Kıbrıs'a egemen olmuştur.

1974 SONRASI

1974 sonrası gelen özgürlük ortamında Kıbrıs Türk sanatçıları evrensel boyutlu yeni atılımlar yaratmanın arayışlarını sürdürüyor, Türkiye'nin yanısıra üçüncü ülkelerdeki gelişmeleri de yakından izleme çabası gösteriyorlar. Geçimlerini başka yerlerde temin etmek zorunda kalan her kesimden insanlarımız ise başta Türkiye olmak üzere İngiltere, Kanada, Amerika, Avustralya gibi ülkelerde yaşasalar bile yine de doğdukları yerle ilgilerini kesmiyorlar.

Yazımızın başında Bozkurt Güvenç'ten yaptığımız alıntıya dayalı olarak, sıralanagelen örneklerle, şu sonuca varırız:

1. İnsanlar benzer, çünkü kültürleri benzer: Anadolu Türkü ve Kıbrıs Türkü benzer; çünkü kültürleri benzer.
2. İnsanlar farklıdır, çünkü kültürleri farklıdır: Kıbrıs Türkü ile Kıbrıs Rumu farklıdır; çünkü kültürleri farklıdır.

   Genelde böyle iken bazı özel durumlarda (1) için farklılıklar (2) için de benzerlikler elbette ki mevcuttur.

   Sözgelimi (1) için: Temel saz Anadolu'da bağlama iken Kıbrıs'ta keman olmuştur. (2) için: Destanlar birbirleri hakkında ya da birbirlerinin diliyle yazılmışlardır.
3. İnsanlar değişir, çünkü kültürleri değişmektedir; çünkü insan kültürünün ürünüdür!

1963'den bu yana (1) ile (2) giderek daha kesinleşmiştir. Anadolu Türkü ile Kıbrıs Türkü, kültürel bakımdan daha yakınlaşmış; Kıbrıs Türkü ile Kıbrıs Rumu, kültürel bakımdan daha da uzaklaşmıştır.

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HISTORY OF CULTURAL RELATIONS OF TURKISH CYPRIOTS

ABSTRACT

The establishment of Turkish Cypriot community in Cyprus started after the conquest of Cyprus in 1571 followed by a planned policy of settlement.

In this study, the author explores the cultural relations of Turkish Cypriots in historical developments in relation to following points:

1. People are alike because cultures are alike. Anatolian Turks & Cypriot Turks are alike because their cultures are alike.
2. People are different because cultures are different: Turkish Cypriots & Greek Cypriots are different because their cultures are different.
3. People change because cultures change and human beings are products of culture.

The author comes to the conclusion that since 1963, Anatolian and Cypriot Turks are culturally getting closer and Turkish Cypriots and Greek Cypriots are falling more & more apart.

THE LEGAL SYSTEM OF THE TURKISH REPUBLIC OF NORTHERN CYPRUS

Dr. h.c. Zaim M. NECATİGİL *

ABSTRACT

This article deals with the judicial system of the Turkish Republic of Northern Cyprus, the powers, jurisdiction and organisation of the courts of justice and the constitutional and legal provisions applicable. The system has inherited basic elements of the English common law, and enriched itself by drawing various principles from the continental systems of law, especially in the field of administrative law. The writer attempts to give an account of the substantive law applicable in the State, the interplay of different systems and how it has been possible to conciliate elements drawn from various systems in developing the country's own legal system.

I-HISTORICAL INTRODUCTION

Cyprus was a British Colony between the years 1878-1960. It has therefore inherited various elements of the English common law.

The 1960 Constitution of Cyprus preserved the legal provisions in force, so far as they were consistent with the Constitution, but organised the courts of the new Republic on the basis of participation of the two communities in the judicial organs. The two superior courts - the Supreme Constitutional Court and the High Court of Justice - would have *neutral* presidents, and the Constitution provided for various judicial guarantees for members of the two Cypriot communities. At the lower tier of the system were the District Courts. Disputes between Turkish Cypriots would be heard by courts composed of Turkish Cypriot judges; disputes between Greek Cypriots, by Greek Cypriot judges; and there were also "mixed" courts to try "mixed cases".

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The 1960 Constitution retained the English system of law, but superadded on that system new principles relating to judicial control of administrative action; provided for the supremacy of the Constitution; and for individual basic rights, as well as, communal rights.

The bi-communal system envisaged by the 1960 Constitution collapsed in December 1963.

The political and administrative organisation of the Turkish Cypriots after 1963/64 went through evolutionary stages. First, there was a "General Committee" which took the necessary administrative decisions; then in 1967 the Provisional Cyprus Turkish Administration was set up, which later dropped the word "Provisional" from its title; and in 1974 it became the Autonomous Cyprus Turkish Administration. In February 1975 the Turkish Federated State of Cyprus (TFSC) was proclaimed. This process of evolution culminated in the proclamation in November 1983 of the Turkish Republic of Northern Cyprus (TRNC).

During the "General Committee" stage the Turkish Cypriots were reluctant to establish their own separate courts, but set up two separate commissions, composed of Turkish Cypriot lawyers, one of which dealt with criminal cases - applying the existing Criminal Code - and the other dealt with rent assessment, to adjust rents between landlord and tenant in view of the prevailing anomalous situation which affected the means of the tenant and his ability to pay the full rent.

The "Basic Provisions" - a mini-constitution - of the Cyprus Turkish Administration provided that the judicial power in the Administration would be exercised by independent courts, organisation of which, as well as matters relating to appointment of judges, would be regulated by law.

The 1975 Constitution of the TFSC provided for the reorganisation of the judiciary with the establishment of the Supreme Court, which would sit as the Supreme Constitutional Court; as the Court of Cassation (*Yargıtay*); and as the High Administrative Court. There were constitutional guarantees of the tenure of office of judges, and the independence of the Judiciary. A Supreme Council of Judicature was set up, which would be responsible for appointment, promotion and other matters relating to judges.

The 1985 Constitution of the TRNC generally retained the system envisaged by the 1975 Constitution, and enriched the system, which is based on the principle of supremacy of the Constitution, with guarantees of access to independent and impartial courts.

II- INDEPENDENCE OF THE JUDICIARY

The judicial power in the Turkish Republic of Northern Cyprus (TRNC) is exercised by independent courts, a tradition maintained since the evolution of the Turkish Cypriot Administration. Article 136 of the TRNC Constitution provides that the judges shall be independent in their duties, they shall perform their judicial function in accordance with the Constitution, laws, legal principles and the opinion dictated by their conscience. No organ, authority or person can give instructions, or make recommendations or suggestions to the judges relating to the exercise of judicial power. There can be no debate in the Legislative Assembly (Republican Assembly), and no question can be asked, about a matter that is *sub judice* before the court. More significantly, the Constitution requires the legislative, executive and administrative organs to comply unconditionally with court decisions. In order to reinforce such mandatory provisions, Article 142 empowers the Supreme Court, and all other courts, to punish for contempt of court, until there is compliance, by committing the person concerned to imprisonment for a period not exceeding 1 year[1].

Appointments, promotions, *disciplinary* control and all matters relating to the President and judges of the Supreme Court and to judges of subordinate courts are within the exclusive competence of the Supreme Council of Judicature. However, the appointment of the President and judges of the Supreme Court have to be approved by the President of the Republic[2]. Article 141 of the Constitution provides that the Supreme Council of Judicature shall be composed of the President and judges of the Supreme Court, a member appointed by the President of the Republic[3]; a member appointed by the Assembly of the Republic; the Attorney-General; and a member elected by the Bar Association. The appointed, or elected, members hold office for a period of three years and they are eligible for re-election. The President of the Supreme Court is the Chairman of the Council, and he is entrusted with the duty of ensuring the implementation of the decisions of the Council.

The Supreme Council of Judicature has the duty to take the necessary measures for the orderly functioning of the judiciary; to regulate matters relating to judges; and to safeguard the dignity and honour of the profession. The Council is also required to submit yearly reports to the President of the Republic, the Legislative Assembly and to the Council of Ministers, on the state of affairs of the judiciary, as well as, the problems that have been encountered and the measures that should be taken.

In the TRNC there is no Ministry of Justice, mainly because there is no need for it, in view of the powers and functions of the Supreme Council of Judicature. Matters relating to prison administration and the police, are entrusted upon the Ministry of the Interior.

The Constitution guarantees security of tenure of office for the judges. Excepting conviction for a criminal offence incompatible with the office of a judge; incapacity to perform functions on grounds of ill health; taking up employment incompatible with the profession; and being found unsuitable to remain in office, the judges cannot be dismissed, or retired before reaching retiring age[4]. The competent organ to dismiss a judge in such circumstances is the Supreme Council of Judicature.[5] The retiring age for judges of the Supreme Court is sixty-five, and for judges of lower courts it is sixty.[6]

No action can be brought against judges in respect of words spoken or any act done in the execution of their judicial duties[7].

The Supreme Court has power to make rules of court, to regulate the practice and procedure of itself and of any other court[8]. It can specifically make rules for the purpose of regulating court sittings and allocating the duties of judges; providing for summary proceedings in certain circumstances; prescribing forms and fees in respect of court proceedings; regulating the powers and duties of civil servants employed in the courts; and prescribing time-limits for pleadings, etc.

There are a number of matters, however, which must be regulated by law. These are matters relating particularly to qualifications, appointments, rights, salaries and allowances, as well as, disciplinary offences of judges[9]. As regards salaries of judges, specific salary levels have been set by law, which cannot be changed by the legislature to the detriment of judges, as these have become accrued rights. For instance, the salary of the President of the Supreme Court is equal to the salary of the Prime Minister; and Supreme Court Judges draw the same salary as Ministers.

Experience has shown that the Legislature has generally shown the inclination to pass, without much opposition, laws concerning the Judiciary which are submitted by the Government upon the proposal of the Supreme Council of Judicature. In one particular case the Legislature encountered some difficulties, mainly because the Supreme Council of Judicature was itself divided on the matter[10].

III- THE SUPREME COURT

The highest court in the State is the Supreme Court composed of a President and seven judges[11]. When sitting as the Supreme Constitutional Court, it is composed of five Judge (including the President); it sits, with a quorum of three, as the Court of Appeal; and it also sits as the High Administrative Court. Administrative law cases, except those specified by law, are being heard by a single judge of first instance from whose decisions there is a right of appeal to the Court composed of three judges[12].

The Supreme Court has jurisdiction to sit as the Supreme Council[13], Supreme Constitutional Court, the Court of Cassation (Appeal) and as the High Administrative Court.

(i) The Supreme Constitutional Court

The Supreme Court, sitting as the Constitutional Court, has exclusive jurisdiction in the following matters:

(a) To sit as the Supreme Council to hear and determine accusations against the President, Prime Minister and Ministers, as provided by law;

(b) as a final adjudicator on any matter relating to any conflict or contest of power or competence arising between the State organs or State authorities;

(c) to hear and determine references made by the President of the Republic before promulgation of a law of the Assembly, as to whether such law or any specified provision thereof is repugnant to or inconsistent with any provision of the Constitution;

(d) to hear and determine applications for annulment of laws or decisions of the Assembly, or of any rules or regulations, on grounds of unconstitutionality, which may be instituted by the President, political groups, at least nine deputies, or other associations;

(e) to hear and determine references regarding questions of unconstitutionality of any law or decision, which are reserved by courts for the decision of the Constitutional Court;

(f) To interpret the Constitution, and

(g) To decide upon petitions for closing down political parties which do not conform to specified basic principles.

