

Revealing the Best Applicable and Acceptible Way of Opening of Closed Off Varosha Area under TRNC Administration

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Abstract: *The region named “closed off Varosha”, where was the main tourism centers of the Mediterreanean region in early 1970’s has been kept closed since 1974. Turkish Cypriot government has planned to open this closed area and revitalize this area for tourism development. However “immovable property ownership” and “administration of the area” have been two disputed matters that pose an obstacle in opening of this region. In this research, problems associated with opening of this area that is fenced for 46 years were dealt individually and related, acceptable and fair solutions were proposed. In this study, the most effective and applicable solutions were developed by taking human rights and international rules of law into consideration.*

Keywords: *Closed off Varosha, tourism, property ownership, EU.*

1. INTRODUCTION

Situated at the Eastern Mediterranean, Cyprus is the third largest island in the region after Sicily and Sardinia. The island of Cyprus has an area of 9,251 m² and has a length of 224 km in the east-west direction and a width of 100 km in the north-south direction (Gürgen, 2017, p.1).

In 1960, the Republic of Cyprus was established as a common state of Turkish Cypriot and Greek Cypriot communities. However this did not last long due to conflicts arose between two communities. In 1974, the island of Cyprus was splitted and Turkish Republic of North Cyprus is established in 1983 in northern part of Cyprus.

However, on 11 May 1984, the United Nations (UN) issued resolution numbered 550 (1984) and declared the TRNC as “legally invalid” and as “the occupied part of Cyprus”. In the same resolution, it was also stated that settling into any part of Varosha, where used to be one of the main tourism centers of the Cyprus island, by people other than its inhabitants would be inadmissible. In the said resolution, there was also a call made for transferring of that area to the administration of UN.

Turkish Republic of North Cyprus covers approximately 3,242 sq km of the island. The territory of the TRNC includes 55% of the coastline of the Cyprus island (Warner, 1999). Turkish Republic of North Cyprus climate is typical Mediterranean climate with hot and dry summers from mid May to mid October and mild and short rainy winters from December to February.

The average annual temperature in Turkish Republic of North Cyprus is 19°C. According to the macro climate classification, Turkish Republic of North Cyprus falls into semi arid climate zone. In Turkish Republic of North Cyprus, it is estimated that the hottest month is July and the coldest month is January. The weather temperature is calculated as 37°C – 40°C in day time during the summer and 09°C – 12°C in day time during the winter.

The capital of the Turkish Republic of North Cyprus is Lefkoşa. According to the data received from State Planning Organization, the population of Lefkoşa was 94,824 (2011). The population of North Cyprus is explained to be 374,299 in 2018.

Turkish Republic of North Cyprus is divided into six districts namely Lefkoşa, Gazimağusa, Girne, İskele, Güzelyurt and Lefka. Turkish Republic of North Cyprus where operates under a parliamentary democracy, is peaceful country.

The rate of violent crime is low compare to other developing countries. Therefore, TRNC is one of the safest touristic destinations not only in the Mediterranean but also in the world. (Abiç, 2016).

According to the study conducted by State Planning Organization (2017) in TRNC; there are a total of 336 tourism industry related premises where a total of 16,999 people worked for. Apart from that, total hospitality premises are 138 with a bed capacity of 21,845. Total personnel working for these premises are calculated as 9,280. It is also estimated that the number of other hospitality premises are 11 with a bed capacity of 413. It is calculated that there are 62 personnel working for these premises. The number of the tourism and travel agencies are estimated as 157 with total of 460 personnel. In the study of SPO's, it is stated that there are 30 gambling centers with 6,897 personnel (SPO, 2017). According to 2017 data, 98.14% of the 22,258 existing bed places in the northern part of the island are accommodation establishments excluding Other Accommodation Establishments. The ratio of the bed capacity of the Other Accommodation Establishments in relation to the bed capacity of the all the accommodation establishments in total is determined to be 1.86%. A review was conducted based on the number of accommodation establishments; the ratio of 5-Star Hotels to the accommodations except Other Accommodation Establishments in 2017 was found to be 13.77%, 3.62% of the 4-Star Hotels, 10.87% of the 3-Star Hotels, 12.32% of 2-Star Hotels, 10.14% of 1-Star Hotels, 18.12% of touristic bungalows and 15.22% of touristic pensions respectively.

Looking at the distribution of the bed capacity by region; percentages has been identified as 70.2% in Kyrenia, 17.6% in Iskele, 7.8% in Famagusta, 3.8%, in Nicosia, 0.2% in Morphou, and 0.4% in Lefke, respectively. When it comes to the distribution of accommodation establishments, Kyrenia is the leading district with a proportion of 62.3%, followed by Iskele with 20.3%, Famagusta with 8.7%, Nicosia with 5.1%, Morphou with 0.7% and Lefke with 2.9% respectively. In terms of tourism returns, total foreign exchange revenue from the tourism sector was \$ 2,072.8 million in 2017, while export revenues were \$ 105.6 million and net tourism revenues were \$ 864.9 million. The share of net tourism revenues in total foreign exchange revenues was 41.7%, while the ratio to the export revenues was 819.0%. The tourism sector is one of the main sources of income in Famagusta where alternative models of tourist trade co-exist with the conventional sun-sea-sand tourism. The foremost among them is the cultural heritage tourism. In fact, looking at the distribution of a total of 54 museum and archaeological sites in North Cyprus (34 museums, 2 inns, 5 castles, 1 tower, 11 ruins-archaeological site, 1 culture and art centre under the protection and maintenance of the Department of Antiquities and Museums) it can be observed that 16 of them are located in Famagusta. (11 of them are in Nicosia, 21 in Kyrenia and 6 in Morphou) (Masterplan)

