

THE RULE OF LAW AND HUMAN RIGHTS

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The Comprehensive Settlement of the Cyprus Problem (The Annan Plan) and its compatibility with the European Convention of Human Rights.

On the 20th of July 1974, Turkey invades parts of Cyprus, occupying approximately thirty-eight percent of Greek Cypriot land. The military operation and the occupation of the northern part of Cyprus triggered the transfer of most of the Greek Cypriots living in the North to the Southern part, whereas the Turkish Cypriots in the south went to the north. In spite of the fact that the invasion and the occupation of a country was illegal¹ under international law², this subject is not the topic under examination in this work, but rather the cause that has brought about the construction of the Comprehensive Settlement of the Cyprus Problem otherwise called as the Annan Plan. The essence of the plan is emphatic due to the restrictions on the human rights that it poses and for this reason its ability to function is of profound importance.

The European Court of Human Rights' judgments are legally binding upon Member States, this includes both Cyprus and Turkey as they have signed and ratified the Convention thus having the legal obligation to ensure that they safeguard human rights and for this reason any decisions passed are irrefutable and must be conformed with. The significance of the European Court as well as the Convention is that it gives individuals the ability to pursue grievances based upon violations of their human rights against Member States. This thesis analyses the compatibility of the Annan Plan against the background of the European Convention of Human Rights and any anomalies that arise due to some incompatibilities.

The Annan Plan is the product of several years of negotiations for a resolution into the Cyprus Problem. This has resulted into multiple president ships and in effect caused the

¹ Security Council Resolution 367 (1975) condemns when Turkey declares North Cyprus a federated Turkish State

² Article 2 (4) of the UN Charter – All Members Shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.

failure of the plan, as neither party³ has expressed any satisfaction with it⁴. The main focus of the thesis is concentrated on the human rights and legal issues that are brought forward by the Plan with particular emphasis on Article 8 and Article 1 of Protocol 1 (dealing with property rights as well as right with respect to home) and of Article 2 of Protocol 4 which deals with the freedom of movement and establishment. Furthermore, it will be examined whether the Plan ratifies previous violations or creates future violations of the Convention. The future violations will consist of whether the issues of the above have been met through the Convention. Lastly, it shall be investigated whether States or individuals can waive their rights for a better tomorrow through a referendum.

What is the Annan Plan? The Comprehensive Settlement of the Cyprus Problem was made by the Secretary General Kofi Annan to the leaders (of the two states in question) to bring about the reunification of the divided island of Cyprus. The plan proposed by the Secretary-General fore so a bi-communal, bi-zonal federal structure, based on the political equality of the two communities. At the same time it represented a compromise between the conflicting claims of the original owners and the current users.⁵ The plan was an agreement for the creation of a so-called 'common state', which would consist of two 'constituent states'. Moreover, the constituent states would have had their own laws and legal systems, which would be above the laws of the common state.⁶ This stage was reached since the negotiations between the two leaders broke down and thus Kofi Annan as an arbitrator presented to the two sides a proposed final settlement. The final settlement that comprised Annan V was not only criticised for its property and home aspect, but also for a number of other issues; in particular those concerning politics, economy, security and social well-being of the population that would be affected.

³ In the beginning stage, Cyprus was ready to make negotiations (Annan I) however the Turkish Cypriots as well as Turkey were not satisfied.

⁴ Cyprus Mail, the English-language newspaper stressed that "one thing is certain about the Cyprus plan", and that is that neither side "will get what it wants."

⁵ <http://www.unhcr.org/cgi-bin/txis/vtx/home/pendoc.pdf?tbl=RSDCOI&id=3bd98d542>

⁶ <http://www.socialismtoday.org/73/cyprus.html>

One of the main criticisms which will be discussed on a later stage in the thesis was that, Mr Annan proposed that the highest body in the state would be a council of judges comprising three Greek Cypriots, three Turkish Cypriots, and three non-Cypriots. The three non-Cypriot judges as a result would decide on everything if the Greek Cypriot and Turkish Cypriot could not come to a conclusion. Perhaps the most important outcome of an agreement to Annan Plan V would have been through referendum the reunification of Cyprus prior to its accession to the European Union. Moreover, Turkey's desire of joining the European Union was in parallel with its willingness to resolve the Cyprus Problem, preferably with the fifth and final plan.

Property

The most intensely focused upon issue, other than defence, was that of property. The aspect of property is a key hurdle that stands in the way of an agreement between the two states and hence the final solution to the problem. This is due to the fact that the Greek Cypriots feel that their human rights as far as this issue is concerned, are not looked upon with the same degree of sensitivity by the Annan Plan, as are those of the Turkish Cypriots. The thesis will discuss on the issue of property rights of the Greek Cypriots as well as of the Turkish Cypriots. Moreover, it will investigate on the issue of third parties who are buying property in northern Cyprus and how this will impact towards the problem of Cyprus further on.

In the common law and in civil law, ‘property’ is defined as a ‘right of a person with respect to a thing’.⁷ Moreover, Blackstone in *Commentaries on the Laws of England (1766)* also defined the right to property as ‘that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.’⁸ International human rights documents as well as treaties incorporate provisions protecting property rights; however, they do not define what property rights are. The task of defining what rights constitute as property rights lie in the hands of judges.⁹ Article 1 of Protocol 1 of the European Convention of Human Rights was laid down in order to protect the property and possessions of individuals by guaranteeing the right to peaceful enjoyment of property. This Article emphasises that ‘every natural or legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be deprived of his possessions except in the public interest’¹⁰ thus stating that it is not an absolute right allowing the state to interfere with the right if it is in the public interest.

⁷ Protection of Property Rights Within The European Convention on Human Rights, Ali Riza Coban, Chapter2- What is Property? Definition of Constitutional Property, page 14
⁸ (see as footnote 1)

⁹ Protection of Property Rights Within The European Convention on Human Rights, Ali Riza Coban, Chapter 6 – Property Rights Under the ECHR page 143 [paragraph 2]

¹⁰ Article 1 Protocol 1 of the European Convention of Human Rights

Annan Plan on Property

How does the Annan Plan settle the issue of property? The issue of property has been a major obstacle to the Greek Cypriots in securing a solution to the problem of Cyprus. Many Greek Cypriots were not satisfied with the settlement that Secretary General Annan was proposing and therefore they rejected it in the referendum.¹¹ Although in theory it is a compromise solution, in practice it appears to be a completely different story. Didier Pfirter, the draftsman of the plan explained how the plan was perceived by him. He explained that one third of these displaced¹² from the North to the South will be able to return to their properties whereas the remaining two third will be able to receive bonds or shares as part of compensation which can be used after twenty five years.

The refugee will be able to return and claim his property; however there are some special rules and regulations to which he has to comply with. According to Pfirter,¹³ if a Turkish Cypriot is living in the refugees' house, since he was transferred in 1974 by the UN to the Northern Cyprus in order to avoid bloodsheds between the two states, and decides to stay in the refugee's house and in return give his property to the Properties Commission, then the refugee cannot claim his property. The Properties Commission is a panel responsible for relocating properties to the Cypriots. Also if a current user has improved a property then he is allowed to retain the property and the refugee will be compensated.¹⁴ For example, if the property has been significantly improved (that is he has built something that is worth more than the land) then the current user can retain the property and the refugee will receive compensation.

¹¹ 76% of the Greek Cypriots rejected the Annan Plan as they were unhappy at the limits placed on their right to return to property in the Turkish North, whereas the Turkish Cypriots accepted it with an overwhelmingly result of 65%.

¹² The term 'refugee' is meant to mean to internally displaced and not the meaning under international law.

¹³ http://www.cyprus-un-plan.org/DIDIER_PFIRTER_INTERVIEW_ON_PROPERTY_ISSUE.pdf

¹⁴ Article 10 (3) (c)

This contravenes not only the judgments of the European Court of Human Rights¹⁵ but also European Union Law, which states that under planning regulations if someone illegally builds an extension to their home without planning permission or builds on land they do not own they must have the structure demolished and compensate the land owner for the losses incurred.¹⁶ In Article 10 (2) of the Foundation Agreement of the Annan Plan it is stated that ‘in areas subject to territorial adjustment, properties shall be reinstated to dispossessed owners.’¹⁷ This creates some hopes to some of the refugees as finally they will be able to take back possession after thirty-two years, however, to some others it creates a sense of panic and disappointment as once again they will be deprived of their fundamental right in regards to their rights to property.