However, the Supreme Court, sitting as the Supreme Constitutional Court, has no power to adjudicate on an election petition. The Constitution provides for the setting up of election councils to exercise power in relation to elections of the President and of the deputies[14].

(a) The Supreme Council

Article 144 of the Constitution provides that the Constitutional Court, sitting as the Supreme Council[15] shall have jurisdiction to try the President of the Republic, the Prime Minister and Ministers for any offence committed by them. It also provides that the duties of the prosecuting officer at these proceedings are to be performed by the Attorney-General, or his Deputy, and that the judgments of the Council are to be final.

Article 144 should be read in conjunction with Articles 103 and 108, respectively. Article 103 provides that the President of the Republic cannot be held responsible for acts committed in the execution of his duties, and that he can be accused only for high treason by a two-thirds majority decision of the Legislative Assembly. In such a situation he can be tried by the Supreme Council. Article 108 provides that when a charge has been preferred before the Supreme Council, against the Prime Minister, or a Minister, by decision of the Assembly, the Council of Ministers shall be deemed to have resigned, in the former case, and the Minister concerned shall be deemed to have forfeited his Ministry, in the latter case. Article 98 provides for the procedure that should be carried out with a view to preferring charges against the Prime Minister, or the Minister conceded. First, the Assembly should decide for the holding of an investigation; the second stage would be the carrying out of the investigation by a special committee of the Assembly; and the third stage would be the approval by the Assembly, by at least two-thirds majority, of the report of the committee proposing the accusation of the Prime Minister, or the Minister concerned.

The above provisions have never been invoked in the TRNC.

(b) Conflict or contest of power

Article 145 provides that the Constitutional Court shall have jurisdiction to adjudicate finally on a recourse[16] made in connection with any matter relating to any conflict or contest of power or competence arising between State organs. Article 145 also provides that such proceedings may be commenced by the President of the Republic; or the Legislative Assembly; or any other organ of the State that is involved in the dispute relating to the conflict or contest of power. Upon such an action the Court may declare that the law, decision, or act, which is the subject matter of the proceedings is void as from the time the conflict or contest of power arose, or void *ab initio*. The Court may also issue an interim order to suspend the operation of the law, decision or act, until final determination

of the matter by the Court.

Disputes under Article 145 may arise particularly in view of the separation of powers under the Constitution. The powers of the State are entrusted mainly on the Executive, Legislative and Judicial branches, as part and parcel of State sovereignty, exercised by these organs on behalf of the people. Rather than adopting a rigid separation of powers, the Constitution has preferred a flexible approach that requires cooperation between the organs of the State. In all cases of conflict of power, however, the Constitutional Court is the final arbiter.

An example of conflict or contest of power under the 1960 Constitution arose, for instance, when the Greek Cypriot dominated Council of Ministers decided in 1963 not to pass legislation for continued existence of Turkish Cypriot municipalities in the five largest towns of Cyprus, as required by Articles 173-177 of that Constitution, but converted the said municipal areas into "improvement areas" for the purposes of the Villages (Administration and Improvement) Law, Cap. 243.[17] Another conflict of power arose in 1988 between the Foreign Ministry and the Public Service Commission as to whether the posting of public servants to representative offices abroad was within the competence of the Foreign Ministry, or the Public Service Commission. The Court ruled in favour of the latter.[18]

c) References of questions of constitutionality by the President of the Republic for opinion of the Court

Article 146 of the Constitution provides that the President of the Republic may, before promulgation, by publication in the Official Gazette, of a law, or any decision of the legislative Assembly, refer the question of constitutionality of the law, or decision, or any provision thereof, for the opinion of the Constitutional Court. When such reference has been made, the Court hears arguments on behalf of the President, who is represented by the Attorney-General, and also on behalf of the Legislative Assembly, and has to give its opinion on the matter within forty-five days of the conclusion of the hearing. If the Court is of the opinion that such law or decision, or any provision thereof, is repugnant to, or inconsistent with, the Constitution, the President cannot promulgate such law or decision, or any provision thereof, but has to return it to the Legislative Assembly with the reasons therefor. The Assembly should then re-consider the matter in the light of the judgment of the Court, and if possible re-draft the law or decision to bring it into conformity with the Constitution.

As noted above, references by the President for opinion of the

Constitutional Court, are not confined to laws, but they include decisions of the Legislative Assembly. Under the Constitution the President promulgates by publication all laws, but as regards decisions, not all of these are promulgated by the President of the Republic. Article 95 specifies those decisions that are to be promulgated by the President (Speaker) of the Assembly. The President of the Republic promulgates only those decisions of the Assembly that are of a general nature.

It is understood that it is only with respect to decisions that are to be promulgated by the President of the Republic, that the President can make a reference to the Constitutional Court; he cannot make a reference in respect of a decision which he is not entitled to promulgate.

Such references have to be made within fifteen days - the period specified for promulgation of laws. Within that period it is usual for the President to obtain the opinion of the Attorney-General before he can decide whether to refer the matter to the Court.

The President has, for instance, referred the Public Servants Declaration of Wealth Law;[19] Co-operative Societies (Amendment) Law;[20] Teachers Law;[21] and the Emplacement on Established Posts of Temporary Personnel Law.[22]

d) Action for annulment

The Constitution has provided procedures to test the constitutionality of laws, whereby a law that is contrary to the Constitution will either be annulled, or declared unconstitutional, because laws have to be in accordance with the Constitution - the supreme law. The Constitution is the basic norm; laws cannot contravene or change the Constitution.

Article 147 of the Constitution provides that the following may institute annulment actions[23] with the Constitutional Court:

(i) The President of the Republic,
(ii) Political parties represented in the Legislative Assembly;[24]
(iii) Political groups;[25]
(iv) Any nine deputies; and
(v) Associations, institutions and trade unions on matters concerning their existence and duties.[26]

The texts that can be made subject to an action for annulment are:

(i) Laws;[27]
(ii) Decrees having the force of law;[28]
(iii) Rules;[29]

(iv) Rules of the Legislative Assembly;[30]
(v) Decisions of the Legislative Assembly;[31]
(vi) Regulations.[32]

This procedure under Article 147 is described as "*soyut norm denetimi*", because in such actions the constitutionality of laws and other texts, such as rules and regulations, are tested in abstract, i.e. without reference to the facts of a given case. In other words, constitutionality of lower norms, such as, laws, rules and regulations, are tested against the hierarchically superior norm, the Constitution.

The time-limit for filing such actions is ninety days from the date of publication of the above texts in the Official Gazette.[33]

Since the publication of the Rules of the Supreme Constitutional Court of 1997, the parties to an annulment action are described as "plaintiff" and "defendant", and not as "applicant" and "respondent", as formerly they used to be. The defendant in an annulment action is the Republican Assembly when the constitutionality of a law or decision of the Assembly is challenged before the Court. In the case of rules made by the Council of Ministers, the defendant is the Council of Ministers.

(e) References of questions of constitutionality

Article 148 of the Constitution provides that a party to any judicial proceedings, including proceedings on appeal, may, at any stage of the proceedings, raise a question as to the constitutionality of any law or decision, or any provision thereof, which is material for the determination of any matter at issue in such proceedings and thereupon the court shall reserve the question for the determination of the Constitutional Court, and stay further proceedings until the Constitutional Court pronounces on the matter of constitutionality which has been referred to it.

Whereas under Article 147 the right to institute annulment actions is given to certain persons and institutions, the right to ask for reference of questions of constitutionality is given to parties to judicial proceedings, and there is no time-limit for initiation of the reference; the only requirement is that it should be made during the proceedings.

The court which is asked to make the reference, does not itself inquire into the question of constitutionality - a matter within the exclusive jurisdiction of the Constitutional Court - but has to make the reference if the question raised is "material" for the determination of the issues in the proceedings.[34] However, if the proceedings before the court lack any legal basis due to which the party concerned is not entitled to continue

the proceedings, no reference to the Constitutional Court should be allowed.[35]

If the same question of constitutionality has been submitted to the Constitutional Court and the Court has decided on the matter in an earlier case, the court may refuse to refer the question once more to the Constitutional Court.[36]

The decision of the Constitutional Court on a matter of constitutionality, that has been referred to it, binds the parties and the court which has made the reference.[37] This means that the decision of the Court as to unconstitutionality does not annul the law or decision, but is in the nature of a declaration as to unconstitutionality. It would be up to the Legislative Assembly to comply with the decision of the Court and abrogate any provision that is declared unconstitutional. It is a requirement of the principle of the supremacy of the Constitution, that this should be so. Moreover, paragraph 3 of Article 148 empowers the Court to decide "to the contrary" as to the effect of its decision, which raises the question as to whether the Court may, in exceptional circumstances, decide on annulment, as distinct from a declaration of unconstitutionality, of a legal provision.[38]

There has been some confusion as to the meaning of the word "decision" in Article 148. It is clear that it refers to decisions of legislative and administrative organs, but a problem has arisen as to whether it also includes judicial decisions.[39]

(f) Interpretation of the Constitut

Whereas it is clear that all courts can apply constitutional provisions, when there is a question of interpretation of the Constitution - because the meaning is not clear - the matter comes within the exclusive competence of the Constitutional Court under Article 149. However, it is not easy to decide objectively when the need for interpretation arises that would necessitate the use of such a procedure. Moreover, as all courts are not entitled to interpret the Constitution, references to the Constitutional Court tend to unduly delay the proceedings.

Problems have also arisen in the past as to whether a court, of its own motion, refer a matter of constitutionality to the Constitutional Court, or whether it should do so only upon the application of a party concerned.[40] Under the former Rules of the Supreme Constitutional Court of 1962, in the case of a party wishing to apply for interpretation of the Constitution, it was necessary to obtain "leave" of the Court.[41] Now, section 6 of the

Rules of the Constitutional Court of 1997 provides that proceedings under Article 149, as in the case of proceedings under Articles 146 and 148, shall be by way of written reference. Leave of the Constitutional Court would not be necessary for such a reference. However, the *cryptic* provisions of the Rules leave open the question as to whether a court can of its own motion refer a question of interpretation to the Constitutional Court.[42] It would seem that the proper procedure would be for a party to ask for a reference of the question of interpretation, and for the court to make the reference, if such interpretation is material for the determination of the issues.[43]

(g) Closing down of political parties

Article 71 of the Constitution lays down the principles to which political parties should adhere. These include principles of democracy, human rights, indivisibility and integrity of the TRNC, and the principles of Atatürk. Political parties acting in contravention of the provisions of this Article may, upon institution of proceedings by the Attorney-General, be permanently closed by the Supreme Court, sitting as the Constitutional Court.

The control of the formation and activities of political parties and their closing down are governed by the provisions of Articles 70 and 71, of the Constitution, and Law No.10/1975.