Although the service sector plays a sizeable role in the economic structure, another essential source of income in the Famagusta district is the education sector. (Masterplan) Eastern Mediterranean University and Ada Kent University, both located in Famagusta, have a major role in the education sector in Famagusta, as approximately 20 thousand students from 106 different countries are currently enrolled.

Tourism has been one of the major sources of income of Turkish Republic of North Cyprus. Revenue of Turkish Republic of North Cyprus from the tourism industry almost reached to \$960 million in 2018 (SPO, 2017).

Turkish Republic of North Cyprus achieved 22.4% growth in the tourism industry and revenue earned from the tourism industry reached to 20.1% of total GDP. Tourism industry has been the leading sector of the country which contributed to the GDP most. A total of 258,202,703.9 Turkish Lira investment which represents 13.6% of total investments made under the tourism industry. In 2017, total foreign exchange generated from the tourism industry represented 2,072.8 million USD while net income reached to 864.9 million USD. Net tourism revenue was accounted for about 41.7% of total foreign exchange earnings (SPO, 2017).

Varosha is located at the Famagusta province. It extends over 6.5 km along the eastern coastline. Coastline of Varosha extends between 33°57'33" East - 35°07'12" North and 33°59'56" East - 35°04'12" North. Varosha region became one of the most popular tourism destinations of not only the Cyprus island, but also the entire Mediterranean region in late 1960's. Such that, population of Varosha was estimated approximately 39,000 before its' closure in 1974. Prior to 1974, Varosha region used to provide 53.7% of the tourism sector of the island. The tourism paradise of the Cyprus Island, contained 45 hotels with 10,000 bed capacity, 60 apart hotels, 3000 commercial units, 99 entertainment centres, 143 public departments, 4649 private houses, 25 museums, 21 banks, 24 theatres and cinemas, 2 sports facilities, 380 unfinished constructions, a library with 8 thousand 500

English, Greek and Turkish books, 9 churches, tombs and cemeteries and 8 schools (elifmohulabic.com).

After conquest of the Cyprus island by the Ottoman Empire in 1571, different foundations were established in the Cyprus island. Varosha was one of the regions in the island where was mainly a settlement made up of pious foundation lands (vakhf lands). The majority of those lands in Varosha region used to be lands of Lala Mustafa Pasha, Abdullah Pasha and Hacı Bilal Aga foundations (evkaf.org).

The primary objective of this study is to conclude reasonable, applicable and viable solutions in order to contribute to the efforts of authorities for opening of closed off Varosha under Turkish administration. However, matters directly effecting opening of closed of Varosha are not studied. In this study, immovable property dispute and pertinent UN resolutions are reviewed and clarified.

The objective of this study is to contribute to ongoing studies of Turkish government authorities of the TRNC in determining the best appropriate, applicable and acceptable approach of opening of the closed off Varosha region under Turkish Cypriot Administration. Although opening of the closed off Varosha under Turkish Cypriot Administration has been decided by the TRNC government, the Council of Ministers' related decision has not yet been produced because of two facts namely, ongoing property ownership dispute between users of the immovable properties in 1974 and the Turkish Pious (Vakhf) Foundation and of pertinent UN resolutions namely 550 and 789. Therefore, in this study, it is aimed at providing acceptable and applicable remedies to above mentioned problems on national and international law grounds for contributing to achievement of goal of the TRNC government. It is believed that, opening of closed off Varosha region will boost tourism income in the TRNC.

2. METHODOLOGY

Closed off Varosha region is a fenced area and is designated as a second degree military zone. Responsibility of control of this fenced area has been assumed by the TRNC Security Forces Command since 1981. Therefore collecting documents and other related datas about the said region was not succeeded at desired level. However, every available document with regard to the closed off Varosha area is reviewed and content analysis is made to conclude necessary results.

2.1. Limitation of Methodology

The data with regard to the closed off Varosha issue was limited. Closed off Varosha area is a fenced area, where is controlled by the TRNC Security Forces Command. Therefore, only secondary data collection method was adopted. Information results obtained from the study indicates that there are still limitations and shortcomings in data collecting process. This study should be expanded in case all related organizations decide to share information.

2.2. Data Collection

In this study secondary data collection method was adopted. In this scope, information on this matter were gathered from books, political statements, articles on newspapers, documents of Turkish Evkaf Administration, and from court decisions. After carefully reviewing of collected datas, content analysis is conducted. In this study, all problematic facts that constitute problem for opening of closed off Varosha were all analysed in detail and a road map was drawn in order to open the area and revitalize the region for tourism development of the TRNC.

3. VALIDITY AND RELIABILITY OF THE STUDY

The information collected from the secondary resources is studied on national and international law grounds. Therefore results of this study are found to be highly reliable, and useful. Final results of this study are believed to be highly important for facilitating studies and efforts of authorities.