It is followed by Article 10(3) where it explains that in areas where there is no territorial adjustment the arrangements for the exercise of property rights will be either through compensation or reinstatement. However, once again there are special arrangements. If, for example, the dispossessed owners opt for compensation rather than being reinstated back to the property they will receive full and effective compensation on the ‘basis of value at the time of dispossession adjusted to reflect appreciation of property values in comparable locations’.¹⁸ On the other hand, if the current user renounces his title of property in the other constituent state then he will receive the title of the property he is living in.¹⁹ For example, if a Turkish Cypriot, prior the invasion, had property in the South and does not want to return he can renounce his title and claim the title of the property he is living in now. Many people claimed that this is unworkable due to the fact that Turkish Cypriots own only 13% of the properties whereas the rest is being owned by the majority Greek Cypriots. Therefore, the outcome will be mainly catastrophic for the

¹⁵ Cyprus v Turkey as well as Loizidou v Turkey

¹⁶ <http://www.argyrosargyrou.fsnet.co.uk/annanplan/english/Article10-3c.htm>

¹⁷ In the scenario for the residents of Karpasia, its residents have the right to return to 4 villages (Rizokarpaso, Yiallousa, Ayia Triada and Melanagra) after two years from the implementation of the Plan. They will get their properties without any restrictions, except those properties that could possibly be exchanged with the current residents who left property on the Greek Cypriot side.

¹⁸ Article 10 (3) (a) of the Annan Plan

¹⁹ Article 10 (3)(b) of the Annan Plan

Greek Cypriots who will not be able to get their properties. It is also unworkable as once again it does not rectify previous violations that occurred from the invasion and thus intervenes with the property rights within the context of human rights. At the same time, however, under existing laws of the Republic of Cyprus, all Turkish Cypriots who had properties in the constituent state are allowed to return and reclaim it at any time they want,²⁰ as in the case of Arif Mustafa who after thirty-two years was granted permission to return and claim his property.²¹ So it can be proved that the Republic of Cyprus takes fundamental rights of its citizens very seriously and ensures that each and every one is protected within its jurisdiction as is emphasised in Article 1 of the Convention.²²

A major flaw on the issue of property comes from the delays in the reinstatement. In the plan it states that if the property is vacant then the displaced will be able to return six years after the settlement. However, if the property is not vacant he will wait nine years so that the Turkish Cypriot has the financial means to acquire another property. If the property on the other hand is not vacant and a Turkish settler is living there then there will be further delay of eight years. Secondly, the plan provides that any compensation, regarding the ongoing violation of the right of enjoyment and loss of use of property will be provided by the "constituent state" from which the applicant derives from.²³

European Convention of Human Rights and the European Court of Human Rights

Article 1 Protocol 1 only applies when there has been an interference with property. In order to be an interference with property a 'direct victim' must prove that there was a deprivation of possessions and as a result he or she lost control, use and enjoyment of that property. In one particular case - *Cyprus v Turkey*, the deprivation of property resulted from a physical act by the invasion which resulted in the internal displacement. The Turkish army in the invasion of 1974 not only did destroy moveable property but at the

²⁰ Article 23 of the Constitution of Cyprus

²¹ *Arif Mustafa v Minister of the Interior*, through Limassol District, Case 125/2004, 24 September 2004

²² Article 1 of the European Convention of Human Rights

²³ See Annex VII Attachments 3 & 4 of the Annan Plan

same time occupied the immovable properties. The Grand Chamber in 2001 in the case of *Cyprus v Turkey*, through its judgment held that there was a continuing violation of Article 1 of Protocol 1 concerning the mere fact that Greek Cypriot owners of property in northern Cyprus were being denied access to control, use and enjoy their property as well as being denied any compensation for the interference with their property rights. At the same time the Court held that there was also a continuing violation of the same right in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possession was not secured in case they departed from Northern Cyprus and also in the case of death, the inheritance rights of relatives who were living in the southern Cyprus would not be recognised.

A question that arises is whether confiscations during socialist era without compensation should be brought before a Court. It can be argued that if it is accepted that Contracting States are under the obligation of correcting previous injustices then it is correct to speculate that they will be held responsible for not returning the properties confiscated without compensating the victims.²⁴ In the *Loizidou* case, the European Court held that Turkey was responsible for the actions of the Turkish army who refused *Loizidou* access to her land, the enjoyment of it as well as the use and control of her property without compensating her.

In *Loizidou v Turkey* the applicant became the first ever Cypriot applicant who took up a case against Turkey with a claim that the mere fact that she was deprived of the enjoyment, the use and the control of her property it lay the responsibility on Turkey even though it was the actions of TRNC (Turkish Republic of Northern Cyprus). The Court held that *Loizidou* was the legal owner of the property and that ‘as a consequence of the fact that [she] has been refused access to the land since 1974, she has effectively lost all control as well as all possibilities to use and enjoy her property’. Therefore, according to

²⁴ Protection of Property Rights Within The European Convention on Human Rights, Ali Riza, Coban, pages 164-165 [paragraph 3]

the Court, the continuous denial of access to her property was an unjustified interference with her property rights under Article 1 of Protocol 1.

The issue of property was also raised in the case of *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey*.²⁵ Ever since 1974 the applicants were deprived of their property which was situated in the village of Tymvou. The applicant alleged that the continuous denial of access to his property in northern Cyprus and the ensuing loss of all control of it constituted a violation of Article 1 of Protocol No.1. The Government of Turkey objected and stated that property rights were the subject of on-going inter-communal talks and the applicant's claim could only be resolved through negotiations aimed at a bi-zonal and bi-communal settlement of the Cypriot problem. Once again the court took into account the previous judgments of *Cyprus v Turkey* and *Loizidou v Turkey* and held that Article 1 of Protocol 1 was violated and the justifications of Turkish Government did not justify the interferences sustained by the Greek Cypriot applicants. In *Papamichalopoulos*'²⁶ case the Court found a de facto expropriation, similar to the situation in Cyprus. According to the Court the applicant's land was never really formally expropriated by the Greek authorities and thus they remained owner of the land. The Court held that the transfer of the land to the Navy by the dictatorial government and the fact that the Navy exercised full de facto control for twenty-eight years constituted a de facto expropriation since the applicants could not make use of the property and at the same time they were forbidden from any access to it.²⁷ Equally in the case of *Vasilescu*,²⁸ the court held that the unlawful seizure which resulted to the loss of the ability to dispose the property and together with the failure of the attempts for remedy by the national courts amounted to a de facto confiscation which is incompatible within the context of Article 1 of Protocol 1. The Commission considered that the *de facto* deprivation of the enjoyment of that right had not been justified and concluded that a fair balance had not

²⁵ *Eugenia Michaelidou Developments Ltd and Michael Tymvios v Turkey*, (application no. 16163/90)

²⁶ *Papamichalopoulos and Others v Greece*, Judgement of 24 June 1993 Series A, No.260-B

²⁷ *Protection of Property Rights Within The European Convention on Human Rights*, Ali Riza Coban, page 179

²⁸ *Vasilescu v Romania*, Judgment of 22 May 1998, 27053/95 [1998] ECHR 42

been struck between the aim pursued by the judgment which was the compliance with domestic rules on jurisdiction and the resulting individual burden on the applicant²⁹. In *Demades v Turkey*³⁰ the applicant lodged a complaint that since 1974 he has been prevented by the armed forces from having access to his property, using and enjoying possession of it. The Court held that there has been and continues to be a violation of Article 1 of Protocol 1 by the mere fact that the applicant is denied access to and control, use and enjoyment of his property as well as any compensation for the interference with his property rights.³¹ Turkey once again was found responsible by the European Court of Human Rights in the case of *Myra-Xenides-Aresti*.³² The case is seen as a major development since the Court held that while Turkey ‘continued to exercise overall military control over northern Cyprus’ the fact that the Greek Cypriots rejected the Annan Plan ‘did not have the legal consequence of bringing to an end the continuing violation of the displaced person’s rights’.³³ The Court gave Turkey six months to ‘introduce a remedy, which secures genuinely effective redress for the Convention violations identified in the instant judgement.’ Once again the Court rejected Turkey’s claim that property rights should and could be settled through the communal talks; ‘the inter-communal talks cannot be invoked in order to legitimate a violation of the Convention.’³⁴

In June 2004, the Special Rapporteur to the UN Commission on Human Rights on housing and property restitution brought forward the ‘Draft Principles on Housing and Property Restitution for Refugees and Displaced Persons’ which held that **‘All refugees and displaced persons have a right to have restored to them housing and property of which they were deprived during the course of displacement or to be compensated**

²⁹ [paragraph 47]

³⁰ (Application no. 16219/90)

³¹ *Demades v Turkey* – [paragraph 46]

³² *Myra Xenides-Aresti v Turkey* (application no. 46347/99)