There has been no instance in the TRNC of closing down of a political party.[44]

(ii) The Court of Cassation (Appeal)

(a) Jurisdiction on appeals from lower courts

The Court of Cassation (*Yargıtay*) (Appeal) hears and determines appeals from lower courts in civil and criminal cases. All decisions of the District Courts and Assizes are subject to appeal as of right.[45]

In Criminal cases an appeal may be against conviction and/or sentence.[46] An amendment to the Criminal Procedure Law has also made it possible for the Attorney-General to appeal from the decision of acquittal of the Assize Court.[47] An appeal can be lodged against any decision or order of the Assize Court, or from an order or decision of a court exercising criminal jurisdiction,[48] or that of a single judge of the Court of Cassation, releasing a person from custody, on bail.[49]

In determining an appeal against conviction, the Court of Cassation may dismiss the appeal; allow the appeal and quash the conviction, because of "substantial miscarriage of justice"; set aside the conviction and convict the appellant of any other offence of which he could have been convicted on the evidence before the trial court; or order a new trial.[50] On appeal against the sentence, the Court may increase, modify, or reduce the sentence.[51] The Court also has the power to hear further evidence and reserve judgment in the meantime.[52] There are also provisions relating to reserving questions of law, or stating a case, for the determination of the Court of Cassation.[53]

As regards appeals from civil cases, the matter is regulated by the Civil Procedure Rules.[54] All appeals are by way of rehearing.[55] As for the powers of the Court, Order 35, rule 8 provides that the Court shall have all the powers and duties as to amendment and otherwise of the trial court, together with full discretionary power, to receive further evidence upon questions of fact, by way of oral examination, by affidavit, or deposition. Upon appeals from judgment after trial or hearing on the merits, such evidence can be admitted only on special grounds. The Court has power to draw inferences of fact and to give any judgment and make any order which the case may require.[56] Upon the hearing of an appeal the Court may set aside, either wholly or in part, the decision appealed from, and order a new trial generally or in regard to a particular issue or matter.[57]

The Supreme Court has recently amended the Civil Procedure, as well as, the Criminal Procedure Rules, to require each party to an appeal, to file a few days before the hearing, a list of authorities and academic works, which such party intends to quote during the hearing of the appeal.[58]

(b) Jurisdiction to issue orders in the nature of *habeas corpus, prohibition* and *certiorari*

Article 151 para. 3 of the Constitution empowers the Supreme Court, sitting as the Court of Cassation, to issue orders in the nature of *habeas corpus, mandamus, prohibition, certiorari* and *quo warranto*. These writs, or orders, of the English common law have been introduced into the judicial system of Cyprus during the British colonial period and have been retained by the 1960 Constitution, as well as, the constitutions of the TFSC and the TRNC.

As for the procedural rules relating to the issue of these orders, the English Rules of Procedure still apply in the TRNC, as our Supreme Court has not made the relevant rules.[59] It is interesting to note that an applicant

for the issue of any of these orders has first to apply for leave to file an application, which is heard by a single Judge of the Court and if leave is granted, the substantive application is heard by three Judges of the Court of Cassation.

It is also interesting to note that the Court of Cassation hears and determines applications for the issue of these orders as a court of first instance, exercising "original" jurisdiction.

Article 151 (3) of the Constitution also attempts to define in Turkish the "meaning" of these writs, or orders. However, it cannot be said that such brief definitions give a fully satisfactory description of the nature and scope of the English common law remedies. Moreover, the Turkish definitions in Article 151 (3) should not be taken to have intended to change the nature and scope of such remedies as defined by the common law. In the definition of *"prohibition"*, for instance, the reference to "any court", should not be taken to be a reference to a court other than a lower court. In other words, the orders under examination apply in respect of decisions of lower courts, but not in respect of decisions of the Supreme Constitutional Court, the High Administrative Court, or the Supreme Council of Judicature.[60]

In English common law these orders have been described as discretionary remedies, as they will not issue as of right, but taking into consideration all the circumstances of the case, the Court may refuse to grant the order applied for.

Prohibition and *certiorari* would commonly be issued by the English High Court against lower courts. However, through the passage of time these orders came to be issued against administrative bodies, provided that their decisions were *quasi* - judicial, i.e. similar in character to those of a court. In case of disciplinary hearings by administrative authorities, for instance, the orders of *prohibition* and *certiorari* would be granted against such authorities, even though they were not "courts" in the strict sense of the word. Gradually the English judges extended the scope of *prohibition* and *certiorari*, so that, apart from their application in respect of decisions of lower courts, their prime importance in English law today is that they are remedies of administrative law, as they are issued to control the exercise of administrative power, as well as, judicial power. English administrative law today is therefore mainly concerned with the issue of these orders to control wrongful exercise of power by administrative bodies, on grounds, such as, excess and abuse of power.

It is important to note that whereas in England the scope of the prerogative orders have been extended to control the exercise of power by administrative bodies, thus extending the role of the orders in the field

of judicial control of administrative action, in Cyprus, development of administrative law has followed a different course. In the TRNC today these orders would be issued more often against decisions of lower courts, than those of administrative bodies. This is because the 1960 Constitution of Cyprus introduced the continental system of administrative law *(droit administratif)*, which has been retained by our Constitution. In view of these provisions, it has not been possible for English administrative law and continental administrative law to apply concurrently in all respects. Whereas the English system of administrative law is incorporated in Article 151 (3), and the continental system in Article 152 of the Constitution, our Supreme Court has ruled that both remedies are not open for a plaintiff (applicant) at the same time, and that if the proper remedy exists under Article 152, the remedy under Article 151 cannot apply. In such a situation the plaintiff is not at liberty to choose either of the remedies, but has to use the remedy under Article 152; one remedy cannot be used as an alternative to the other.[61]

Habeas corpus

The most commonly used type of *habeas corpus* proceedings is *habeas corpus ad subjiciendum*, which is used to order the liberation of a person imprisoned unlawfully. An order of *habeas corpus* is directed to a person who detains another in custody, ordering him to bring the detained person before the Court and to show cause why such person should not be set free. *Habeas corpus* is therefore a safeguards of fundamental right to personal liberty.

Respondent to a writ of *habeas corpus* will usually be a prison governor, officer in charge of a police station, or it may even be the commandant of an internment camp.[62] It can also be issued against civil detention - may issue against the superintendent of a mental hospital, and in child custody cases, the respondent may be a parent.

In case of deprivation of liberty by order of a court of competent jurisdiction, usual procedure to secure the liberty of the person concerned would be an appeal from the decision of the judge.

In the TRNC the right to liberty of the individual - freedom from unlawful arrest and detention, which are instances of deprivation of liberty - is protected under Article 16 of the Constitution. This Article sets out the circumstances under which a person can be lawfully arrested and/or detained. Even under those circumstances arrest and detention of a person

would not be lawful unless there are legal provisions authorising deprivation of liberty and that the purpose of arrest or detention is in accordance with the purpose set out in the Constitution. Article 16 restricts considerably police powers of arrest and detention of a person on suspicion that he has committed an offence. In all those circumstances it is necessary that a judicial warrant must be obtained authorising the arrest or detention, unless in the case of a flagrant offence punishable with imprisonment.[63]

If a person is deprived of his liberty by way of arrest or detention that is in contravention of the provisions of Article 16, or any other legal provision, it would be proper to apply for *habeas corpus* for the release of such person.

Mandamus

Mandamus is an order commanding a person or body of persons to do that which it is his, or its duty to do. *Mandamus* is more commonly used to enforce the performance of a duty, provided that the applicant can show that the duty is one owed to him. Moreover, in order that an order of *mandamus* may be issued by the Court, there must be a legal duty on the respondent public authority. It will not be issued if the respondent has wide discretionary power as to whether to perform an act, or not.[64]

Mandamus will issue against a court or a judge, who wrongfully refuses to exercise a jurisdiction.

Mandamus is a discretionary remedy and it may be refused if an alternative remedy, such as an appeal, exists.

In North Cyprus *mandamus* was issued for the first time in 1982 in a case where the Court ordered the Director of Ports to perform a duty which it had failed to do.[65]

Under the TRNC Constitution there is a remedy under Article 152, in cases where an administrative organ, authority, or body has failed to perform a duty, that is, has committed an omission. In the field of Cyprus administrative law therefore, mandamus has lost its importance, as an alternative remedy exists under Article 152 of the Constitution against omission of the administration.[66]

Prohibition and certiorari

Prohibition is an order issued by a superior court, prohibiting a lower court, administrative body, or tribunal, from exceeding or abusing its authority.

Certiorari is an order which compels a lower court, administrative

body, or tribunal, to send its records of proceedings and decision to the superior court in order that the superior court may "certify" (hence *"certiorari"*) as to whether the decision is within the jurisdiction of the lower court, administrative body, or tribunal.

Compared with *certiorari, prohibition* is usually asked at an earlier stage of proceedings, before the completion of such proceedings, because its aim is to prevent wrongful exercise of jurisdiction. *Certiorari*, on the other hand, is usually asked when the proceedings have been completed. The purpose is to quash such proceedings on the ground of lack of jurisdiction. It is quite common to ask for *prohibition* as well as *certiorari* together in one application.

These remedies are discretionary, and may therefore be refused if, for instance, there has been delay in applying for the order. Under the rules of procedure, application has to be filed within six months of the decision which the applicant seeks to quash by way of *prohibition* and/or *certiorari*.

Initially these orders would issue in respect of decisions of lower courts. However, English administrative law has developed in such a way that in England they are now being commonly issued against administrative bodies, organs or authorities, just as they can be issued against lower courts.[67] Since 1977 the old English procedure for the issue of these writs has been replaced by a simplified "application for judicial review".[68] In Cyprus, however, the importance of these orders, as administrative law remedies, has declined in view of the provisions of Article 152 of the Constitution, which provide a different procedure for judicial review of administrative action.

The grounds for the issue of *prohibition* and *certiorari* have been laid down in a rational manner in an English case in 1984.[69] These grounds are:

(i) Error of law (illegality). This ground may be invoked, for instance, when the lower court, or administrative body, has misunderstood the law regarding its power and jurisdiction, or wrongly applied the law, or failed to obey the procedural requirements in reaching its decision, and has thus acted in excess of jurisdiction.[70]

(ii) Unreasonableness (irrationality). This ground may be invoked when the lower court, or administrative body, has taken a decision that no reasonable body could have been expected to take.[71] The taking into consideration of totally irrelevant and wrong criteria, or wrongful

evaluation thereof, may vitiate an administrative decision for unreasonableness. For instance, it was held in an English case that a local council had acted unreasonably when it decided not to institute proceedings for violations of its regulations, because of the legal costs involved.[72] The principle of unreasonableness is similar to the principle of *proportionalité* in French law. By using this principle the administrative court has extended judicial control into areas of administrative discretion. According to this principle, in the exercise of judicial control, especially in a case of expropriation of land by the administration, the court will weigh for itself the advantages and disadvantages of a challenged expropriation; only if the balance is in favour of the former (advantages) will the court adjudge such a measure to be in the public interest.