4. RESULTS AND DISCUSSION

After carefully reviewing of all gathered information, it is found that it is legally possible to open closed off Varosha region under Turkish Cypriot administration namely TRNC and is possible to produce related Council of Ministers' decision. To achieve that, it is important to conclude immovable property ownership problem between immovable property users of 1974 and the Turkish

Evkaf Administration. Because of the fact that immovable property users of 1974 in closed off Varosha region are mainly Greek Cypriots, it is important to persuade Greek Cypriots to engage in communication with Turkish Cypriot authorities. However, Greek Cypriot community refuses to recognize Turkish Cypriot authorities, since they describe the northern part of Cyprus as the “occupied part of Cyprus” and declares the TRNC as “legally invalid” and the “subordination of Republic of Turkey”. Apart from that Greek Cypriot community who live in south part of Cyprus, indicates UN resolutions 550 and 789 and argues that in case of opening of closed off Varosha, responsibility of control and administration of the Varosha region should be transferred to UN authorities. In addition to that, Greek Cypriots, who claim of having immovable properties in the Varosha region deny claims of Turkish Evkaf Administration and argue that they keep official and legally valid titledeads of immovable properties in their possession. Because of this fact, it is found that some of Greek Cypriots have already taken this matter to the European Court of Human Rights. Therefore it is important to justify claims of the Turkish Evkaf Administration, the TRNC and the Republic of Turkey on international law grounds. In this sense, it is vital to provide reasonable solutions that in return would be irrefutable. In order to achieve this goal, it is highly important to address three issues. First of all, claims of Turkish Evkaf Administration should be justified, titledeads of 1974 should be dealt, smoothly running mechanism that is internationally legally acceptable should be activated, UN resolutions should be read on legal grounds.

4.1. The Status of Turkish Evkaf Administration and Vakhf Properties

The immovable properties of the foundations established after the conquest of the island in 1571 were administered by the Evkaf (Foundations) Administration in Cyprus in accordance with a set of principles and rules known as Ahkamul Evkaf (Constitution of Foundations). During the British Colonial period, the foundations administration was changed to a committee of three delegates, one assigned by Ottoman Evkaf department, one by the UK and one among the Muslim Turkish Cypriots. It was decided in 1915 Cyprus (Muslim Immovable Property) Imperial Order of United Kingdom that the two delegates involved in the Evkaf administration was to be appointed by the British Colonial Administration. In this way, the British Colonial Administration has begun to play an active role on the evkaf property and has established the base for the illegal transactions and transfers (Altan, 2003)

The foundations, which were governed by the principles of Ahkamul Evkaf until 1878, were negatively affected by the Law No. 12/1907 of the British Administration after 1907; some of the provisions stated in this Law were in contradiction with the principles of Ahkamul Evkaf, which was decided to be in force in the second article of the Additional Protocol dated 1 July, 1878 annexed to the Defence and Alliance Agreement signed on 4 June, 1878 between the Ottoman Empire and the United Kingdom. According to this Law (12/1907), it is stated that individuals who have been in continued possession of arazi mevkoufe and vakf idjaretein type of foundations over 10 years, could acquire the said property due to acquisitive prescription. Similarly, the same law also states that those who possess a foundation by way of inheritance do have the right to register the immovable property on their own behalf.

However, as stated in the principles of Ahkam-ul Evkaf, the immovable properties of a foundation are permanent, cannot be transferred, sold and acquired due to reasons as the acquisitive prescription. Acquisition occurs only in very exceptional cases and is subject to strict rules. For these exceptional cases, Evkaf Law, Ahkam-ul Evkaf, regulates under what kind conditions the foundations could be exchanged for real properties. In this context, Rey-i Hakim (judge’s decision) or İzn-i Sultan (approval of sultan) is required for a foundation property to be exchanged.

It can be inferred that the way of acquisition regulated in Law no. 12/1907 is contrary to the principles of Ahkam-ul Evkaf, which has been in force since 1571, and it is therefore invalid.

Another provision of “12/1907 Immovable Property Registration and Valuation Law” states that a person who utilizes an immovable property continuously without dispute over 10 years may deed the property over their own behalf. This Law states that arazi mevkoufe and vakf idjaretein type of foundations could be transferred to and acquired by these persons. Even if the legality of the 12/1907 Law has been recognised, the immovable property of the Lala Mustafa Pasha and the Abdullah Pasha Foundations in the Varosha region do not belong within arazi mevkoufe and vakf idjaretein categories, therefore it is clear that none of the properties belonging to these two foundations can be transferred to, registered over or acquired by the possessor.

The validity of principles of Ahkam'ul Evkaf, alluding to the laws of the Foundations (Erginel, 2014), has been reconfirmed by various agreements, protocols and decisions. For example, it was confirmed in 1915 Cyprus (Muslim Immovable Property) Imperial Order of United Kingdom, that Ahkam'ul Evkaf was in force.

It is also observed that Ahkam'ul Evkaf principles are in force in both established in 1960 and Article 110 (2) of Republic of Cyprus Constitution. However, the Law 12/1907 is mentioned in neither the Treaty of Establishment of the Republic of Cyprus nor in the Constitution.