³³ *The Cyprus Weekly*, December 23-29 2005 No 1353 [Rights’ Court Reaffirms refugees right to return Turkey guilty by Alex Efthyvoulos]

³⁴ Same as above footnote

for any property that cannot be restored to them³⁵ This point echoes in many Security Council Resolutions regarding the Cyprus Problem. In particular Resolution 1987/19 of the Sub-commission on Prevention of Discrimination and Protection of Minorities demanded the ‘full restoration of all human rights to the whole population of Cyprus, including the freedom of movement, the freedom of settlement and the right to property.’³⁶ Similarly Security Council Resolution 1244 came with the same conclusion in regards to the problem relating in Kosovo.³⁷ Ambassador Pascal Fieschi, Head of the OSCE Mission in Kosovo stated that the deprivation of a person’s right to their property is a fundamental human rights violation.³⁸ He continued and said that ‘ **the continued functioning of a structure to deal with property rights is therefore crucial in the respect for human rights and the rule of law as well as ensuring the conditions for return.**’³⁹

Property is a fundamental right within the concept of human rights. Article 1 of Protocol 1 was created to ensure that property rights are fully protected. Property rights are also included in the non-binding Universal Declaration of Human Rights under Article 17.⁴⁰ A victim to succeed in his or her application under Article 1 of Protocol 1 must prove firstly that he /she was a victim through an action of a public authority and as a result she or he sustained a loss. Article 1 of Protocol 1 is not an absolute right thus the State has the right to interfere with the specific right if it is in the interest of public. The European Court of Human Rights decided in *Loizidou* as well as in *Cyprus v Turkey* that since TRNC was not recognised by the international community (except by Turkey) neither should their legislation be regarded as valid. Since the legislation was void under international law the displaced Greek Cypriots were still legal owners of the property they lost and by the mere

³⁵ Sub-Commission on the Promotion and Protection of Human Rights, UN Doc. E/CN.4/Sub.2/2004/22

³⁶ http://www.hri.org/Cyprus/Cyprus_Problem/hr/hr_19.htm

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<http://daccessdds.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>

³⁸ <http://www.osce.org/item/6546.html>

³⁹ <http://www.osce.org/item/6546.html>

⁴⁰ Article 17 [2] - No one shall be arbitrarily deprived of his property.

fact that they were forbidden to have access and by losing all control of the property it constituted interference within the context of the first paragraph of the Article.

The Annan Plan – Is it Compatible With European Convention of Human Rights?

The Annan Plan is a compromise plan made by the Secretary General Kofi Annan with regards to the Cyprus Problem. Many people claimed that the Cyprus Problem constituted on the issue of property. Once the issue was resolved there would be no Cyprus Problem. In order for a solution to exist however both communities must come to a compromise. Sometimes however a compromise brings further problems and sometimes a compromise widens the void between the two communities as is seen in our case. There would be two communities (Greek Cypriot and Turkish Cypriot) and although there will be equality amongst themselves the country as a whole will not be unified because the Greek Cypriots will still feel that they are neglected in the human rights concerning property rights. In the Annan Plan, the Secretary General tried to reach a settlement not just on the issue of property but on equality and fairness. The settlement was that one third of the displaced population be able to gain their property back whereas the two thirds must be given compensation for the loss they incurred since the invasion of 1974. A referendum was organised where the majority of Greek Cypriots rejected it overwhelmingly whereas the Turkish Cypriots accepted it. As a result the plan ceases to exist for the moment. Looking at the European Convention of Human Rights and the European Court of Human Rights, the European Court has taken on the side of the Greek Cypriots. The Court has held Turkey in violation of many articles mainly in that of Article 1 Protocol 1 with regard to property.

The question that arises is whether the Annan Plan is compatible within the European Convention. Should all refugees return to claim their properties or should just one third be allowed? Many resolutions of the United Nations have repeatedly demanded that refugees be allowed to claim their properties.⁴¹ Article 1 Protocol 1 specifically states that each and every individual human being be entitled to ‘the peaceful enjoyment of his

⁴¹ As earlier I mentioned

possessions'. At the same time it emphasises that no one should be deprived of his possessions except if it is in the interest of the public. For the above reasons Article 10 of the Foundation Agreement of the Annan Plan basically is incompatible with the European Convention of Human Rights. By just having one third of the population returning back to their property proves that once again the displaced are being deprived of their rights to property.

Another major blow to this is that once the agreement is signed none of the refugees will be able to take their cases to the European Court of Human Rights if they are not satisfied with the outcome in the long term and the Courts will have to strike out previous judgements. Basically their underlying rights will be destitute.

Third Party Property Rights in Northern Cyprus

Before the Annan Plan was brought forward, the Turkish Army was selling properties to international citizens mainly Britons. The questions that arise are. What are the rights of the third parties and how does the plan help in understanding more on the situation. At this moment there is no case-law to help us understand more, however if we take the European Convention within the context of Article 1 of Protocol 1 it is fair to say that the original title owner is the Greek Cypriot who was displaced thus is the true and original owner. In the Plan it is stated that if someone is inhabiting the property of a Greek Cypriot, then the displaced refugee must wait years so that they could re-locate a new home to that person. However if someone has built a home and has expanded more than the price of the property he will be allowed to remain there, and title deeds will be exchanged. What happens, however, when a third party buys a property illegally in good faith and builds a villa? In the case of *Apostolides v Orams*⁴² the Nicosia District Court found in favour of the applicant and ordered the demolition of the house and the swimming pool which was built on a displaced Greek Cypriot owner's land. The case at this stage is in appeal at English Courts and a decision will be given in the future. Should

⁴² *Apostolides v Orams*, Nicosia District Court, 9 November 2004

the applicant win in English Courts then more Greek Cypriots will be taking future cases further to the courts.

Paragraph 8 of the UN Secretary General's report to the UN Security Council stresses that the increase of litigations in property cases 'poses a serious threat to people-to-people relationships' however, the Acting Government Spokesman, Mr Marios Karoyian disagreed. He stated that "the right of every individual to claim his own property is indelible, it is safeguarded by international conventions, by international treaties and it is a fundamental principle of international law." He also commented on the sale of Greek-Cypriot properties. He emphasised that the sale is leading to an aggravation of the situation and as a result the international community must employ a moratorium on the illegal sale of Greek Cypriot properties in the occupied area.⁴³

⁴³ http://www.cyprusemb.se/Dbase/cypemb/svenska/archive_305.asp

Home

Home is of a fundamental right in which individuals form a family and identity. At the same time the term home is associated with a feeling of security and shelter. Equally fiercely debated was the issue of 'home'. How is home dealt with in the Annan Plan? This thesis examines the issue of 'home' from four different aspects; the Greek Cypriots who lost their homes since 1974 and want to return back, the Turkish Cypriots who lost their homes in the Republic of Cyprus; the Turkish Cypriots who have lived in the houses of the Greek Cypriots for many years; the rights of descendants whose parents had a home in the north but they are not alive any more; the issue of settlers and their rights to home. Before we expand on our arguments we have to define what 'home' means. Although there is no exact definition of home it is provided that it can be argued that it is defined as where a person 'lives and to which he returns and which forms the centre of his existence' as Lord Millett put it in *Uratemp Ventures Ltd v Collins*⁴⁴. Article 8 of the European Convention on Human Rights is the corresponding article in the safeguard of home within the context of human rights which includes the right to respect for home.⁴⁵ In the French version of the European Court of Human Rights home was described as 'domicile'. The right to home is also protected by article 12 of the Universal Declaration of Human Rights⁴⁶ as well as by article 17(1) of the International Covenant of Civil and Political Rights⁴⁷.

Annan Plan on Home

In the 1974 invasion, half of the population fled northern Cyprus to the South and as a result both communities (Greek Cypriots and Turkish Cypriots) lost their homes that they

⁴⁴ [2001] UKHL 43

⁴⁵ Everyone has the right to respect for his private and family life, his home and his correspondence.

⁴⁶ No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation

⁴⁷ No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

used to live in before the invasion. Thirty two years later, Cyprus is still divided. Many are still waiting for the day that they will be able to return to their homes. Although there are many who have perished, their descendants are anxiously waiting as well, that once there is a solution they will be able to return to their fathers' homeland. The Annan plan states that only one third will be able to return back, thus not all Greek Cypriots will be able to live in their homes that they left behind in 1974.⁴⁸ A Greek Cypriot at the same time will not be able to return back to his home even in the areas which are supposedly to be returned as the Secretary-General has allowed the illegal occupier to choose where to be re-housed or even choose to stay there forever. In the Plan, the Secretary General states that the settler can choose where to be re-housed and as a result the Greek Cypriot immediately loses his home once again as he will have to live somewhere else.