(iii) Contravention of principles of natural justice (procedural impropriety). This ground may be invoked when the lower court, or administrative body has not acted impartially, i.e. has acted with bias; or, it has failed to afford the interested party an opportunity to be heard and/or to defend himself, in cases which affect his rights or his livelihood, such as in disciplinary proceedings. If for instance, a judge or an administrator, has an interest in the matter on which he will adjudicate or decide, he should not participate in the adjudication, or in the decision making process. Justice should not only be done, but it should "seem" to be done. As for the right to a hearing, in a case where a medical doctor was found guilty of a disciplinary offence of professional negligence - on the basis of the record of proceedings of a criminal court which convicted him - and his name was struck off the medical register, it was held that the disciplinary proceedings that were concluded without affording him an opportunity to be heard and defend himself, should be quashed, for violating the principle of natural justice.[73]

Quo warranto

This archaic writ was used in England till 1938 to question by what authority a public office was being held. It can no longer be used in England. Today it has been replaced by an injunction, to restrain a person from unlawfully holding a public office. In Cyprus too it has become obsolete and its place has been taken by an injunction. Section 41 of the Courts of Justice Law[74] provides that every court in the exercise of its civil jurisdiction, subject to

any rules of court, grant an injunction (interlocutory, perpetual, or mandatory) in which it appears to the court just or convenient so to do, notwithstanding that no compensation or other relief is claimed or granted together therewith.

(iii) The High Administrative Court

a) Competence in administrative matters

Article 152 of the Constitution provides that the High Administrative Court shall have exclusive competence in administrative matters. In other words, judicial review of decisions of the administration is within the exclusive competence of the High Administrative Court. Article 143 provides that the High Administrative Court shall be composed of three judges of the Supreme Court and that, except for those cases specified by law[75] all cases shall be heard by a single judge, from whose decision there is the right of appeal to the Court composed of three judges. The decision of the Court sitting with three judges is final.

In view of the "exclusive" competence of the High Administrative Court no other court in the TRNC can exercise concurrent or parallel jurisdiction with that of the High Administrative Court[76]. This does not, however, exclude hierarchical review of decisions within the administration itself before resort is made to the High Administrative court[77]. However, if the administrative decision is complete and final, it is not mandatory to pursue the procedure for hierarchical review; resort may be made direct to the Court, thus by-passing such procedure.[78] In similar systems, however, when the law provides for hierarchical review it is necessary to exhaust that procedure before resort can be made to the Court.

(b) Administrative organs

Article 152 of the Constitution, which defines the powers and functions of the High Administrative Court to review the acts and decisions of the administration, refers to "any organ, authority, or person" exercising any executive or administrative authority. This means that an act or decision that can be subject to a recourse for annulment under Article 152 must, generally speaking, emanate from an administrative authority, described as "organ, authority or person". The word "person" in this context does

not denote a person acting in his private capacity, but a person acting on behalf of, and representing, an administrative authority.[79]

The administrative authorities in the above context are "juridical creations, bearing the functions of organic institutions of government acting on behalf of the State".[80]

The administrative authorities whose acts and decisions are subject to judicial review under Article 152, include such organs of central and local administration, as well as, other agencies and bodies created by law, that act on behalf of the State.[81]

(c) Administrative acts and decisions

Administrative acts have very often been described as unilateral acts emanating from the administration, expressing the will of the administration *vis-à-vis* the individual.

Article 152 of the Constitution refers to a "decision, an act or omission of any organ, authority or person exercising any executive or administrative authority". Even though in most continental jurisdictions the administrative courts have attached decisive importance to the organ or authority that has taken the decision in question, in Cyprus the competent court has, in its early decisions based its review jurisdiction essentially on the nature of the decision, rather than on the nature of the organ or authority from which such decision emanated.[82] In one case the decision of the Office of the *Müftü* refusing permit to an applicant to preach in a mosque, has been treated as "administrative", attaching decisive importance to the nature of the act, rather than the authority that took the decision in question.[83] For this reason, decisions of semi-official institutions, such as the Electricity Authority, the Telecommunications Authority, and non-private radio and TV corporations, have been treated as administrative.

On the other hand, not all acts of the administration are to be regarded as administrative in the sense of Article 152 of the Constitution. For instance the making of rules and regulations by the Council of Ministers, are not administrative acts, but are considered as legislative functions outside the scope of jurisdiction under Article 152.[84]

Legislative and judicial acts are not subject to review by the High Administrative Court under Article 152. The constitutionality of legislation can be challenged under different Articles of the Constitution, and the jurisdiction belongs to the Supreme Constitutional Court. Similarly, judicial decisions, in the sense of decisions of lower courts, are subject to revision on appeal to the Court of Appeal. The High Administrative Court has no jurisdiction in respect of legislative and judicial acts. The Supreme

Constitutional Court of Cyprus has held that the arrest of a person and seizure of his papers, for the purpose of bringing him before judicial authorities, are so closely connected with judicial proceedings that such acts cannot be considered administrative.[85] However, our Constitutional Court and the Court of Cassation have held that the decision of the Military Court relating to certification of military service as a fighter *(mücahit)* is administrative and can be made subject to review under Article 152.[86]

Decisions of the administration of general nature are not themselves administrative acts, because they are not addressed to an individual, or group of individuals, who can be considered as "persons aggrieved". For instance, the decision of the Council of Ministers to build a traffic island, or to divide motorways into lanes and construction of barriers, would not be considered administrative, if an old decision of the Supreme Constitutional Court on the matter would be considered as good law today.[87] Similarly, the making of schemes of service for a public post, would not be considered administrative.[88]

It is a principle of law that an administrative act must be "executory" in order to be subject to review by the administrative court. It must affect the rights of the individual to which it is addressed. For instance, preparatory acts, opinions of the Attorney-General, reports of inspectors etc. are not *ipso facto* administrative acts. For the same reason, a repetitive act, confirming an earlier administrative decision, without taking into consideration new factors, is not an "executory" act.

When the administration is acting in the domain of private law its actions will not be considered as "administrative". For instance, the decisions of the Lands Office relating o boundary disputes and ownership of land, are not administrative.[89] In some cases the administration is deemed to act as a private person, for instance, when it leases property. Its action in such a situation would be in the domain of private, and not of public law. Acquisition and requisition of property, however, for public purposes, are administrative acts. Similarly, decisions of the competent commissions under the Housing, Allocation of Land and Property of Equal Value Law of 1977 relating to distribution to Turkish Cypriots, of Greek Cypriot property abandoned in North Cyprus since 1974, are in the domain of public law.[90]

(d) Omission of the administration

The word "omission" in Article 152 denotes an omission to do something required by law, as distinct from the non-doing of a particular act or the non-taking of a particular course where such non-action is the result of

exercise of discretion.[91]

An omission as envisaged in Article 152, presupposes that no action has been taken in the matter in question. The appointment, for instance, of a person by the Public Service Commission to a particular public office cannot be treated as an omission to appoint another person who also seeks appointment to the same post.[92]

When the administration reaches a negative decision on an application made to it, it is not possible to complain at the same time that such a course amounts also to an omission. In some cases it is necessary to decide whether there is a refusal amounting to a negative decision of the administration, or only an omission by the same to deal with the matter at all.[93] Omission of the administration may not only consist of failure on its part to respond, when called upon to act, but also, of an express refusal to exercise the relevant powers vested in it.

The failure of the administration to reply to a petition addressed to it within 30 days, as is required by the Constitution, has also been treated as an omission.[94]

(e) Proceedings for judicial review

Article 152 of the Constitution refers to a "recourse" (French *"recours"*) for annulment. *"Recourse"* is not, however, a commonly used word in English. Under the 1962 Supreme Constitutional Court Rules, a recourse for annulment was by way of an application in a prescribed format. An opposition could be filed to an application; and the applicant could reply to the opposition.

Now, under the 1997 High Administrative Court Rules, proceedings for judicial review are by way of an action. The writ of summons should show (a) the relief sought, (b) the legal grounds relied upon, and (c) the relevant facts.

The plaintiff must show that he has a "legal interest" to bring the proceedings. He must show that he is the "person aggrieved", that is to say, his rights or interests are adversely and directly affected by the administrative act in question.[95] Such "legal interest" must exist not only when the proceedings are instituted, but also during the hearing, because the administrative action is not an *actio popularis,* and the court will not decide on academic or hypothetical issues that will not directly affect the applicant. In a case, for instance, where the applicant complained that a condition attached to a licence was void, the Court ruled that he had no legal interest to continue the action after the licence had expired.[96]

The defendant to an administrative action is the State (TRNC) through the administrative organ that has taken the decision in question.

The "interested party" is the person who is interested in the outcome of the proceedings, because the administrative act in question which is in his favour, is being challenged by the plaintiff. For this reason, such a person can join the proceedings to protect his interest, which is at risk due to the proceedings.[97]

The defendant can file a defence to the action within 21 days of the service of the writ of summons. The statement of defence must state the facts and the legal basis on which it is made. A reply may be filed within 14 days of the service of the defence.[98]

The writ of summons, defence and reply constitute the pleadings in the proceedings.

The Court has also power to grant an interim (provisional) order, at any stage of the proceedings, upon application or on its own motion, without dealing with the merits of the case.[99]

(f) Grounds for judicial review

Article 152 of the Constitution empowers the High Administrative Court to adjudicate finally on a complaint that an administrative act or decision, or an omission is "contrary to any provisions of the Constitution, or of any law or of any subsidiary legislation made thereunder, or is made in excess or in abuse of powers vested in such organ or authority or person". In view of this, the grounds for judicial review may be stated as

(i) Contravention of the Constitution;
(ii) Illegality;
(iii) Excess of power; and
(iv) Abuse of power.

Contravention of the Constitution:

If an administrative act is clearly contrary to the Constitution it will be annulled upon recourse to the Court. This is part and parcel of the principle of supremacy of the Constitution. Should the administration, for instance, contravene the principle of equality in its treatment of individuals; or contravene the accrued rights of public servants, such as those guaranteed under Article 160 of the Constitution; or take a decision restricting the fundamental rights of the person concerned without the authority of law, there would be contravention of the Constitution.

In very many cases the acts of the administration complained of, would be based on the provisions of a law; in other words, the administration would be acting on the authority of a law. In such cases the proper procedure to follow would be to refer the question of constitutionality of the relevant law for the determination of the Supreme Constitutional Court, because the High Administrative Court cannot adjudicate on the question of constitutionality of the law, but has to apply it.[100]

Contravention of law:

This ground of review may also be described as "illegality". However, "illegality" is stronger in meaning than "contravention of law", because the former word is used sometimes to refer specifically to instances where the administration has shown such disrespect for the law that it may be described as having acted as an outlaw.