Former President of the Turkish Historical Society Dr Yusuf Halacoglu argued that according to the foundation law, it is not possible for personal foundations to be assigned to, that is, to be given as property, to be transferred or used in any other way and this kind of actions wouldn't be in line with the international law. (One Third of the Island is Vakhf Land. [Kıbrıs'ın Üçte Biri Vakıf Arazisi], 2014)

However, in the section of "Categories Immovable Property under Ottoman Laws, abolished" under Cyprus Immovable Property (Tenure, Registration and Valuation), Chapter 224 of the Laws, Chapter 1, Article 3 issued by the British Colonial Administration, it is described as follows:

"3. (1) The categories of immovable property hitherto Categories known under the Ottoman Land Code as "Mulk," "Arazi Memlouke," "Arazi Mirie," "Arazi Metrouke" or "Arazi Mevat" shall be abolished and thereafter all immovable property whatsoever shall be owned, held and enjoyed subject to and in accordance with the provisions of this Law or any other Law in force for the time being."

However, the legal regime in which the lands in the Ottoman state were tied to was clearly defined in the Land Code of 1858. According to the Land Code, the lands in the Ottoman state are divided into five groups: mulk, miri, vakf, metrûk and mevât. Mulk land, in other words, arâzi-yi memlûke, is a type of land where the owner can utilize per preference and is subject to the inheritance law (Yazıcı, 2014).

Arâzi-yi memlûke are the mulk lands which are formed by parcelling of arazi-i osriye, arazi-yi hariciye, tetimme-i sukna and miri lands. While the arazi-i osriye was the land assigned to the veterans as the war booty during a conquest, arazi-i hariciye belonged to the non-Muslims before the conquest; these lands were left to Non-Muslim owners in return for kharaj (a land tax). Tetimme-i Sukna lands were left vacant to build houses in villages/towns and the miri lands belonged to the state. Although state governors and administrators have right to utilize these lands, they cannot sell, alienate or rent these lands under miri category.

Arazi mevkoufe, on the other hand, is a foundation land and its use is regulated by the foundation laws. Arazi mevkoufe lands are divided in two categories; arâzi-i mevkûfe-i sahîha and arâzi-i mevkûfe-i gayri sahîha. Arâzi-i mevkûfe-i sahîha lands were initially private properties but they were eventually endowed by the owners, while arâzi-i mevkûfe-i gayri sahîha lands are the lands where the head of state or his authorized representative dedicates a part of the income of miri land for charity (Yazıcı, 2014). The provisions of the Land Code shall not apply to arâzi-i mevkûfe-i sahîha lands. The aforementioned arâzi-i metrûke type of lands are left vacant to be used for public benefit. These type of lands are not agricultural and are released by the state for the public use of a community or village/town (Cin, 1966 p.751). These lands can be public roads left for public benefit, places to sit on streets, accommodation places for voyagers (arâz-i mürfeka) and forage, pasture or quarters forgone for the use of specific village or town community (arâzi-i mahmiyye).

On the other hand, the type of land mentioned as arazi mevat (dead lands) is vacant, unowned and nonarable land filled with shrubbery. They are usually located a mile and a half away from a village or town and are not types of lands that are released or assigned to any community (Cin, 1966 p.751).

It is argued that the foundation lands in the Varosha region have been alienated until today according to the above mentioned provision introduced by the British Colonial administration. However, it could be seen that the lands constituting a big part of the immovable property in the Varosha region are the foundation lands. For this reason, the article above has no binding force on the foundation properties.

The immovable properties belonging to the Abdullah Pasha Foundation, a big part of the lands in the Varosha region, are the mulhak foundations. Former President of the Turkish Historical Society Dr.

Yusuf Halacoğlu emphasizes that mulhak foundations are subject to international law and that the heirs of these immovable properties are entitled to claim rights even today, and therefore mulhak foundation immovable properties cannot be transferred, endowed or assigned (Immovable Properties Worthing a Hundred Billion are Ignored in the Island. [Adada 100 Milyar Yatıyör], 2011).

Further, it is noted that, per their status, if it is de jure or de facto impossible to satisfy the conditions, the mulhak foundations could be acquired provided that it is not contrary to the will of grantor and is subject to approval of Foundations Council. Immovable property of mulhak foundations cannot be used for a commercial activity or any other use in contradiction with the allocation provisions (Republic of Turkey General Directorate of Foundations).

4.2. Foundation Lands in Varosha Region

It is found that the Varosha region consisted of a total of 6.207.101 donums of land, 3000 donums of which are the lands of Tekke (Tekkelitika) Foundation (Altan, 2003, p.801). Lala Mustafa Pasha's mazbut-type foundation, Tekkeli Farm, is the largest farmland in the Varosha region. Yet, these certain foundation lands, ignoring laws establishing the conduct of foundations and the available deed records, were registered to foreign individuals through unlawful property acquisition practices (Tahrir-i Cedid) and the awarding of slips (Altan, 2003 p.789). Another method used in exchange of foundation lands was to ignore the regulatory laws and consider foundation assets to hold as icareteyn (Altan, 2003, p. 790). These methods, hence, had caused Pious Foundation of losing of Vakhf properties gradually within a period of time.