Before 1974 there were some Turkish Cypriots who lived in the Southern part of Cyprus. They had their homes and although they were rivals with the Greek Cypriots some were friends with each other. However after the invasion they had to be taken to the Northern side to avoid bloodsheds between the two communities. As a result a majority of Greek Cypriots lost their homes and about 16% of Turkish Cypriots lost their homes back in the south. What does home stand for, for these two communities?

Although there is no actual definition of 'home', each case is decided on its own merits. In the *Loizidou* case the judge held that a home is 'an area of a state where one has grown up and where the family has its roots but where one no longer lives'.⁴⁹ However in *Gillow*⁵⁰ case the Court held that home can also be extended to the place where one intends to live. The above two cases brings forward on the first issue regarding with the situation of the Greek Cypriots who had home in the north and since the invasion they no longer live there. In *Cyprus v Turkey* the court held that the refusal to allow the return to their homes resulted in an interference, thus a violation of Article 8. In *Demades* case the applicant explained that the house in Northern Cyprus was his home and one day he

⁴⁸ Article 10 of the Foundation Agreement of the Annan Plan

⁴⁹ *Loizidou v Turkey* (merits), op. cit., paragraph 66

⁵⁰ *Gillow v UK* [[Application no. \[9063/80\]](#)]

intended to reside there permanently. He also explained that it was used by him, his wife and children on a regular basis as well as for holiday purposes. The Court noted that it may not always be possible to draw precise distinctions whether a secondary residence could be regarded as home, however a person can still form strong emotional ties with it and treat it as his home. For the above reason it concludes that there has been a continuing violation of Article 8 of the Convention by denying the right of the applicant in respect of his home.⁵¹ The case is important due to the fact that the plan once being modified it ensures that those who would be reinstated to their properties could in the long term use it as a secondary residence for holidays. For the above reasons there would be no violation under Article 8 of the Convention. Thus, if in the case of Demades, the court accepts that secondary residence can be regarded as home, then a Plan that ensures that the displaced will have some kind of residence, should also be within the context of home under Article 8.

On the other hand, we have the Turkish Cypriots who have lived in the north for so many years. They have formed a family and although they live in a home that does not belong to them this is the home they know. In *Buckley*⁵² the Commission stated that 'Home' is an autonomous concept which does not depend on classification under domestic law. Whether or not a particular habitation constitutes a 'home' which attracts the protection of Article 8(1) will depend on the factual circumstances, namely, the existence of sufficient and continuous links. "The factor of 'unlawfulness' is relevant rather to considerations under paragraph 2 of that provision of 'in accordance with law' and to the balancing exercise undertaken between the interests of the community and those of the individual in assessing the necessity of any interference". Thus, the home the Turkish Cypriots are living in can be classified as home, even though they are living in unlawfully.

Then there is the other scenario which involves the descendants. Their parents may have since been deceased and their offspring would like to go back and re-establish a home. The issue of inheritance qualifies as a 'possession' under Article 1 of Protocol 1 therefore

⁵¹ Demades v Turkey [paragraph 37]

⁵² Buckley v UK [23 E.H.R.R. 191]

if a descendant wants to live in the home he could only use the above article on property as he never lived in the house thus he cannot argue that it is his home.

A major issue that concerns everyone is the issue of settlers and their rights to home. It is clear that Turkey throughout the years has sent many illegal settlers to live in the houses of the displaced. In the Annan plan, the Secretary- General allows the settlers to choose their residence. This aspect however gives rise to concern, since if more settlers could stay then fewer Greek Cypriots will be reinstated to their homes and properties. This has created discomfort and disappointment amongst many refugees who once again may have their hopes dashed from ever returning back to their homes.

The Al Khasawneh Report, which was adopted by the UN Sub- Commission on Promotion and Protection of Human Rights in 1997, focused on the issue of settlers. It stated that ‘another problem related to prolonged military occupation involves the continuation of the policy of implanting settlers in the aftermath of a peace agreement underlying a territorial settlement which brings military occupation to an end. Such agreements cannot, by their nature, deal with this complex issue adequately or explicitly because they are often concluded in a political and military atmosphere in which the balance of power weighs heavily against the inhabitants or an occupied territory.’⁵³ Thus, the question remains. Should the settlers be allowed to stay in a state and live in the homes of the displaced? International law states that settlers should be sent back to their homeland as their presence is illegal. UN Resolution 1987/19 of the Sub-commission on Prevention of Discrimination and Protection of Minorities condemned the ‘implantation of thousands of settlers from Turkey in the occupied territories in Cyprus.’⁵⁴ In addition, Resolution 3212 (XXIX)⁵⁵ demanded that ‘all refugees should return to their homes in safety.’

⁵³ <http://www.alfreddezayas.com/Articles/cyprussettlers.shtml>

⁵⁴ http://www.hri.org/Cyprus/Cyprus_Problem/hr/hr_18.htm

⁵⁵ General Assembly Resolution 3212 (XXIX) November 1974

European Convention and European Court of Human Rights

Article 8 involves not only the right to respect home but also the formation of family. For an applicant to successfully win his case under this article he must provide sufficient information and prove that the place he was living was his home and that he had no intention of moving out or re-establishing another house. In our situation, we have people fleeing their homes in order to save themselves from being slaughtered by the army who had invaded their country. Thirty two- years later, people have re-established themselves, however they still want to go back to their homes where they were raised.

In the *Xenides-Aresti*⁵⁶ case the court found Turkey guilty of violating Article 8 in that the applicant had been unable to gain access to and also to use and enjoy her home. The *Blecic*⁵⁷ case disputed the issue of refugees in their challenge of getting back their home under Article 8 of the European Convention of Human Rights. The applicant in this case lived in Croatia since birth. When her husband died she decided to go to Rome to visit her daughter. However, while she was there, an armed conflict occurred. At the same time, the Government stopped paying her pension so she decided to stay with her daughter. In addition, she discovered that someone had squatted in her flat with his family. The applicant lodged a complaint that her right to respect for home was violated. The government claimed that they did not interfere with her right as no one evicted her from the flat; she voluntarily abandoned her flat. For that reason it could not be argued that the flat in question was the applicant's home for the purposes of Article 8 of the Convention.

The applicant explained that she always considered the flat as her home and she had the intention of returning to it. She supported her claim by stating the fact that she left her furniture and her personal belongings behind there, as proof of her return. She also

⁵⁶ [Application no. 46347/99]

⁵⁷ *Blecic v Croatia* judgment of 29 July 2004 59532/00 [2004] ECHR 397

explained that the war did not make it easy for her to return. When the war stopped she had a health scare and once again she could not return back to her flat, and when she came back someone else was staying in her flat. The Court held that since she left her personal belongings she intended to return and since she had lived for many years in the flat it constituted her home for the purposes of Article 8 of the Convention. Moreover, the Court had to evaluate whether the interference was justified under Article 8(2) as well as whether it was a legitimate aim and whether it was necessary in a democratic society. The Government contended that there was no justified reason for her not to return. The Courts in Croatia took account of her age as well as her health and were satisfied that her physical condition would enable her to travel from Rome to Croatia. Moreover they took into account of the armed conflict and held that once again it was not a justified reason for her to leave the country as it affected everyone within the state and for the above reasons the authorities terminated her protected tenancy.⁵⁸ Although the Court held that there had been interference under Article 8(1) it was justified under Article 8 (2) and for that reason there was no violation.⁵⁹

In *Slivenko*⁶⁰ the applicants were forced to leave Latvia against their will and as a result they lost the flat in which they had lived for so many years. After Latvia gained independence in 1991, the applicants entered into the register as "ex-USSR citizens". The husband, however, a retired Russian army officer was refused entry into the register for the reason that 'under the terms of the Latvian-Russian treaty on the withdrawal of the Russian troops of 30 April 1994 ("the 1994 treaty")' Soviet military officers as well as their family had to leave. The Government argued that the removal of the applicants had pursued the legitimate aims of the protection of national security and the prevention of disorder and crime. The Court held that 'Latvian authorities overstepped the margin of appreciation enjoyed by the Contracting Parties in such a matter and that they failed to

⁵⁸ [paragraph 63] – <http://www.worldlii.org/eu/cases/ECHR/2004/397.html>

⁵⁹ <http://www.worldlii.org/eu/cases/ECHR/2004/397.html>

⁶⁰ *Slivenko v Latvia* 48321/99 [2003] ECHR 498

strike a fair balance between the legitimate aim of the protection of national security and the interest of the protection of the applicants' rights under Article 8.⁶¹

For the above reasons the court concluded that the removal of the applicants from Latvia constituted an interference with their right to home under the meaning of Article 8 (1) of the Convention. The similarities between the two cases and the situation of Cyprus are very emphatic. In both the applicants are victims and their right to respect for home is intervened. The difference in Blečić is that the applicant left her home prior the invasion whereas the internal displaced in Cyprus were forced to flee from their home as a result of the invasion. Similarly, the applicants in Slivenko were also forced to leave a country they knew since birth. By the mere fact that these applicants as well as the two-thirds of the displaced in Cyprus cannot gain access and use and enjoy it, it constitutes an interference as well as a violation under Article 8 of the Convention.