In this context the notion of contravention of law is provided specifically by Article 152 of the Constitution to include contravention of subsidiary legislation made under the authority of law. However, it was not necessary for Article 152 to provide that "contravention of subsidiary legislation" is also a ground of judicial review of administrative action, because the notion of "law" by itself includes "subsidiary legislation". The inclusion of "subsidiary legislation" was therefore *ex abundenta cautela*. It is a principle of our constitutional law that rules must be made under the authority of law and regulations, under the authority of rules.[101]

The administration will be deemed to have acted contrary to law when, for instance, it has not taken into consideration the relevant provisions of the law; it has relied on the wrong section of the law; it has misinterpreted the provisions of the law;[102] or it has not complied with a procedural requirement of the law.[103] However, some unimportant procedural irregularities which do not affect the essence of the administrative act in question, will not be sufficient to vitiate such act for illegality.[104]

However, the notion of contravention of law is not restricted to written law, that is to say, legislation passed by parliament. Contravention of law includes contravention of general principles of law, such as, the rules of natural justice, or procedural fairness (known as *droit de l'défense* in French law); the principle of reasonableness and proportionality; the principle relating to accrued rights; the requirement of reasoning of administrative decisions; principle against retrospectivity, and so on.[105]

The courts have sometimes distinguished between "mandatory" and "directory" provisions of the law. Mandatory provisions have to be obeyed

by the administration, but directory provisions involve an element of discretion. Again, there may be discretion as to the exercise of a power; a discretion as to the manner of its exercise; or both. The relevant legal provisions have to be examined in each case. In one instance, the Court has annulled the decision of the Public Service Commission because one of its members, who participated in the decision-making process, was appointed for a term of 2 years whereas the mandatory legal provisions required that he should have been appointed for a term of 6 years. There was no evidence to the effect that this irregularity as to the term of office of a member of the appointing authority affected the decision in question, but the Court was of the opinion that the irregularity reflected on its independence.[106]

Excess and/or abuse of power:

These grounds of judicial review of administrative action have been derived from Continental systems of administrative law. In French law excess of power is known as *"excès de pouvoir"*, and abuse of power, as *"détournement de pouvoir"*.

In its literal meaning "excess" of power is the instance of a power being exceeded in its exercise. When a power is exceeded, whatever has been done in excess of that power will be invalid as being *ultra vires*. A power entrusted, for instance, to a Minister or an administrative authority by a legislative enactment will be *ultra vires* if the Minister or the agency concerned exceeds that power by doing an act not authorised by such legislation, or by doing an act not in accordance with the procedure (if any) that may have been specified by that legislation. In such instances, the administration is said to have exceeded its power, or jurisdiction.

On the other hand, "abuse of power" literally denotes that a power has been exercised for some object other than that for which such power was conferred by law. If the power has been utilised for an improper purpose, there is abuse of power. However, the courts in Cyprus have indicated that a power may have been "abused" *bona fide*, i.e., in good faith, without there having been a bad motive on the part of the administration.[107] However, in most cases the test would be subjective, involving an inquiry into the motives which inspired the administrator so to act.

It should be stressed, however, that the courts usually refer to these grounds generally without drawing distinctions between excess and/or abuse of power. It should also be pointed out that excess and/or abuse of

power, as grounds of judicial review, are very closely connected with "contravention of law" discussed above, because in almost all cases the administration will be deemed to have exceeded or abused its power, or jurisdiction, given by law (statute). Exceptionally, the administration may be deemed to have acted in excess and/or abuse of power when it has disregarded a general principle of administrative law, even though such principle is not, strictly speaking, laid down by law (statute), but by earlier court decisions. Non-observance by the administration of general principles of administrative law laid down by the established jurisprudence of the Court may amount to illegality and/or excess, and/or abuse of power.[108] Failure on the part of the administration to give due weight to certain material considerations in reaching an administrative decision, or reaching a decision without sufficient knowledge of, or inquiry into all relevant factors, may also be treated as abuse of power.[109]

(g) Time limit for judicial review

Paragraph (3) of Article 152 of the Constitution provides that administrative proceedings must be filed with the Court registry "within seventy five days of the date when the decision or act was published or, if not published, or in the case of an omission, when it came to the knowledge of the person making the recourse".[110]

Usually, an administrative act or decision will come to the knowledge of the person concerned by way of service. That is why the 75 days period of limitation begins from the date of service. In the case of publication of the decision, however, the 75 days period begins as from the date of publication irrespective of the time when it came to the knowledge of the person concerned.

According to the jurisprudence of the Court, the period of 75 days begins to run on the day following the day of service and if the last day is a public holiday or a weekend the period ends on the following day, which is not a public holiday, or on Monday, as the case may be.[111]

The time-limit set by the Constitution for filing of actions with the Court registry, has to be observed, otherwise the action will be rejected for being out of time.[112] The rule cannot be relaxed, except perhaps, on the ground of *force majeure*, such as, serious earthquake or floods that do not allow access to the Court registry.

The Court can, of its own motion *(ex proprio motu)*, take into consideration the issue as to whether an action is time-barred or not, even though there is no objection from the defendant, because the provisions

of Article 152(3) are mandatory.[113]

In the case of an omission of the administration, the period of 75 days begins to run from the time when such omission came to the knowledge of the person concerned. The applicants have sometimes tried to by-pass this impediment by asking the Court to consider a "negative decision" as an "omission". [114]

There are also a number of cases where the applicants have tried to overcome this impediment by applying to the administration to take a new decision on the matter so that the period of limitation will start from the date of the new decision. If, however, the administration merely repeats its earlier decision, without taking into consideration new facts, there is no new decision that can set in motion once again the 75 days period of limitation.[115]

The Court has exceptionally laid down the principle that an administrative act or decision may be so bad and illegal, that it may be deemed not to exist at all, in which case its non-existence may be made an issue in the Court any time, regardless of the 75 days period, even though Article 152 does not make a distinction between void and voidable acts.[116] In its later decisions, however, the Court tried to restrict the application of this principle.[117]

(h) Powers of the Court under Article 152

In exercise of its jurisdiction the High Administrative Court may either (a) confirm, or (b) annul an administrative act or decision, or (c) declare that the omission in question ought not to have been made and that whatever has been omitted should have been performed.

Confirmation: Confirmation of the administrative act or decision means that the plaintiff has not been able to establish any one of the grounds for annulment, i.e., the plaintiff has been unsuccessful. In such a situation the Court usually rejects the action; which implies confirmation of the administrative act or decision.

It is possible that instead of confirming the whole of the decision the Court may confirm part of it. Confirmation in part is not, however, a common occurrence; it is only some minor errors that can be corrected by the Court, such as the date of the coming into effect of an administrative decision. In such a situation the Court would be confirming the administrative decision, but not the date of its coming into effect.

Annulment: When an administrative act or decision is annulled, it means that the legal situation that was created by such act or decision does not exist at all. Upon annulment the situation is re-established as it was before such act or decision was done or taken.

In the case of annulment of an appointment to a public post, for instance, the appointing authority has to declare the post vacant, and invite applications from prospective candidates. The appointing authority has to take into consideration not only the candidates who had applied formerly to the post annulled; but also new candidates that have applied for the vacancy created as a result of such annulment.

In annulling an administrative act or decision in the exercise of its "revisional" jurisdiction in administrative law matters, the High Administrative Court does not act as a court of appeal. In other words, the Court does not, as an appeals court would do, revise, or alter the decision of the administration and enter its own decision in the place of that of the latter. In the exercise of its jurisdiction under Article 152, the Court annuls the act or decision of the administration, leaving it to the administration to take a new decision on the matter. Therefore, when an administrative act (or decision) is annulled, the organ of administration whose action is annulled, has, in most cases, to re-consider the matter in the light of the judgment of the court, and reach a new decision as a result of such re-consideration. On re-consideration, it is possible for the administration to take the same decision, without committing contempt of court, provided that it acts in accordance with the principles and criteria indicated in the judgment of the Court.

It has always been said that it is for the administration to administer, and for the Court to exercise judicial control in accordance with the principles of administrative law. The Court cannot therefore substitute its own decision in the place of that of the administration.[118] However, though most lawyers will agree that in principle this must be the case, in practice this is not always so, because by laying down the criteria that should have been taken into account and the principles that should have been followed, the Court has, in some cases, limited the margin of appreciation left for the administration in taking a new decision.[119]

Omission: The judgment of the Court in respect of an omission is in the form of a declaration that "such omission, either in whole or in part, ought not to have been made" or that "whatever has been omitted should have been performed".

In one particular case the Court has ruled that an administrative authority

can be punished for contempt of court if it fails to comply with a declaration of the Court, that is to say, fails to perform what it had omitted to do. That case related to failure of the administration to issue an export licence to the applicant who had obtained a prior declaration from the Court that the omission should not have been made.[120]

(i) Action for compensation

Paragraph (6) of Article 152 of the Constitution provides that any person aggrieved by any administrative decision that has been annulled, or by an omission which the Court has declared should not have been made, shall be entitled to take proceedings in the district court for compensation, if such a claim has not been met to his satisfaction. In other words, a successful plaintiff in the High Administrative Court cannot pursue his claim for compensation in that Court, but has to file an action in the district court. The usual procedure is for such person to claim compensation from the administrative organ concerned, and if such claim is not met to his satisfaction, to apply to the district court.[121] Cyprus administrative law in this respect is different from most continental systems where the administrative court has plenary jurisdiction to annul an administrative act, as well as, to award compensation to the person aggrieved.

As to the quantum of damages, Article 152(6) of the Constitution provides that this has to be "just and equitable". The Supreme Constitutional Court has interpreted this provision to mean such compensation that is not awarded on the basis of principles of the law of contract, or tort, but the Court has to decide on the amount on the basis of all the circumstances of the case.[122]

IV- MILITARY COURTS

Article 156 of the Constitution provides that judicial power relating to military matters shall be exercised by military courts and disciplinary courts and that the establishment, jurisdiction and functions of such courts shall be regulated by law.

The relevant law is the Establishment and Judicial Procedure of the Security Forces Court and Security Forces Appeal Court Law, No.34/1983.[123]

The TRNC Security Forces Court is composed of a President and a Substitute designated by the Security Forces Command, who are officers in the Security Forces; and two civilian judges designated by the Supreme

Council of Judicature.[124] The duty of prosecution at the Military Court is carried out by two law officers designated by the Supreme Council of Law Officers. They are subject to the provisions of the laws relating to the Law Office (Attorney-General's Office) of the TRNC, and perform their duties on behalf of the Attorney-General.[125]

The Security Forces Court of Appeal is composed of a President and a Substitute designated by the Commander of the Security Forces, who are officers in the Security Forces; and two judges of the Supreme Court, designated by the Supreme Council of Judicature.[126] These judges perform their duties in accordance with the Courts of Justice Law, 1976.[127] The Security Forces Court of Appeal is the final Court of Appeal from decisions of the Military Court.