According to the data collected by the Research and Evaluation of the Cyprus Foundations Project, there are 393 mosques and small mosques; 63 schools; 14 madrasahs; 41 dervish lodges, zawayahs and shrines and 275 cemeteries which are established as charity in Cyprus. It was recorded that as of 1878, the bigger foundation lands are consisted of farms and crops, and along with those, endowed buildings (müsakaffât) in cities, towns and villages, and other type of endowed buildings (müstegallât) with their lands, vineyards and gardens, have a prominent place in the Island. (Arastırma Sureci Elde Edilen Bulgular/ Research Process-The Findings p.7, 8)

TRNC Evkaf and Religious Affairs Department states that while the number of illegal properties built on foundations was 648 in the early 1900s, this number increased rapidly to 2,253 in the later periods. (Evkaf.org)

According to the report no (11)-29/94 dated 7 June, 1994 published by Turkish Republic of Northern Cyprus Ministry of Interior Directorate of Housing and Rehabilitation Department Mapping Branch, the total foundation land in Varosha region is 3402.3.0558 donums. As a result of the investigations, the report determined that 3024.1.1660 (3144) donums of these foundation lands were alienated to Greeks; 88.3.1507 donums to the British Ministry of Defense and 24.3.1224 donums to the Republic of Cyprus. The report also records that the total foundation property registered in the name of the Turkish was only 6.1.0282 donums (Altan, 2003, p.796).

Another report dated 27 September, 1994 published by the Turkish Republic of Northern Cyprus Ministry of Interior Directorate of Housing and Rehabilitation Department Mapping Branch, mentions that the amount of land not belonging to foundations in the Varosha region is 1493.2.2827 donums (Altan, 2003, p.797).

In the column article of newspaper "Halkın Sesi" dated 29 June, 2000 and titled "Maraş Golden Sands- Golden Beach Land", Ahmet Gazioğlu advocates that the land which Maraş Golden Sands Hotel was built on belongs to the Abdullah Pasha Foundation and had been seized by British Defence Ministry during Second World War to be registered on the name of the Ministry on 9th November 1948 however they couldn't proceed with the title deed transactions since it was owned by the foundation. In the following paragraphs, he highlighted that even though the title deed was on evkaf, Greek administration in the early 1970s somehow alienated this land to foreign investors either by long term rent method or by selling. This is just an example of the foundation properties which are sold out despite their inalienable and non-transferable status.

Assoc.Prof.Dr.Mustafa Alkan (2017) states in his study that according to "Cyprus under Ottoman Administration" research prepared by the Prime Ministry Ottoman Archives experts, the size of foundation land belonging to Lala Mustafa Pasha is 28.592.5 donums (p.803).

Abdullah Pasha Foundation is an appendant (mulhak) pious foundation founded by Abdullah Pasha, who died in 1761 when he was a governor in Aleppo. He had endowed his own 60,000 donum of lands in the Varosha region. Since the foundation lacks trustees and all of the successors of Abdullah Pasha live in Turkey, the administrator and representative of the foundation is Foundations Administration and Religious Affairs Department as is the case with Lala Mustafa Pasha and Haji Bilal Aga Foundations.

A foundation is an organization charged with managing the assets or money left by an individual or a group, an organization that safeguards the continuation of a service, an organization founded by a group of individuals aiming to work for the benefit of the community (TDK-Türk Dil Kurumu/The Turkish Language Institute). Such organizations founded in the Ottoman period to gain merit in Allah's sight sought the benefit of the public.

In the foundation system in which a property is allocated to the public interest permanently, the personal property is transferred to the public use, so that personal facilities are dedicated to public service (Bayartan, 2008, p.157).

4.3. TRNC Evkaf Administration Report

A study conducted by the TRNC Evkaf Administration and Religious Affairs Department determines that the majority of the evkaf properties were transferred on Greek and Greek Cypriots. The ownership of the foundation land within the closed part of Varosha was allotted to several parties as follows; 3362 donums to Greeks and Greek Cypriots, 125 donums to Greek Cypriot companies, 23 donums to Greek Schools Commission, 33 donums to Greek Cypriot Church, 21 donums to Greek Cypriot municipalities and 3 donums to foreigners. Consequently, it is ascertained that 4636 donums 1 evlek 3448 feet square out of total 4638 donums 300 feet square in Varosha region were alienated from Evkaf ownership and only 1 donum 2 evleks 452 feet square are left today under Evkaf administration (KIVABIS). Moreover, lands where British Sovereign Bases Areas namely, Ağrotur and Dikelya (Akrotiri and Dhekelia) are located now used to be belonging Pious Foundation. In 1878, British government had disposed lands in question in temporary status, but then seized said lands unilaterally and illegally in 1914 although Ottoman State objected this illegal act (The Most of the Land in Cyprus Belongs To Turkish Pious Foundation, [Kıbrıs'ın Çoğu Türk Vakıflarının], 2011)

4.4. Famagusta District Court Decision

In case number 272/00 brought to court on January 28th 2002 by the litigants (1), the Foundations Administration and Religious Affairs Department (11) as the principal acting manager and representative of the Lala Mustafa Pasha foundation argued the properties on the list provided to the court belonged to the foundations and were transferred in discord with the Ahkamul Evkaf principles; the litigants asked for a declaratory judgement establishing the lands as the property of the Lala Mustafa Pasha Foundation.