The Annan Plan – Is It Compatible With European Convention of Human Rights?

People can claim that the plan on the issue of home is even more of a compromise than the issue on property. Many refugees, after the introduction of the plan, will still be refugees as not all will return to their homes and those who will return will not necessarily be established in their previous home. The question of this thesis is whether the plan is compatible with the European Convention of Human Rights and at the same time we question whether the plan ratifies previous violations or adds further to future violations.

United Nation Resolutions and the European Court of Human Rights found Turkey guilty of violating the rights of the two hundred thousands displaced people and demanded that their rights be restored. Kofi Annan through the plan tried to bring forward a solution to the people which would be fair and balanced. However things did not go as planned. People rejected the plan as they were still not satisfied with the outcome. The European

⁶¹ <http://www.worldlii.org/eu/cases/ECHR/2003/498.html>

Court of Human Rights through case-law expressed that all the displaced people should return back to their homes as they are the sole legal owners. The Annan plan only gave the one third the satisfaction of seeing their homes. Alternatively, the plan does not rectify previous violations of Turkey since it does not solve the problems as well as the violations being created by the invasion.

On the contrary, it legitimizes the invasion, punishes the victims once again by not allowing them to return and for this reason this plan in the long term would create further violations as the people will not be able to take their case to courts and no effective remedy will be available for their loss. Secondly, nearly all Turkish settlers will be permitted to remain and be granted housing or financial aid, thus legitimating once again the invasion and its consequences and violating international law treaties which clearly state that settlers are illegal in the aftermath of a military occupation. On the other hand, although there are many inconsistencies in the Plan, it partially tries to safeguard the right of every individual in regards to home by allowing the displaced to reinstate a secondary residence in the north. For the above reasons, it can be argued that it is of partially compatible with Article 8 in regards to home.

Movement/Establishment

In a democratic society it is essential that the freedom of movement and establishment be safeguarded. By having this freedom an individual can be free to move about and choose wherever he wishes to reside. Article 2 of Protocol 4 of the Convention emphasises that everyone has the right to liberty of movement and freedom to choose their residence. Once again, this article is not absolute, thus, giving the power to states to interfere with the right whenever it is in accordance with the law, and is necessary in a democratic society in the interests of national security, or for the protection of the rights and freedoms of others. Freedom of Movement is also included in article 13 (1) of the Universal Declaration of Human Rights⁶² as well as in article 12 of the International Covenant of Civil and Political Rights⁶³. This thesis will investigate whether the plan restricts the displaced in their rights to freedom of movement and establishment. If it does then it will be examined whether the restriction falls within Article 2 Protocol 4 (3) and (4).

Annan Plan in Regards to Movement and Establishment

In the plan there are permanent derogations from the *acquis communautaire* as well as restrictions in the free movement and establishment of Cypriots to the entire territory of Cyprus and restrictions in owning property. The Greek Cypriots are allowed to visit the ‘Turkish Cypriot State’ in percentages with a maximum quota and if they want to stay overnight they must obtain special permission of the Turkish Cypriot authorities and this even includes the refugees who have been displaced since 1974. Article 3 (4) of the Annan Plan states that, ‘until Turkey’s accession to the European Union, a constituent state, may limit the establishment of residence, by persons hailing from the other constituent state.’⁶⁴ However, since Turkey is not in the European Union, freedom of

⁶² Everyone has the right to freedom of movement and residence within the borders of each state.

⁶³ Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

⁶⁴ Article 3 (4) of the Foundation Agreement of the Annan Plan

movement within European Union states is not applicable. Moreover, until the end of the sixth year, limitations will be permissible ‘if the number of residents hailing from the other constituent state has reached 7% of the population of a village or municipality between the 7th and 10th years and 14% between the 11th and 15th years and 21% of the population of the relevant constituent state thereafter.’ Lastly after the second year no limitations will apply to former inhabitants over the age of 65 accompanied by a spouse or sibling. Annan’s restrictions mean that if a Greek Cypriot village is empty today, no Cypriots will be allowed back unless sixteen times as many Turkish Cypriots are allowed to take possession of their properties.⁶⁵ Moreover Greek European Union citizens who have the legal right to reside and work anywhere in the Union will be prevented from residing in Cyprus if their number exceeds five percent of the Greek Cypriot population for nineteen years.

The ‘de-linking’ between the right of return and the right to restitution of property was to ascertain two barriers for the displaced persons. On the one hand they would be subject to strict quotas under the residency issue and on the other hand they would also be subject to limitations on restitution to them of their property. Therefore although some would be able to return, they would not necessarily be reinstated to their homes, thus many could be permitted to return even though they would have nowhere to live. On the other hand, many would be reinstated to their properties as well as to their homes but would be excluded by the residency quotas. For the above reasons, the Secretary - General slightly modified the plan in order to permit those reinstated to their properties to use the homes as a second residence.⁶⁶ Specifically, the actual number of persons who could be eligible to return are (for the first five years however there will be a moratorium with the exception of people aged over 65 years and their spouse).

Between 2010 -2013, nearly fourteen thousand people would be eligible to resettle and by 2019 the maximum number that would be eligible would be around forty five thousand.

⁶⁵ Article 3 Paragraph 7 of the Foundation Agreement

⁶⁶ An International Relations Debacle The Un Secretary-General’s Mission of Good Offices in Cyprus 1999-2004, Claire Palley, Chapter XV, page 167-168

The major flaw of the above numbers is that in practice they would not be able to return to the locations in which they had lived prior to the invasion of 1974, as mentioned earlier on, on the points regarding home and property. Therefore, those who wished to return would eventually have to settle in other locations.

European Convention and European Court of Human Rights

The freedom of movement and the freedom to choose residence are dealt in the context of Article 2 of Protocol 4. The right is limited by the restrictions imposed under article 2 (3) and (4) of Protocol 4 concerning national security or for the protection of the rights and freedoms of others. Once again the restriction is subject to the requirement that it must be necessary in a democratic society and at the same time be justified by the public interest. Freedom of movement within a State is a fundamental right and is included in many international treaties. At the same time it is a fundamental objective in the creation of a unified area of freedom, security and justice. Article 45(1) of the Charter of Fundamental Rights of the European Union states that ‘every citizen of the Union has the right to move and reside freely within the territory of the Member States.’⁶⁷

In *Baumann v France*⁶⁸ the Court held that the right of freedom of movement as guaranteed by paragraphs 1 and 2 of Article 2 of Protocol No.4 is ‘intended to secure to any person a right to liberty of movement within a territory and to leave that territory.’⁶⁹ In *Denizci and others v Cyprus*⁷⁰ the applicants’ movements were closely monitored by the Greek Cypriot authorities. They were not allowed to move freely in the south and as a result they had to report to the police every time they wanted to go to the north to see their family and friends as well as when they re-entered back to the south. The Court held that these restrictions fell under the provision of article 2 of Protocol 4 and constituted an interference with their freedom of movement.⁷¹ The Court as a result found a violation under this specific article since it was not necessary in a democratic society and was neither provided by the law.

The right to return was emphasised also in non-European scenarios as in the case of the Palestinian crisis. Under international law the right to return as well as establishment was

⁶⁷ http://www.europarl.eu.int/comparl/libe/elsj/charter/art45/default_en.htm

⁶⁸ (Application no. 33592/96)

⁶⁹ <http://www.worldlii.org/eu/cases/ECHR/2001/340.html>

⁷⁰ (Application no. 25316/94, 25321/94 and 27207/95)

⁷¹ <http://www.hri.ca/fortherecord2001/euro2001/vol2/cyprusechr.htm>

of great importance. Although international law is not the essence in our thesis, it is important to state that the plan once ratified could eventually lead to a violation of international law treaty. Moreover, UN Resolution 194 stated that ‘the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date’ and that ‘compensation should be paid for the property of those choosing not to return.’⁷² At the same time, there are many cases in which the return of refugees and restitution have been granted. The Dayton Agreement of 1995 preserved the rights of Bosnian refugees to ‘return to their properties or just to receive compensation for those who opted not to return. All refugees and displaced persons have the right to freely return to their homes of origin...’ The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina.⁷³ Similarly a Land Claims Court was laid down to compensate or even return land to those who were dispossessed during the apartheid period.⁷⁴ Article 49 of the Geneva Convention IV specifically states that those who have been evacuated during an occupation ‘shall be transferred back to their homes as soon as hostilities in the area in question have ceased.’