The Military Court has power to try offences in respect of members of the Security Forces, as provided in the Military Offences and Punishment Law.[128] The Military Court has also jurisdiction to try offences committed under other laws, provided that such jurisdiction is specifically given to the Court by law. Examples are, the Prohibited Military Areas Law,[129] Military Service Law,[130] Reserve Officers Law,[131] and the General Mobilisation Law.[132]

In view of the above, the Military Court has jurisdiction particularly to try offences committed at military areas; during military service; and in respect of military property.[133] Otherwise, the Military Court has no jurisdiction in respect of civilians. As regards crimes committed by civilians in conjunction with military personnel, the competent court is the court specified by law. Should the law so provide, such offenders may be tried separately, military personnel by the Military Court, and the others, by the competent civil court.[134]

V- LOWER COURTS

(i) Assizes

Under section 30 of the Courts of Justice Law of 1975[135] an Assize Court has been set up which holds sittings at the capitals of the districts of Lefkoşa, Gazi Magosa and Girne. The judges of the Assize Court are designated by the Supreme Court at the beginning of the judicial year. Each Assize Court sits three times a year. Offences punishable with imprisonment for more than five years are termed indictable offences and are tried by the Assize Court composed of three District Court judges. In cases where the offence carries the death sentence, the President of the District Court has to preside.

Assizes have unlimited jurisdiction in criminal matters and in addition to or in substitution for any punishment may adjudge any person convicted before it to pay compensation not exceeding 5,000,000,000.- Turkish Liras to any person injured by the offence.

Assize Courts have the duty to make such inquiry concerning all persons in custody within the district where the Assize Court is sitting to ensure that no person is detained except in accordance with law.

The jury system was never introduced in Cyprus, and this is easily understood from the social conditions of the island, i.e. smallness of the community and the fact that it is difficult to secure persons who are not somehow or other biased or connected with accused persons or with the victims.

(ii) District courts

District courts have been set up in Lefkoşa, Gazi Magosa and Girne, having jurisdiction in civil and criminal matters. The Lefkoşa District Court has sittings also in Güzelyurt and Lefke.

The amended section 17 of the Courts of Justice Law of 1976 provides that in all the District Courts there will be not more than 5 Presidents not more than 8 Senior Judges and not more than 16 judges.

The jurisdiction of a District Court in civil and criminal cases depends on its composition. In civil cases, a District Court composed of not less than two and not more than three judges has unlimited jurisdiction. A President or a Senior Judge sitting alone has jurisdiction to hear and determine an action in which the amount in dispute or the value of the subject matter does not exceed 5,000,000,000.- Turkish Liras. A District Judge sitting alone has power to hear and determine an action in which the amount in dispute does not exceed 2,000,000,000.- Turkish Liras. A President of a District Court or a District Judge sitting alone has jurisdiction to hear and determine any action for the recovery of possession of any immovable property, or any action founded on civil wrong committed in relation to immovable property, in which the title to such immovable property is not in dispute.

In criminal cases a member of a District Court sitting alone has jurisdiction to try summarily all offences punishable with imprisonment not exceeding five years, or a fine not exceeding 2,000,000,000.- Turkish Liras, or with both, and may, in addition to any such punishment, adjudge any persons convicted before him to pay compensation not exceeding 2,000,000,000.- Turkish Liras to any persons injured by his offence. However,

the President of a District Court or a District Judge has jurisdiction, with the consent of the Attorney-General, to try summarily any offence punishable with imprisonment for a term not exceeding ten years, or a fine not exceeding 5,000,000,000.- Turkish Liras, if satisfied that it is expedient so to do in all the circumstances of the case.

(iii) Family Courts

By virtue of the provisions of section 32 of the 1976 Courts of Justice Law, Family Courts have been set up, composed of a single judge (a President of a District Court or a District judge), to hear and determine actions and proceedings relating to personal status and religious matters. By virtue of section 33 of the Law, the Family Courts have also jurisdiction in respect of matrimonial matters of foreigners.[136]

Every Family Court has jurisdiction to hear and determine proceedings instituted by persons residing within the geographical area of its jurisdiction. Decisions of the Family Courts are subject to appeal to the Supreme Court, sitting as the Court of Cassation (Appeal).

Family Courts deal, *inter alia*, with applications for divorce and annulment of marriage, adoption and legitimation of children, and guardianship of infants.

(iv) Juvenile Courts

In virtue of the provisions of the Juvenile Offenders Law[137] the District court sits as a Juvenile Court to try young offenders. The aim is to protect the interests of young persons. Such hearings are held in camera.

VI- APPLICABLE LEGAL PROVISIONS

Transitional Article 1 of the 1975 Constitution of the TFSC declared that certain legislative provisions, as well as the provisions of the 1960 Constitution of Cyprus, would continue to be in force, so far as they were not inconsistent with or contrary to constitutional provisions. However, the TFSC Constitution was so comprehensive that it almost completely replaced that of 1960, with the exception of the international agreements which gave birth to the Republic of Cyprus in 1960.[138] Transitional Article 4 of the TRNC Constitution also provides that the provisions in force at the time of the coming into operation of the Constitution shall continue to be

in force so far as they are not inconsistent with the provisions of the Constitution.

The Courts of Justice Law[139] has provided that the following provisions shall apply:

1- The Constitution and laws made thereunder;
2- The laws saved under the above referred Transitional Article 4 of the Constitution;
3- The English Common Law and the doctrines of Equity in so far as they are not inconsistent with, or contrary to, the Constitution;
4- The laws and principles of *Vakıf*;[140]
5- The laws relating to Admiralty Jurisdiction that were in force on 21 December 1963.[141]

Even though a number of modern laws have been enacted to regulate the social, economic and commercial activities of the Turkish Cypriot people, the criminal law and procedure[142] date from the British colonial administration. So are the laws of tort[143] and contract[144]. These laws attempted to codify the English Common Law principles being applied at the time. In view of this, principles of the Common Law are relevant in interpreting the provisions of the Civil Wrongs Law, and the Contract Law, respectively.

The criminal law is based on the English accusatorial system. The prosecution has to prove every element of the crime of which the accused is charged. The Criminal Code provides that the provisions of the Code shall be interpreted in accordance with the principles of legal interpretation obtaining in England, and expressions used shall be presumed to have been used with the meaning attached to them in English criminal law.[145] Similarly, as regards matters of criminal procedure not provided for in the Criminal Procedure Law, the court has to apply the law and rules of practice relating to criminal procedure "for the time being in force in England"[146]. In this system the witnesses are examined, cross-examined and re-examined according to strict rules of evidence, while the judge remains rather passive.[147] The laws of evidence, however, which have been inherited from the British administration, need to be up-dated in view particularly of modern inventions, such as facsimile copies and electronic mail.

Another characteristic of the criminal law is that the judges have wide discretionary powers when passing sentence. The laws provide for the maximum sentence for a criminal offence; the judges have wide discretion to pass any sentence below the upper limit, after taking into consideration the mitigating circumstances. Moreover, since the coming into effect of the

provisions of Article 12 the 1960 Constitution, which provides that "no law shall provide for a punishment which is disproportionate to the gravity of the offence",[148] the judges have been in a position to decide what punishment is proportionate to the gravity of the offence. In virtue of such provisions the judges have felt free to declare unconstitutional certain mandatory provisions of the laws relating to punishment in criminal cases. For instance, legal provisions providing for mandatory disqualification from driving a motor vehicle, upon repeated conviction for driving under the influence of drink; and mandatory provisions for demolition of a building constructed without a building permit, have been found to be unconstitutional.[149] Such mandatory provisions, provided they are in the nature of "punishment"[150] within the aforesaid constitutional provisions, are now to be regarded as discretionary.

It is not only the Common Law that has been incorporated into Cyprus law. The Companies Law[151] and the laws relating to sale of goods[152] and bills of exchange[153] are examples of English statute laws that have been incorporated into Cyprus legislation, with some modifications to suit local conditions. However, new laws have been enacted by the Legislative Assembly of the TFSC and the TRNC to regulate matters, such as, exchange transactions[154] and external trade[155]. A Central Bank has also been set up to regulate the monetary and banking policies of the State.[156]

On the other hand, modern laws have been enacted to improve the standard of living of the people. We have in mind here, laws relating to social insurance, pensions, and working conditions.

NOTES AND REFERENCES

1. Section 50 of the Courts of Justice Law (Law No. 9/1976) and rules of court provide for enforcing obedience to court orders by imposing fines, imprisonment or sequestration of goods. Section 52 of the Law specifies acts that constitute contempt of court, punishable with imprisonment not exceeding 3 years, or a fine not exceeding C. 500. If the contempt is committed during court proceedings it is usual first to warn the person concerned and only then to proceed to commit such person for contempt if his conduct continues.

   Even though the decision of the High Administrative Court in administrative cases is in the form of a declaration and not an order of the Court, paragraph (5) of Article 152 of the Constitution provides that decisions of the Court shall be binding on all courts and authorities of the State and shall be given effect to by those authorities. Such constitutional provisions have been interpreted by the Court as empowering it to punish non-complying administrative authority

for contempt of court (Decision of the Court in YİM 270/80, dated 28 May 1980). However, the legal situation as regards contempt of court - a principle developed by the English common law - in administrative law cases that are being decided on the basis of a system drawn from the French *droit administratif,* is far from being clear. Nevertheless, apart from one or two cases, problems regarding non-compliance with court decisions have never been in issue in this country.

The only lawful interference with a court decision seems to be when an amnesty law is passed, in virtue of the power given to the Legislative Assembly under Article 78 of the Constitution, which has the effect of annulling convictions in criminal cases.

2. Article 141(6) of the Constitution provides that such appointments "shall be approved by the President of the Republic". Even though in practice this provision has been looked upon as a formality, serious problems would arise if the President would refuse to approve any such appointment.
3. Under the Turkish Federated State Constitution there was no provision for a representative of either of the President, or a representative of the Republican Assembly to sit and vote in the Supreme Council of Judicature. The drafters of the TRNC Constitution thought that it would be useful to enlarge the composition of the Council. However, there are objections to such representation from certain judicial and legal circles, on grounds of principle, and appearance. It is particularly intimated that, it would be better if the President should prefer to nominate non-practising persons rather than practising advocates. The same objections are being made as to the representative of the Legislative Assembly.
4. Article 137.
5. It is not possible to review the decisions of the Supreme Council of Judicature by the orders of *prohibition* or *certiorari: Yargıtay Asli Yetki* 1/1982, decision dated 15 June 1982.
6. Article 138 (2).
7. Article 137 (3).
8. Article 154.
9. Article 138.
10. This was in relation to enactment of the High Administrative Court (Competence) Law (Law No. 60 of 1990), which had the objective of specifying those cases where three judges of the Court would sit and determine finally administrative cases - instead of a single judge, from whose decision there is a right of appeal to the Court composed of three judges.
11. Article 143.
12. Article 143 (4), and Law No. 60 of 1990.
13. Article 143(2). However, Article 144 entrusts this duty on the Supreme Constitutional Court.
14. Article 69.