In the Famagusta District Court Identification Report 272/2000 dated January 28 200, it is stated that 2743 deceres of land, 0 furrow, 1018 square feet registered in 1472 parcels of this region, belong to Sadr-i Esbak Abdullah Pasha; 1105 deceres of land, 3 furrows, 2661 square feet belong to the Lala Mustafa Pasha; and 1 decare, 2 furrows and 452 square of the 582.59 square feet of lands of the foundations belong to Kemahli Haci Bilal Aga. This inventory study showed us that all these three foundations are still valid and needed.

The case decision indicated that taking into consideration of Ahkam'ul Evkaf and evkaf-related legislation, the immovable property of the foundations could not be alienated, but could only be exchanged in exceptional circumstances under strict rules.

The decision stated that upon the examinations made on land registries and title deeds, the real properties belonging to the Lala Mustafa Pasha Foundation, which is an indefinite and fused type foundation, were confiscated against the principles unless otherwise provided.

Upon the investigations carried out on the land registry and submitted documents, the court ruled that unless otherwise concluded, the real estate belonging to the Lala Mustafa Pasha, which is a permanent and mazbut foundation, was confiscated in disregard to the principles. The judgement explained neither the register of title deeds nor other documentations did not provide information on how the immovable property belonging to the Lala Mustafa Pasha Foundation had changed hands nor did the ledgers or documents provided to court include any change or annotations within.

In conclusion, the court has issued a Declaratory Judgement determining that immovable properties in the lists attached to the summons belong to the Lala Mustafa Pasha Foundation and that they have been alienated in contrary to the principles of Ahkam'ul Evkaf.

The Famagusta District Court has passed judgment for the issue of the declaratory judgment of the case no 272/2000 against the defendant regarding alienation of immovable properties of Lala Mustafa Pasha Foundation located in A and B Varosha Region in contrary to the Ahkam'ul Evkaf principles. In the lawsuit brought against (11) the Attorney General of Turkish Republic of Northern Cyprus by (1) the Foundations Administration and the Religious Affairs Department, as the acting manager of the Abdullah Pashaa Foundation, (court case number: 271/2000) 1472 properties as denoted in ledgers were indicated to be the property of the Abdullah Pasha Foundation. The Famagusta District Court ruled the foundation properties had been seized without the due process of law and in total disregard to the Ahkam'ul Evkaf principles and methods between the years 1913 and 1916.

4.5. British Rules and Regulations that Had Been Effective on Producing 1974 Titledeads.

The investigations have revealed that the regulations made under the British administration between 1878 and 1914 did not directly address the foundations. However, after the annexation of the Island by the British in 1914, regulations were directed to the foundations, particularly in the years of 1915, 1928 and 1944.

The fourth paragraph of the Investigation Process and the Findings section of the Cyprus Foundations Research and Evaluation Project states that,

Islamic tithe for the grains was lifted in 1926 (1926/5), control of the Jelali foundations was handed over to the foundation negotiators with a regulation in 1933 (1933/44), several articles were amended in the Precept of 1928 in 1934 (1934/19), and lastly, several laws were enacted on the conversion of the categories of the vakf idjaretein into "mulk" (property) and mevkoufe takhsisat into "mirie arazi".

With the Edict of Laws by the Islamic Assets Administration in 1928 and Foundation Regulations in 1929;

1. It was made possible to indirectly transfer the administration and control of all property, money and land belonging to mosques, cemeteries, Islamic schools and other religious institutions in Cyprus (due to the British government appointing delegates of its own accord) to the control of the British Colonial Administration,
2. It was made possible to convert all the leased foundations and other type of foundations upon the approval of the Governor and a department was established under the Evkaf Administration subject to the supervision of a British Governor in all subjects regarding the foundations properties and no action could be taken without the Governor's approval.

Moreover, it was observed that by this law, many immovable foundation properties have been regarded as idjaretein and that the land with the trees and building on it have been transferred to the ownership of the tenants.

It is also noted that these actions taken during the British period were performed according to Malcolm Seager's report because this report suggests that the use of these lands, regardless of the land type, should be left to the tenants (Bouleti, 2011). The Executive Summary of the Cyprus Foundations Research and Evaluation Project Second Term Second Section Report states that actions steps taken to dispossess the foundations of their properties are as follows:

1. Regulations of 1907/12 and 1908/9 stipulated that all immovable properties shall be registered with a title deed. High amount of tax fees were dictated for the foundation properties and consequently, the Foundations were unable to pay such fees could not register their properties with a title deed. Also, the tenants of the properties took advantage of this provision and alleged that they were the owners of these properties, as they kept the rented properties under their possession for more than ten years.
2. Administration of the foundations in Cyprus was reorganized by "The Edict of November 30th, 1915". Provided that one of them would be Muslim, both of the negotiators were to be assigned by the British Administration to govern the foundations, instead of two negotiators where one was elected by the Ottoman, and the other by the British.