The Annan Plan – Is It Compatible With the European Convention of Human Rights?

The Annan Plan once again tries to come to a compromise solution in order to reunite Cyprus as one. Article 3 (4) of the Foundation Agreement, restricts the freedom of movement, as well as establishment. This constitutes a violation of fundamental human rights law, which includes the European Convention of Human Rights, the Universal Declaration on Human Rights as well as the International Covenant on Civil and Political Rights and many other European as well as International treaties. It is also incompatible

⁷² <http://www.madre.org/articles/me /rightofreturn.html>

⁷³ Article I(1) of Annex 7, General Framework Agreement for Peace in Bosnia Herzegovina, in Office of the High Representative, Bosnia and Herzegovina, Essential Texts 16 (2nd ed. 1998), The U.N. Security Council statement in this respect in U.N. Doc. S/Res/1031 (1995)

⁷⁴ (same as footnote 49)

with the Constitution of the Republic of Cyprus under Article 13 (1) which emphasises that ‘every person has the right to move freely throughout the territory of the Republic and to reside in any part thereof subject to any restrictions imposed by law and which are necessary only for the purposes of defence...’⁷⁵ In a compromise solution there must be a balanced proposal where both communities can accept and live in the long term. In the plan however the proposal lacks balance and fairness as well as justice for the displaced as only a limited number will be allowed to return. For the above reasons, therefore, the plan is incompatible with the European Convention of Human Rights as it does not protect the freedom of movement of the Greek Cypriots but rather it restricts the right. The restrictions, as a result are, neither justified nor necessary for democracy. Instead of preserving the rights of the displaced, by allowing them to return, they confine the freedom of movement. Once again the plan legitimizes the invasion and its consequences. Lastly, the plan does not rectify previous violations and in the long term it would have created future violations if it had been enacted.

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<http://www.cyprus.gov.cy/cyphome/govhome.nsf/0/F8EFE7AA104C1843C2256A720026ECDB?OpenDocument&languageNo=1#Part2>

Judiciary

In a democratic society, the judiciary is of great importance as its role is to preserve justice and fairness to its citizens. When a crime is committed or even when individuals' rights have been violated, it is the Court together with the judges that award damages and thus grant justice. The role of the judges is to uphold national law and to preside independently and impartially over the administration of justice.⁷⁶ It is the responsibility of judges to ensure that all people involved are treated fairly and also receive a fair trial. They must also ensure that the rights of defendants are protected at any cost.

This thesis will focus mainly on the issue of the foreign judges in the Supreme Court. According to Article 6 of the European Convention everyone is entitled to impartial and independent tribunal. Annan V has attempted to satisfy this by appointing three foreign judges in the Supreme Court of the potential state it seeks to create. The aim of any judiciary system is to create the highest order of fairness possibly achievable. Annan seeks to achieve this with three foreign judges in the Supreme Court and in this sense it creates a system that theoretically can function on the highest ideals of the legal system. In theory this is the most ideal and desirable solution, however it might prove to be dysfunctional and non doable when put into practice. It is unlikely that a panel of foreign judges will be able to comprehend the problems faced by a bi-communal society and further be able to fully function in a fair and just way. The reason for this being that though their intentions are just, they can not fully grasp the grievances of those affected by the aspects brought about by the Annan V.

Furthermore Annan V in itself brings about a number of different unfair issues that will not be acceptable, particularly with the Greek Cypriot side. More specifically, relating to the property issue which does not fairly compensate the Greek Cypriot side. A panel of foreign judges will not handle such a situation with an appropriate degree of sensitivity as they will prefer to stick to the outlines given by the plan and hence create an atmosphere of resentment between the two sides. This is something which is not desirable, in a state

⁷⁶ http://www.essex.ac.uk/combatingtorturehandbook/manual/3_content.htm#2

seeking reconciliation. Overall, the plan does not treat both sides the same. Specifically, on the issue regarding property and home, the Turkish Cypriot will get his land back immediately whereas the Greek Cypriot will have to wait for at least five years after the plan is endorsed.

Annan Plan as Regard the Judiciary

Article 6 (2) of the Foundation agreement of the plan states that the Supreme Court will 'comprise an equal number of judges from each constituent state, and three non-Cypriot judges until otherwise provided by law.'⁷⁷ More specifically, the judiciary will comprise of three Greek Cypriot judges, three Turkish Cypriot judges and three foreign judges.⁷⁸ The dynamics of the mechanism of the judicial system function in this manner. If an individual has a legal problem which fails to be resolved in a civil and lower court, he will go to the Supreme Court. If a decision is not reached by the six judges then the impartial foreign judges will come to a final decision. The equal number of judges from each constituent state creates the highest order of functionality and fairness in a judicial civil court and ensures that there is there is no bias amongst judges. The population ratio proportion to ethnic background is of no relevance in this court. The above system of appointing judges though, is unrepresentative of the population of each constituent-state since the Turkish Cypriots are approximately eighty five thousand whereas the Greek Cypriots outnumber them by seven hundred thousand. This poses a potential problem as it is unfair to the Greek Cypriot side and furthermore violates the fundamental concepts of democracy itself. Democracy is the basis of any Republic; its very meaning is the governing of a state by its people through majority vote. However this is extremely unlikely because of the type of cases adjoining the civil court. Provided that the laws of the new state are just and fair to every person involved irrelevant to their ethnic background the judiciary imposed by Annan plan is the best solution in a unified canton

⁷⁷ Article 6 (2) of the Foundation Agreement of the Annan Plan

⁷⁸ This system is similar to the Constitution of Cyprus under Article 133(1) where the judiciary is composed by a Greek Turkish and one neutral judge, who will also be the President of the Court.

state. Article 36⁷⁹ also states that the Presidential Council will appoint judges for a non-renewable term of nine years in accordance with criteria and procedures stipulated in a special majority law.

European Convention of Human Rights and the European Court of Human Rights

Article 6 of the Convention emphasises that ‘everyone is entitled to a fair hearing ...by an independent and impartial tribunal established by law.’⁸⁰ In the case of *Coeme and Others v Belgium*⁸¹, the Court stated that in order to establish that a tribunal can be considered “independent” for the purposes of Article 6 § 1 it must be examined whether it presents an appearance of independence.⁸² In order to assess whether a tribunal can also be considered as ‘impartial’ there are two tests that must be complied with; the first consists in seeking to determine the personal conviction of a particular judge in a given case and the second in ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect.⁸³ Similarly, in the case of *Belilos v Switzerland*,⁸⁴ the Court emphasised that in order for a tribunal to be characterised, in the substantive sense of the term by its judicial function, it must satisfy a series of conditions. First of all the members must be independent. Secondly, the length of their terms of office must be taken into account.⁸⁵

Annan Plan – Is It Compatible With the European Convention of Human Rights?

Many have claimed that the three non-Cypriot judges sitting on the Supreme Court will cause resentment among the majority of the Cypriot people and the judiciary and thus giving the perception that they are incapable of carrying out justice fairly. The mere fact that there will be equal number of judges within each constituent state has the potential

⁷⁹ Article 36 of the Annan Plan

⁸⁰ Article 6 (1) of the European Convention on Human Rights

⁸¹ (Applications nos. 32492/96, 32547/96, 32548/96)

⁸² [see paragraph 120]

⁸³ [see paragraph 121]

⁸⁴ 10328/83 [1988] ECHR 4 (29 April 1988)

⁸⁵ [see paragraph 64]

cause of creating some specific problems. This equals overrepresentation of the Turkish Cypriot side which is outnumbered by the Greek Cypriot population in a ratio of approximately one to nine. This thesis has examined whether it is necessary to have three non-Cypriot judges sitting on the Supreme Court and whether in the long term they could cause deadlocks in the judicial system. Their function is to act as a last resort when a deadlock occurs between the Greek Cypriot judges and the Turkish Cypriot judges. In theory, the three non Cypriot judges satisfy the requirements of impartiality as well as independence in the decision making. In practice however their presence is both unavoidable and unfair as they would make the system more complex and so it would be more difficult to function.

Can Individuals Waive Their Rights?

The political theory of a country is that it is ruled by the individuals that make up its population. Because of their status as humans they are given rights (civil and human) and those rights must be safeguarded by legislations created by the Parliament of the country. Each and every individual must defend his rights and freedoms. They must not be taken for granted as each and every single right is of great importance. In a democratic society human rights are of great essence as people can be allowed to vote or even express an opinion as well as have their possessions safeguarded. This thesis focuses on whether individuals can waive their rights in a scenario such as a referendum.