15. In Article 144 "*Yüce Divan*" has been translated in the English version of the Constitution as the "Council of State". The correct translation should have been the "Supreme Council". It must not be confused with the *"Conseil d'Etat"* in France, or the *"Consiglio di Stato"* in Italy, which have jurisdiction in administrative law matters.
16. The Constitutional Court Rules of 1997, prepared by the Supreme Court provide that the institution of proceedings under Article 145 shall be by way of writ of summons (action) as prescribed by the Rules (s.3).
17. See e.g. *The Turkish Communal Chamber v. The Council of Ministers,* 5 R.S.C.C. 59, and *Celaleddin and others v. The Council of Ministers,* 5 R.S.C.C. 102.
18. *A. Mahk.* 10/87, decision dated 8 February 1998, published in the Official Gazette, 1988, Sup. I, Part 2, pp.1-10).
19. *Anayasa Mahk.* 2/80, opinion dated 26 March 1980.
20. *Anayasa Mahk.* 12/83, opinion dated 16 September 1983.
21. *Anayasa Mahk.* 36/84, opinion dated 22 February 1985.
22. *Anayasa Mahk./Görüş İstemi* 2/97, opinion dated 5 June 1997.
23. The Supreme Constitutional Court Rules of 1997 provide that such proceedings shall be by way of writ of summons (action), as prescribed by the Rules.
24. The Court has held that a political party which was represented in the Assembly when proceedings had been instituted, but later joined another party and merged into a new party, could continue the proceedings under the same title: *Anayasa Mahk.* 12/85, decision dated 12 November 1986.
25. A political party having at least five members in the Assembly, can form a group.
26. E.g. the Association of Aggrieved Refugees from the South (*Zarar Görmüº Güneyliler Cemiyeti*): *Anayasa Mahk.* 14/85, decision dated 23 May 1986. In order to be able to institute such proceedings, however, the rules of the association concerned should provide, as its main objective, for the protection of the rights and interests in respect of which proceedings have been instituted: *Anayasa Mahk.* 12/95, decision dated 27 June 1996.
27. The Budget Law, relating to the allocation of funds, cannot be made subject to an action for annulment. However, if there is any provision in the Budget Law that is not concerned with the budget at all, such as a provision relating to the public service, or to the public servants, such provision can be annulled because it should never have been included in the Budget Law: *Anayasa Mahk.* 6/77, decision dated 9 August 1977, Official Gazette, 26 December 1977, No. 88, Sup. II, Part. I.
28. Article 112 of the Constitution provides for the issue of decrees having the force of law. Such decrees can be issued in case of urgency on economic matters and have to be submitted to the Assembly, which has to take a decision on the matter within ninety days. Decrees cannot bring new economic burdens, or restrict political rights and liberties. Decrees having the force of law can also be issued under Article 128 during a state of emergency or martial law.

Generally speaking, however, decisions of the Council of Ministers cannot be made subject to action for annulment: *Anayasa Mahk.* 23/85, decision dated 4 June 1987.

29. Rules can only be issued under the authority given by a law: Article 122. The Constitution provides that certain matters must be regulated by law. For instance, all kinds of tax, duties and charges can only be imposed by law: Article 75 (2). However, even in that situation, certain matters can be regulated by rules provided that the law draws clearly the framework of authority for the making of rules, and sets the rates or limits within which such taxes, rates and charges may be regulated: *Anayasa Mahk.* 7/79, decision dated 20 May 1980.
30. Article 81(4) provides that the Assembly shall carry out its functions in accordance with the rules made by it.
31. However, this must be read subject to Article 95 of the Constitution. In view of its provisions, only decisions of the Assembly relating to (a) termination of office of a deputy; (b) removal of immunity, from prosecution, of a deputy; and (c) state of emergency and martial law, can be made subject to annulment actions.
32. Regulations can only be issued under the authority of rules: Article 122.
33. Para. 2 of Article 147.
34. *Anayasa Mahk.* 17/87, decision dated on 9 October 1987.
35. E.g. YİM 2/1982, decision dated 24 November 1982; YİM 27/85, decision dated 25 May 1987; YİM 67/1986, decision dated 23 November 1987; and *Anayasa Mahk.* 13/86, decision dated 22 December 1987.
36. Para. 1 of Article 148. The object is to prevent repetitive references to the Constitutional Court. However, the Court which is asked to make the reference can do so, if it considers that in view of changing circumstances and evolving legal thoughts and philosophies, it would be worth to have the matter considered once more by the Court.
37. Article 148.
38. The Constitutional Court has not used such exceptional powers under Article 148 and the issue is therefore subject to debate.
39. *Anayasa Mahk.* 18/80, decision dated 14 January 1981. The judges of the Constitutional Court were divided on the matter. The correct view seems to be, however, that judicial decisions cannot be made subject to a reference under Article 148, as such decisions can properly be reviewed by a system of appeals. This view has been confirmed by the Constitutional Court in *Anayasa Mahk.* 4/94, decision dated 9 June 1994.
40. *The Republic v. Loftis*, 1 R.S.C.C. 30; *The Republic v. Zacharia*, 2 R.S.C.C. 1; *Pelides v. The Republic*, 3 R.S.C.C. 13; and YİM 41/76, decision dated 30 June 1977.
41. Rule 15(2)(b).
42. In South Cyprus where the Supreme Constitutional Court does not exist since

1964 as a separate court, questions of constitutionality and interpretation can be decided upon by any court, subject to appeal to the Supreme Court.

43. In the past questions of interpretation of constitutional provisions used to be initiated upon application of the party concerned: *Anayasa Mahk.* 1/72, decided on 21 April 1972; and *Anayasa Mahk.* 4/77, decided on 27 January 1978. In the former case the Court interpreted the words "just and equitable compensation" in Article 118(6) of the TFSC Constitution; and in the latter, words relating to the salary of the Attorney-General, in Article 124(2) of the same Constitution.
44. There have been some difficulties with regard to the formation of *Bizim Parti*, rules of which initially contained provisions discriminating between males and females as regards some aspects of life, and contained some elements contrary to fundamental rights and liberties of the individual. These rules were subsequently amended to comply with the Constitution.
45. Section 25 of the Courts of Justice Law 1960 and section 27 of the Courts of Justice Law 1976 (No.9 of 1976).
46. Criminal Procedure Law, Cap.155, section 132 and 133.
47. Law No.33/1982.
48. Courts of Justice Law, section 37(1).
49. Criminal Procedure (Amendment) Law, No.33/1982.
50. Criminal Procedure Law, Cap.155, section 145.
51. *Ibid.*
52. *Ibid*, section 146(b). This can be done in rather exceptional circumstances when such evidence could not have been produced, with reasonable diligence, before the lower court.
53. *Ibid*, sections 148 and 149.
54. Subsidiary Legislation 1954.
55. Order 35, rule 3.
56. As for the principles on this matter, see *Adem v. Mevlid*, 1963 C.L.R. 3.
57. Order 35, rule 9.
58. Civil Procedure (Amendment) Rules, 1996; and Criminal Procedure (Amendment) Rules 1996, published in the Official Gazette No.16, 1 February 1996, Part III.
59. *Yargıtay/Asli Yetki* 11/78, decided on 8 November 1979. In this case application was made for the issue of an order of *certiorari* to quash the decision of the Registrar of Cooperative Societies. However, the applicant failed to file with the Court a copy of the decision sought to be quashed, as well as, the "statement" required by Order 59, rule 3 of the English Rules of Procedure. The Court held that the English Rules, as well as, principles of the common law and equity are applicable in Cyprus and that the application should be rejected as the applicant had failed to comply with the requirement of the English Rules of Procedure.

In another case (*Yargıtay/Asli Yetki* No.5/91, decision dated 6 November 1991) the Court interpreted the relevant provisions of the Criminal Code in the light of the principles of the common law and quashed the decision of the lower court by *certiorari* as the conduct of the applicant could not constitute the offence of "public nuisance" for which a conviction had been entered by the lower court.

60. *Yargıtay/Asli Yetki* 1/82, decision dated 15 June 1982,
61. *Yargıtay/Asli Yetki* 1/79, decision dated 20 June 1979; and *Yargıtay/Asli Yetki* 1/85, decision dated 17 May 1985. In the latter case the Court said that if the decision sought to be quashed is within the realm of private law *certiorari* would be the proper remedy, but if such decision is in the realm of public law, the action for annulment under Article 152 of the Constitution would be the proper remedy.
62. *Schmuel v. The Officer in Command, Illegal Jewish Immigrants' Camp, Karaolos,* XVIII C.L.R. 158. In this case the applicant, who was being kept with others in a camp in Famagusta before the proclamation of the State of Israel, was successful in obtaining an order of *habeas corpus.* The Court held that *habeas corpus* could be granted by the Supreme Court in Nicosia, just as it could be issued by the High Court in London.
63. Principles of interpretation relating to Article 11 of the 1960 Cyprus Constitution, as laid down in *Phedias Kyriakides v. The Republic* (1 R.S.C.C. 66, at p.74), apply also in respect to Article 16 of the TRNC Constitution.
64. However, in an English case *{Padfield v. Minister of Agriculture Fisheries and Food* (1968) 1 All E.R. 694}, *mandamus* was issued to compel a Minister to exercise a discretion which it wrongfully refused to exercise.
65. *Yargıtay/Asli Yetki* 13/82, decision dated 30 January 1984.
66. *Yargıtay/Asli Yetki* 1/79, decision dated 20 June 1979.
67. *R.v. Electricity Commissioners* (1924) 1 K.B. 171; *R.v. Manchester Legal Aid Committee* (1952) 1 All E.R. 480; *Ridge v. Baldwin* (1963) 2 All E.R. 66; *R.v. Criminal Injuries Compensation Board, ex parte Lain* (1967) 2 All E.R. 770.
68. S.I. 1977, No. 1955; S.I. 1980, No.2000, Supreme Court Act 1981, s. 31.
69. *Council for Civil Service Unions v. Minister for the Civil Service* (1984) 3 All E.R. 935.
70. *Ashbridge Investments Ltd. v. Minister of Housing and Local Government* (1965) 3 All E.R. 371; *Chertsey U.D.C. v. Mixnam's Properties Ltd.* (1964) 2 All E.R. 627; and *Congreve v. Home Office* (1976) Q.B.629.
71. *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (1947) 1 K.B. 223; and *Bromley L.B.C. v. Greater London Council* (1982) 1 All E.R. 129.
72. *Stoke-on-Trent Council v. B.&.O (Retail) Ltd.* (1984) 2 All E.R. 332, p.336. See also *Hall & Co. Ltd. v. Shoreham-By-Sea U.D.C.* (1964) 1 All E.R.1 (unreasonable conditions in a planning permission).

73. *Ridge v. Baldwin* (1963) 2 All E.R.66.

In Cyprus the rules of natural justice are applicable in disciplinary proceedings against police officers and public servants: *Marcoullides v.The Republic* 3 R.S.C.C. 30; and *Haros v. The Republic* 4.R.S.C.C. 39. Our High Court has also decided that the rules of natural justice require that the person concerned has the right to legal representation in such proceedings: *Yüksek Mahk.* 24/71, decision dated 15 January 1972. Now these matters are regulated by legal provisions.

74. No. 9/1976.

75. The High Administrative Court (Competence) Law, (Law No. 60/1990) has provided that decisions of (a) Ministers; (b) local government organs; (c) authorities and bodies set up under the Housing, Allocation of Land and Property of Equal Value Law (Law No. 41/1977, as amended); (d) Public Service Commission; and (e) Public Vehicles Licensing Authority, shall be heard by three judges of the High Administrative Court.

76. *Mikrommatis v. The Republic,* 2 R.S.C.C. 125, p. 128.