3. Issuance of British Empire Precepts by the British Colonial Administration in 1915 and 1928,
4. Disaffiliation of Islamic Tithe foundation properties from the foundations due to the abolishment of Islamic Tithe in 1926 (1926/5),
5. Handing over the control of the Jelali Foundations to the Foundation Negotiators with the new regulations enacted in 1933 (1933/44),
6. Amending the Precept of 1928 in 1934 (1934/19),
7. Introduction of the Immovable Property Law Chapter 225 (Vakf Idjaretein And Arazi Mevkoufe Takhsisat Conversion) (1959) by the British Colonial Administration and the provisions of the Legislation no. 1944/14 which introduce the implementation of the Law,
8. Registering the properties on behalf of the tenants by taking fraudulent actions.

When examining of the Immovable Property (Vakf Idjaretein and Arazi Mevkoufe Takhsisat Conversion), Chapter 225 of the Laws, 1959 Edition, it can be observed that by this law:

1. All the real estate within the scope of Vakf Idjaretein was put under the definition of "mulk" (property);
2. All the real estate belonging to the foundations are passed into the ownership of tenants;
3. The real estate with the status of foundation Arazi Mevkoufe Takhsisat were converted into the mirie arazi;
4. Foundations were prohibited from being converted to vakf idjaretein or takhsisat;
5. Foundation lands of takhsisat were transferred to the Treasury and the ownership of these places had passed to the Colonial Administration.

The evaluation report states that while the number of buildings illegally constructed on foundation properties was 648 in 1904, it became 2253 in 1914 and 2047 of these illegal buildings were built on the properties of the Abdullah Pasha Foundation, while 206 of them on the real estates of Lala Mustafa Pasha. Besides, it is pointed out in the Research Process and Findings report that all the entities (muhtesat) on the 2253 arazi mevkoufe were recorded as properties (2047 of them to Abdullah Pasha Foundation, and 206 of them to Lala Mustafa Pasha Foundation) (p,13).

The study concludes that British Colonial Administration had imposed various regulations regarding the foundation properties since 1901, in contravention of the Ahkam'ul Evkaf, known as the laws of foundations, and thus contradicted the Additional Protocol dated July 1, 1878, annexed to the Defence and Alliance Agreement signed on June 4, 1878, between the Ottoman Empire and the United Kingdom. Additionally, despite the fact that British Colonial Administration had accepted that in their relevant laws that Ahkam-ul Evkaf was valid (for example, 1915 Cyprus Muslim Immovable Property Imperial Order of United Kingdom), it was observed that their following law and regulations constituted a contradiction.

The study evaluates that since the validity of the Ahkam-ul Evkaf was confirmed in the Republic of Cyprus Constitution, the legal compliance and validity of the laws and regulations issued at the time of the British Colonial Administration are open to debate.

4.6. Justifying Claims of Turkish Evkaf Administration.

In summary, the following conclusions are drawn:

1. When examining the status of the foundations in the Varosha region, it is observed that all three foundations are genuine and needed (Illegal Ownership of Real Estates Belonging to Cypriot Foundations, n.d.), therefore, in accordance with the Ahkam-ul Evkaf paragraph four article a, these foundations are in the category of foundations that are irrevocable.
2. The provisions of Ahkam-ul Evkaf clearly explain the administration of foundation properties (article 25/3), the management of foundation revenues (article 25/4), and most importantly, the functionality conditions and requirements, in other words, provisions regarding the irrevocability of the foundations (article 25/6).

When studying the foundation certificates of the three foundations in terms of these three articles, it can be observed that these foundations were subjected to practices contrary to the provisions of their

certificates. It is concluded that the practices performed on the foundation properties lacked legal standing, as all three foundation certificate-charters had a “provision to be made irrevocable from the foundation”.

3. To exchange a foundation property is possible. They can be exchanged into cash or a real estate. However, in order for the exchange to take place, a) the foundation certificate shall include a clear provision concerning the conditions, b) the foundation shall have no income or the not enough income to cover the expenses, and it shall be deemed that the exchange shall accrue interest for the foundation. However, it is required to get the approval of the judge and the permission of the authorities (According to the Article 422/240, it is prohibited for a judge to decide on the exchange a foundation property with another without the approval of Sultan). Otherwise, an exchange cannot be performed (Ahkam-ul Evkaf article 31/21). Also, in order for the exchange to be legally valid, the property to be exchanged must have a value equal to or higher than the value of the foundation (Ahkam-ul Evkaf, Article 420). The study observed that only one parcel belonging to the Bilal Aga Foundation was exchanged in the closed city of Varosha; no other exchange was performed in terms of the foundation properties.
4. The foundation properties were considered as "mulk" (property) under the Immovable Property (Vakf Idjaretein and Arazi Mevkoufe Takhsisat Conversion), Chapter 225 of the Laws and were registered for the ownership of the people who were tenants for ten years. The study determined that Lala Mustafa Pasha Foundation was a fused foundation and Abdullah Pasha Foundation was an appendant foundation; therefore foundation properties in the region were not fundamentally idjaretein and Arazi Mevkoufe. In this case, it is concluded that all the registration of title deeds were legally invalid in the context of the British Law and the Ahkam-ul Evkaf.
5. It is determined that the buildings on the foundation lands in the closed city of Varosha were passed into the ownership of the people who built these properties. If the land belongs to the foundation and a building is built on this land with the revenues of the foundation then the property in question is considered as the property of the foundation. When the building is constructed with the tenant's own money, then the property in question becomes the property of the tenant.