The philosophical argument behind this is that individuals could in theory waive their rights. In contrast, however, when it comes to core human rights such as basic freedoms (freedom of speech and expression, freedom from torture, right to life and the right to a fair trial) the philosophy of law theorises that individuals should still be safeguarded by the State they belong to irrespective of whether they waive their rights, as these rights are inseparable in the context of democracy.

The Secretary General's call for referendum does in fact put into motion the above problem, because in the case of an affirmative response to the plan the people are in essence waiving their rights (Article 8 in regards to home, Article 1 of Protocol 1 in regards to property and Article 2 of Protocol 4 in regards to movement and establishment), as once the Plan is endorsed, individuals will not be able to take a case to the European Court of Human Rights when their rights have been violated. In this way Article 13⁸⁶ of the Convention will be violated. However, it is the states and hence the plan's which, creates the new state obligation to safeguard the above mentioned important rights. In spite of this no steps whatsoever are taken by the plan to make this possible. It is imperative that the plan at least takes steps to satisfy the rights of

⁸⁶ Article 13 – Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

individuals as they are the most important factors in any plan. The reason for this being that this plan was created by the UN Secretary General in an effort to bring about peace, reunify and finally reconsolidate a country which has been divided for three decades and the possessions, property and lives of those affected have been in abeyance. Its outcome under these circumstances is both frustrating and profoundly disappointing.

Can States Waive Their Rights?

A state is an organized political community, occupying territory, and possessing internal and external sovereignty, which successfully claims the monopoly of the use of force.⁸⁷ The function of a state is to preserve human dignity of individuals. Human rights are above the rights of states; hence a state's ability to derogate human rights should only be carried out under the most extreme of situations⁸⁸. This is different in our case as the plan fails to preserve human dignity. In contrast it creates a multifunctional state that is obligated to derogate ratified human rights laws to compensate for its own failures. It brings tension between the two sides, fails in its mission to reunify and proceeds to compensate for this by obligating the infantile state to waive its rights. Human rights should be preserved to the latter degree of their decree and should be the last resort of compromise.

The core focus of the thesis is whether states can waive rights and if so should they proceed to do thus. Article 1 of the Convention simply binds the signatory parties to secure the rights under the other Articles of the Convention "within their jurisdiction"⁸⁹ therefore the plan premeditatedly goes in contrast to this. It cannot under any circumstances waive rights of individuals since it will contradict international and European human rights law. Furthermore if a state is a member of a specific Convention

⁸⁷ <http://en.wikipedia.org/wiki/Nation-state>

⁸⁸ Article 15 of the European Convention

⁸⁹ Article 1 of European Convention

then it has the obligation to secure human rights and fundamental freedoms.⁹⁰ Specifically the Secretary General, through the plan, is asking the president of the Republic of Cyprus to waive rights by disallowing the two-thirds of the displaced people in ever returning back to their homes. The European Convention of Human Rights, as part of the international law, was meant to establish ‘a common public order of the free democracies of Europe with the object of safeguarding their common heritage of political traditions, ideals, freedoms and the rule of law’.⁹¹ Secondly, the Convention’s aim is to safeguard an individual and thus in order for the Plan to be compatible it must ensure that in the end it aims to safeguard the individual. If it does not, then the plan is held to be incompatible. Finally, when the Member States ratified and signed the Convention they reaffirmed, that, ‘their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand, by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend.’⁹² Similarly, Article 53 of the Convention states that ‘nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.’

Finally can states actually waive rights? In theory they can waive rights when they derogate specific articles through the use of Article 15 of the Convention in times of emergency and at the same time it is specifically written into the treaty. More specifically, in Article 15, it emphasises that ‘in time of war or other public emergency threatening the life of the nation ... may take measures derogating from its obligations under this Convention... provided that such measures are not inconsistent with its other obligations under international law.’ In practice though the states should not waive rights as their main role is to preserve human dignity and at the same time promote human rights throughout their jurisdiction. Finally, the purpose of the European Convention is to

⁹⁰ Cyprus and Turkey are both Members of the Convention and by waiving rights they violate Article 1 as well as their role as the protector of a state.

⁹¹ Austria v Italy 1961 (788/60), paragraph 138

⁹² Preamble of the European Convention

protect the rights of an individual against the state and if a state is allowed to waive rights of an individual then it denies the individual the right to take his case to the European Court. For the above reason, the states should not be allowed to waive rights unless it is in times of emergency as specified in Article 15 of the Convention.

Conclusion

In conclusion, the occupation of Cyprus for thirty-two years was finally meant to be concluded in a reunification plan that was put forward by the UN Secretary General Kofi Annan. This plan's function was to bring about a viable resolution to all the problems that would be faced by the reunified population of Cyprus. However, the main purpose of this thesis was to analyse the compatibility of the plan in respect of its provisions on home, property, movement & establishment as well as judiciary.

After an in depth analysis of these issues, the conclusions which have been drawn include; regarding the issue of property rights, the plan does not bring about any satisfactory solution primarily due to the fact, that only a limited percent would be eligible to retrieve their properties and thus leading to an incompatible conclusion. On the issue of home once again the plan fails to achieve an agreeable outcome, similarly, the freedom of movement and establishment is restricted and even though it is understood that the plan is a compromise, its biggest flaw is that it is non viable in its key points of home and property. Moreover, the issue of judiciary even though in theory is not a problem it has potentials to create loopholes that could constitute a non doable term of the treaty. It must be stated that Annan V is the fifth and final plan proposed by the Secretary General and if agreed upon, it will determine the course of an entire population's life. Considering the delicate political situation of the two concerned sides, a non viable plan could have catastrophic results with fear of the outbreak of a civil war.

A particular shortcoming of property legislation is that two thirds of the displaced, whose property lies on the Northern part of Cyprus, will lose their property and any compensation will have to come only from their own Government (Republic of Cyprus). Under these circumstances this means depreciating the strong economy of the Republic of Cyprus so as to level it with that of the occupied northern Cyprus. This has been met with cries of outrage from the Greek Cypriots whose life savings will be devaluated by such an action. In effect this means that the illegal occupation of Cyprus by Turkey is not reprimanded in any way. This goes against previous European Court judgements such as

Loizidou v Turkey as well as Cyprus v Turkey which stated that Turkey should pay compensation for the losses that the Greek Cypriots sustained. For the above reasons, therefore, the Annan Plan is incompatible within the context of the European Convention under Article 1 of Protocol 1.

On the issue of home, similar to that of property, the Annan plan once again does not fully satisfy fair treatment principles and its decrees are not fully corresponding to those of international law and European Convention. Despite this fact and although the Greek Cypriots will not get their actual home, they will be compensated with a secondary residence. Home is an issue of vital importance as it is the elementary particle that functions as the core of any society. Displacement of home therefore constitutes a significant shortcoming in any plan, as this displacement implies a major inadequacy of the most basic of human rights, the right to a safe environment, created by home. Its most significant failings being that a great number of displaced people will never be able to go back to their homes and a large proportion of the rest might only go back in twenty years. A time period, which is so long that in essence it effectively means, that many legal owners will simply not live long enough to see their homes again. Furthermore, Annan V is so complex in its interpretation of the articles concerning home, that it creates a number of different loopholes that could easily result in loss of the construction that makes up home, made more likely with the extensive time period evolved between reposition. Thus, for the above reasons, the Plan is partially compatible with the Convention under Article 8.

In Article 2 of Protocol 4 of the Convention emphasises that everyone has the right to liberty of movement and freedom to choose their residence. In the state envisaged by the Secretary-General, this is compromised because movement is limited and therefore freedom to choose residence is restricted. It must be emphasised that this situation is specifically created by the ruling of the plan itself. This can be considered a major flaw in the plan as it is compromising a vital law in the rights of individuals which are recognised by both European and International law. A state does have a margin of appreciation when it comes to specific restriction of movement. Arguably however this is a plan that creates

an artificial state whose sovereignty is from the very beginning a compromise and in this sense it is not fair to impose such yielding of rights. For the reasons stated above, the plan is incompatible in connection with Article 2 of Protocol 4.

The role of the judges is to promote and protect civil rights and liberties. Plan V has provided a number of different steps and safety nets in ensuring that the system remains as just as possible. It accomplishes this in a satisfactory way which is efficient because it ensures that the legal and human rights of individuals will be safe in the hands of the Supreme Court. This is clearly mentioned in Article 6 (1) of the Convention. The reason for this is that the role of judges will ensure that there is a fair hearing through their independent and impartial decisions. Lastly, the specific Article binds the states to ensure that their judges are independent as well as impartial and in this way the Annan Plan fully satisfies compatibility with European Convention.