77. *Pelides v. The Republic,* 3 R.S.C.C. 13, p.17.

78. YİM 22/84 and 25/84 (joined), decision dated 9 July 1984.

79. *Öztürk v. The Republic,* 2 R.S.C.C. 35.

80. *Celaleddin v. The Council of Ministers,* 5 R.S.C.C. 102.

81. These include the Council of Ministers; the District Administration; local government authorities, such as municipalities; the Public Service Commission; professional bodies, such as the Medical Association and the Bar Council; Public Transport Licensing Authority; and the High Council for the Media.

82. *Papaphilippou v. The Republic*, 1.R.S.C.C. 62; *Stamatiou v. The Electricity Authority,* 3.R.S.C.C. 44; *Demetriou v. The Republic,* 3.R.S.C.C. 121; and *Eraclidou v. The Hellenic Mining Co.,* 3 R.S.C.C. 34.

83. *Yüksek Mahk.* 2/1972, decision dated 9 August 1972.

84. *Papaphilippou v. The Republic* 1 R.S.C.C. 62

85. *Kyriakides v. The Republic* 1 R.S.C.C. 66

86. *Anayasa Mahk.* 26/80, decision dated 21 August 1981; and *Yargıtay/Asli Yetki* 3/82, decision dated 5 April 1985.

87. *Vrahimi v. The Republic* 4 R.S.C.C. 121. Contrast, *Anastassiadou v. The Municipal Corporation of Nicosia* 3 R.S.C.C. 111 (road widening project).

88. *Yüksek Mahk.* 4/1972, decision dated 18 March 1972.

89. *Laudhia v. The Republic,* 2 R.S.C.C. 119, *Valana v. The Republic,* 3 R.S.C.C. 91; and *Charalambides v. The Republic,* 4 R.S.C.C. 24

90. *Yargıtay / Asli Yetki* 1/85, decision dated 17 May 1985; and YİM 73/85 and 95/85 (joined), decision dated 23 June 1987.

91. *Yargıtay/Hukuk* 12/85, decision dated 10 July 1985.

92. *Uludağ v. The Republic,* 3 R.S.C.C. 131.

93. *Öztürk v. The Republic*, 2 R.S.C.C.35.

94. YİM 4/86, decision dated 26 January 1987.
95. *Uludağ v. The Republic,* 3 R.S.C.C. 131; and *Philippou v. The Republic,* 4 R.S.C.C. 140.
96. YİM 49/77, decision dated 2 June 1978. The Court has, however, adopted a different view with regard to yearly renewable licences: YİM 149/81, decision dated 2 August 1982; and YİM 146/86, decision dated 29 September 1987.
97. Formerly there was no provision in the rules regarding the "interested party", but it had become a matter of practice for the Court to allow the interested party to intervene. This practice has now been incorporated in section 8 of the High Administrative Court Rules of 1997, Official Gazette No. 147, of 25 December 1996, Sup. III.
98. These matters are now regulated by the 1997 Rules (see note 97, above).
99İ. The applicant has to show that there is a likelihood that he will succeed in the proceedings and that if the interim order is not granted he will suffer irreparable damage. As for the principles applicable, see *Yüksek Mahk.* 29/76, decision dated 8 October 1976; YİM 49/84, decision dated 19 July 1984; and *Yargıtay/Hukuk* 21/85, decision dated 16 September 1985. The principles applicable are very similar to those in the case of interlocutory injunctions.
100. YİM 27/76, decision dated 9 March 1977.
101. Article 122. Article 161 requires that all these instruments must be published in the Official Gazette.
102. YİM 3/86, decision dated 23 December 1986; and YİM 187/86, decision dated 25 September 1987.
103. YİM 18/77, decision dated 22 February 1978.
104. *Yüksek Mahk.* 2/74, decision dated 31 March 1975; YİM 74/78 and 75/78, decision dated 29 March 1979.
105. *Kyriakides v. The Republic* 1 R.S.C.C. 66, at p. 69; and *Demetriou v. The Republic*, 3 R.S.C.C.121, at p. 128. See also Zaim M. Nedjati, *Administrative Law* (1974) particularly pp, 218-273. As the text of Article 152 of the Constitution is substantially the same as that or Article 146 of the 1960 Cyprus Constitution, the case-law which evolved before the intercommunal troubles of December 1963 regarding judicial review of administrative action in Cyprus, continues to apply in the TRNC today. According to the case law, even though the wording of Article 146 of the 1960 Constitution is somewhat different from the provisions defining the jurisdiction of administrative courts in other countries, general principles of administrative law that have evolved in similar jurisdictions, have to be taken, as far as possible, into account in defining the extent of the jurisdiction under the said Article. In laying down this principle the Cyprus courts were making a piece of judicial legislation.
106. *Yüksek Mahk.* 2/74, decision dated 16 July 1975. See also YİM 36/76, decision dated 29 November 1977.
107. *Papapetrou v. The Republic,* 2 R.S.C.C. 61 (a decision of the Supreme Constitutional Court delivered in 1961).

108. See note 105, above. In *Marcoullides v. The Republic,* 3 R.S.C.C. 30, at p. 35, it was held, for instance, that disregard of the principles of natural justice amounted to abuse of power.
109. *Theodossiou v. The Republic,* 2 R.S.C.C. 44, at p. 48.
110. In France the period of limitation is two months; in Turkey ninety days (section 67 of Law No. 521 of 1964); and in Greece sixty days (section 49 of Law No. 3713 of 1928). The drafters of the 1960 Constitution preferred a period of limitation in between the Greek and Turkish time limits.
111. *The Holy See of Kitium v. The Municipal Council of Limassol,* 1 R.S.C.C. 15; and *Anayasa Mahk.* 13/77, decision dated 23 May 1978.
112. *Moran v. The Republic,* 1 R.S.C.C. 10; *Marcoullides v. The Greek Communal Chamber,* 4 R.S.C.C. 7; and YİM 20/78, decision dated 23 March 1978.
113. YİM 20/78, decision dated 23 March 1978.
114. *Uludağ v. The Republic,* 3 R.S.C.C. 131, at p. 134.
115. A mere repetition of the earlier decision is not itself a new "executory" decision: YİM 68/78, decision dated 9 February 1979.
116. YİM 5/76, decision dated 18 March 1977; YİM 201/80, decision dated 10 June 1980; and YİM 168/81, decision dated 19 July 1982.
117. See e.g., YİM 32/89, decision dated 9 August 1990.
118. *Saruhan v. The Republic,* 2 R.S.C.C. 133, at 136; and *Christou v. The Republic,* 4 R.S.C.C. 1, at p.6.
119. E.g. YİM 255/83, decision dated 16 May 1985; and YİM 100/85, decision dated 13 February 1987.
120. YİM 270/80, decision dated 3 June 1980.
121. *Gavris v. The Republic,* 1 R.S.C.C. 88, at p. 94; *The Holy See of Kitium v. The Municipal Council of Limassol,* 1 R.S.C.C. 15, at p.26; and *Ramadan v. The Electricity Authority of Cyprus,* 1 R.S.C.C. 49, at pp. 56-58.
122. *Yüksek Mahk.* 1/72, decision dated 21 April 1972.
123. As amended by Law Nos. 21/1984, 27/1984, 61/1987, 24/1990, and 9/1991. These laws regulate military matters relating to the Security Forces of the TRNC.
124. *Ibid,* section 3.
125. Section 8.
126. Section 42.
127. Law No. 9/1976.
128. Law No. 29/1983, as amended by Law No. 34/1983.
129. Law No. 5/1979, and decrees issued thereunder. See also Prohibited Military Areas Decree of 1979, published in the Official Gazette, dated 5 October 1979, Supplement III, Not. No.176/79; as amended by Decree of 1981, published in the Official Gazette of 31 March 1981, Supplement III, Not. No. 114/81. A Decree of 1987 (Official Gazette of 17 September 1987, Supplement III, Not. No. 534/87) reduced considerably the size of the military areas.

130. Law No. 14/1980, as amended by Law No. 33/1986, and 54/1994.
131. Law No. 14/1978; as amended by Law No. 35/1981 and 11/1989.
132. Law No. 17/1980, as amended by Law No. 8/1983.
133. Section 20 of the Establishment and Judicial Procedure of the Security Forces Court and Security Forces Appeal Court Law, No. 34/1983.
134. *Ibid*, section 21.
135. Law No. 9/1976, as amended by various amendment laws, the most recent of which is Law No. 6/1997.
136. Under the 1960 Constitution the jurisdiction of the Turkish Family Court was confined to matrimonial matters of the members of the Turkish Cypriot community. The competent courts in respect of matrimonial matters of members of the Greek Cypriot community were the Ecclesiastical Courts.
137. Cap.157.
138. In one instance the Supreme Court, sitting as the Constitutional Court, ruled that Article 57(4) of the 1960 Constitution relating to the publication of decisions of the Council of Ministers was still in force in view of the provisions of Transitional Article 1 of the TFSC Constitution: Decision of the Court of 20 June 1977 in Case No. 186/75.
139. Law No. 9/1976, as amended. There used to be similar provisions in the Courts of Justice Law, 1960.
140. That is, the laws and principles relating to Moslem religious trust properties and their administration (*Ahkamul Evkaf*).
141. On 21 December 1963 when the intercommunal hostilities started and the 1960 Constitution broke down, the High Court, in the exercise of its admiralty jurisdiction, applied the English Admiralty laws in force on the day preceding Independence Day, that is, 16 August 1960.
142. Caps. 154 and 155, respectively.
143. Civil Wrongs Law, Cap. 148
144. Contract Law, Cap. 149.
145. Cap. 154, Section 3.
146. Cap. 155, section 3. The "Judges Rules" obtaining in England in 1964, relating to the taking of statements and confessions during investigation of crimes, also apply in the TRNC: See e.g. *Ceza İstinaf* (Criminal Appeal) No. 9/72 (action No. 948/71), decided on 7 June 1972).
147. This is also true with civil cases. In Continental systems of law, on the other hand, the judge plays a more active role and directs the conduct of proceedings and the taking of evidence, in view of the "inquisitorial" nature of his functions. There may be advantages and disadvantages of either system of law. Whereas the "cross-examination" procedure may be viewed as a means of protecting the accused from potential false witnesses, if allowed to be done over zealously, it may lead to intimidation of witnesses, by attacks on their character and credibility. It would be the duty of the judge to

intervene when such circumstances occur.

148. There are similar provisions in Article 28(3) of the TFSC Constitution, and Article 18(3) of the TRNC Constitution.
149. See Zaim M. Nedjati, *Human Rights and Fundamental Freedoms*, Nicosia, 1972, p. 62.
150. Return of exhibits should not be treated as "punishment" in the above sense: *Gendarmerie v. Zavos*, 4 R.S.C.C. 63 (restoration of antiquities to the State).
151. Cap. 113.
152. Cap. 267.
153. Cap. 262.
154. Law No.38 of 1982.
155. Law No.12 of 1983.
156. See the Central Bank Law, No.31 of 1983. The TRNC has not issued its own currency. Turkish currency is being used as legal tender in the TRNC, instead of the Cyprus pound.

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