However, the foundation remains as the owner of the land and lease contract only covers the use of the foundation land (Article 417). It is found out in the investigations that 2253 illegal buildings were built on foundation properties in the closed city of Varosha as of 1914 (H3,4).

6. According to Ahkam-ul Evkaf, in cases relating to the foundations' origin, the statute of limitations period is 36 years and a case concerning an original foundation which has been abandoned for 36 years without excuse shall not be taken into consideration by the judges (Article 438).

Nevertheless, there is no statute of limitations on cases involving charities whose interests are owned by the public and which are conditioned on the foundation certificates (Article 452). Provisions above are drafted for the possible conflicts between those who claim to have the right to use the foundation properties, in other words, those who hold a written charter claiming the ownership of the foundation property. A foundation property is to be regarded as the property of Allah (God), and it is strictly forbidden to transfer them (assign or appropriate) (Ahkam-ul Evkaf, Article 1).

In the light of the aforementioned data obtained from legal documents, it is concluded that the transfer of ownership of a foundation real estate to the tenants is prohibited by law, and claims of the Cyprus Foundations Administration on concerning the foundation properties in the closed city of Varosha have a legal base. Therefore, the study assesses that the Cyprus Foundations Administration should initiate a legal action as the plaintiff.

4.7. The Immovable Property Commission as the Internationally and Legally Recognized Mechanism.

The Immovable Property Commission (IPC) has become active on 17 March 2006 so as to establish an effective domestic remedy for claims relating to abandoned properties in Northern Cyprus.

It is found that the Immovable Property Commission has been determined as an effective and de facto way of domestic law, not only for closed off Varosha but for all immovable properties within the

TRNC. European Court of Human Rights with decisions of “Demopoulos” and later “Meleagrou”, approved the IPC as an authorized legal instrument to solve the property problem in Northern part of Cyprus. However it is found that the Immovable Property Commission is authorized to evaluate only three alternatives namely exchange of properties, compensation and return of properties while dealing with appeals. However, Director of the Immovable Property Commission Ayfer Said Erkmen stated that the Immovable Property Commission will take title deeds only dated 1974 into consideration while examining cases. Erkmen also said that there are currently 280 appeals with regard to immovable properties in Varosha region before the Commission and all title deeds are dated 1974 (Pending Two Hundred and Eighty Appeals [Bekleyen 280 Başvuru Var], 2019). It is also found that the Foundations Organization and the Religious Affairs Department are the parties to each case ruled by IPC. It shows that in order for resolving immovable property ownership dispute between parties, the IPC as the sole internationally accepted legal mechanism should be empowered to hear cases filed by Turkish Evkaf Administration as well. In this scope, the IPC should be empowered by the Turkish Cypriot government to extend its’ scope of authority in hearing cases with regard to Turkish Evkaf Administration claims. Apart from that the IPC should be financially supported to be able to hear cases to solve disputes.

4.8. Administration Issue in the Closed Varosha

One of the important problems regarding the Closed Varosha is that the opening of the said area under the Turkish Administration. Some argued that the administration of Closed Varosha should be handed over to United Nation (UN). Even UN made a call in its’ Resolution (550) dated 11 May 1984 for transferring Closed Varosha to the administration of United Nations. However, Closed Varosha is wholly located within the borders of the TRNC. It should be noted that despite the fact that the Turkish state is not recognized by the UN, the Northern Part of Cyprus is regarded as the area, where so-called “Republic of Cyprus (RoC)” has no effective control over it. Besides, southern part of Cyprus is granted a right to become UN member in 2004 where northern part is now allowed. It means that the northern part of Cyprus is where European Acquis Communitaire is not exercised (Protocol Ten). Therefore handing administration task of Closed Varosha over to the UN would be void and null. Also it is assessed that when carefully reviewed, the said UN resolution on Varosha region (UNSG789) is advisory rather than binding in nature.

5. CONCLUSION

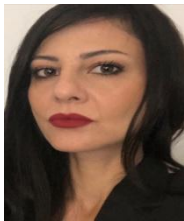
In this study, it is concluded that it is legally possible to open the closed off Varosha region on international law grounds. Closed off Varosha was one of the major tourism centers of the Cyprus and of the Southern Mediterranean. Therefore it is assessed that the closed off Varosha should be opened and tourism facilities should be developed in the era. The findings of this study revealed that the opening of the closed city of Varosha under the Turkish Cypriot administration without any detriment to the rights of the residents in 1974 and of the Turkish Evkaf Administration is the best option in terms of Turkish Cypriot politics, tourism industry and economy. In this light, the IPC should financially be supported to be able to purchase immovable properties from its’ users of 1974. In addition to that, the scope of its authority should be extended. Turkish Evkaf Administration should also be granted a right to file a case based on its’ claims as well. All findings proved that title deeds were produced in contravention of the Foundations law named Ahkamül Evkaf. Hence, the Cyprus Evkaf Administration is considered to be a party of the Varosha issue and should definitely seek its rights on legal grounds. Finally because of the fact that the closed off Varosha region is located within the TRNC borders, the authority of control and administration of the area should be assumed by the TRNC authorities.

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