Law does not solely comprise of factual decrees which dictate the course of ruling of individuals in power and that of states. Laws are based on theories of mankind which make up an elusive and incredibly important characteristic of law that forms the foundation upon which laws themselves are built. According to legal decree, states do in fact have the right to waive their rights but only in state emergency or under any unavoidable circumstances which might require such an action. The Annan plan however in itself should not have that power. Human rights should be above all. Such rights should not be compromised to fit the outline of a plan rather the plan itself should have been tailored to fit around them.

Human rights are sacred, without human rights states could not function properly as they dictate functionality of law and constitute democracy. Human rights are the very fibre of democracy; they create social order, distinguishing us from the animal world and also define the very essence of our humanity.

Overall, the comprehensive settlement of the Cyprus Problem (Annan V), in some ways is compatible and in others it is incompatible to the European Convention. It is

compatible in the aspect of judiciary. This is important as it ensures that the human rights of individuals will be dealt within a fair and just way and as a result the compatibility of the plan may be deemed as a huge success. Furthermore, in regards to home, the plan partially satisfies the requirements of the European Convention. Therefore, it is partially compatible. However, as far as the issues concerning property and movement, the plan does not satisfy compliance with the Convention and in this way, therefore, it is incompatible.

Hence, this plan is a compromise solution. The plan overall satisfies the basic principles of the European Convention which include the right to home and of property. The plan's major shortcoming is that of the restriction put on movement and establishment. This directly opposes Article 2 of Protocol 4 and therefore this is deemed totally incompatible to the European Convention. In conclusion, the Plan satisfies partially the Convention, as it meets some of its requirements but not all.

Bibliography

Case Study:

- ✚ **Cyprus v Turkey Application no. [25781/94]**

- ✚ **Loizidou v Turkey [1996] IHRL 112**

- ✚ **Application no 46347/99 Xenides-Arestis v Turkey**

- ✚ **Denizci and others v Cyprus Application no 25316/94 and 27207/95**

- ✚ **Arif Mustafa v Minister of the Interior, through Limassol District, Case 125/2004, 24 September 2004**

- ✚ **Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey. (application no. 16163/90)**

- ✚ **Demades v Turkey (Application no. 16219/90)**

- ✚ **Apostolides v Orams, Nicosia District Court, 9 November 2004**

- ✚ **Papamichalopoulos and Others v Greece, Judgement of 24 June 1993 Series A, No.260-B**

- ✚ **Gillow v UK Application no. [9063/80]**

- ✚ **Baumann v France (Application no. 33592/96)**

- ✚ **Belilos v Switzerland 10328/83 [1988] ECHR 4 (29 April 1988)**

- ✚ **Coeme and Others v Belgium (Applications no. 32492/96, 32547/96, 32548/96)**

- ✚ **Slivenko v Latvia 48321/99 [2003] ECHR 498**

- ✚ **Blecic v Croatia judgment of 29 July 2004**

- ✚ **Buckley v UK [23 E.H.R.R. 191]**

- ✚ **Uratemp Ventures Ltd v Collins [2001] UKHL 43**

Statutes :

- **European Convention on Human Rights – Article 1, 6[1], 8, 15 P1[1] P4[2]**

- Universal Declaration of Human Rights - Article 12, 13[1], 17
- International Covenant of Civil and Political Rights – Articles 12, 17
- Annan Plan
- Constitution of the Republic of Cyprus 1960 – Article 133
- General Assembly Resolution 3212 (XXIX) November 1974
- Sub-Commission on the Promotion and Protection of Human Rights, UN Doc. E/CN.4/Sub.2/2004/22

Books:

- ✚ **Malcolm D. Evans, Blackstone's International Law Documents 6th Edition,**
- ✚ **Ali Riza Coban, Protection of Property Rights Within The European Convention on Human Rights**
- ✚ **John Wadham, Helen Mountfield and Anna Edmundson, Blackstone's Guide to The Human Rights Act 1998, Third Edition, Chapter 8, pages 118-212**

- ✚ **Javaid Rehman, International Human Rights Law A Practical Approach**

- ✚ **Claire Palley, An International Relations Debacle, The UN Secretary-General's Mission of Good Offices in Cyprus 1999-2004**

- ✚ **Clare Ovey & Robin C.A. White, Jacobs & White European Convention on Human Rights, Third Edition**

- ✚ **Mark Janis, Richard Kay, Anthony Bradley, European Human Rights Law, Text and Materials, Second Edition**

- ✚ **Alexandros Lordos, Can the Cyprus Problem be solved? Understanding the Greek Cypriot response to the UN Peace Plan for Cyprus, An evidence-based study in co-operation with Cymar Market Research Ltd**

- ✚ **Pilaszek Dagmara, The Impact of the European Court of Human Rights Judgment in the case Blečić v Croatia on the right to home and protection of refugees and internally displaced persons in Europe, LLM 2004**

Newspapers:

❖ **Cyprus Weekly**

❖ **Cyprus Mail**

Websites

- ✓ <http://www.hr-action.org/archive4/eurocourt1.html>
- ✓ <http://www.echr.coe.int>
- ✓ <http://www.helleniccomserve.com/ahiannanplan03may05.html>
- ✓ <http://www.hr-action.org/action/loizidou.html>
- ✓ http://www.cyprus-un-plan.org/UNSC_SG_Reports2003Cyprus.pdf
- ✓ <http://www.cyprus-un-plan.org/TranscriptOfPressConferenceBySecretaryGeneralKofiAnnanAtUNHQ130304.htm>
- ✓ http://www.cyprus-un-plan.org/Statement_by_Secretary_General_March_31.pdf
- ✓ <http://www.un.org/News/Press/docs/2004/sgsm9264.doc.htm>
- ✓ <http://www.trncpio.org/ingilizce/DOSYALAR/north%20cyprus%20weekly/29%20Eylul-205%20Ekim.htm>
- ✓ http://kypros.org/Occupied_Cyprus/Loizidou_v_Turkey_1997_23_EHRR_513.htm
- ✓ <http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmselect/cmcaff/113/113we12.htm>
- ✓ http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Foreigners_and_citizens/Nationality/Documents/National_legislation/CyprusTreatyConcerningEstablishmentofRepublicofCyprus.asp
- ✓ <http://www.cyprus-conflict.net/Treaties%20-1959-60.htm>
- ✓ <http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmselect/cmcaff/113/113we38.htm>
- ✓ <http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmselect/cmcaff/113/113we56.htm>
- ✓ [http://press.coe.int/cp/2005/185a\(2005\).htm](http://press.coe.int/cp/2005/185a(2005).htm)
- ✓ <http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmselect/cmcaff/113/113we17.htm>
- ✓ <http://www.cyprusaction.org/humanrights/echr/xenidi.html>
- ✓ <http://www.un.int/cyprus/jacov/htm>
- ✓ <http://unannanplan.agrino.org/>
- ✓ <http://www.hri.ca/forthecord2001/vol2/cyprusechr.htm>
- ✓ <http://www.echr.coe.int/Eng/Press/1999/Sept/reference%20Cyprus%20v%20Turkey%20epress.htm>
- ✓ www.oxi-no.org
- ✓ <http://www.hri.org/news/cyprus/cna/2004/04-04-08.cna.html#01>
- ✓ <http://news.bbc.co.uk/1/hi/world/europe/2839603.stm>
- ✓ <http://news.bbc.co.uk/1/hi/world/europe/3649437.stm>
- ✓ <http://news.bbc.co.uk/1/hi/world/europe/3656753.stm>
- ✓ <http://news.bbc.co.uk/1/hi/world/europe/3656653.stm>

- ✓ <http://www.westlaw.co.uk>
- ✓ http://www.cyprus-un-plan.org/DIDIER_PFIRTER_INTERVIEW_ON_PROPERTY_ISSUE.pdf
- ✓ <http://en.wikipedia.org/wiki/Nation-state>
- ✓ http://www.essex.ac.uk/combatingtorturehandbook/manual/3_content.htm#2
- ✓ http://www.madre.org/articles/me_rightofreturn.html
- ✓ http://www.europarl.eu.int/comparl/libe/elsj/charter/art45/default_en.htm
- ✓ http://www.hri.org/Cyprus/Cyprus_Problem/hr/hr_18.htm
- ✓ <http://www.worldlii.org/eu/cases/ECHR/2001/340.html>
- ✓ <http://www.hri.ca/fortherecord2001/euro2001/vol2/cyprusechr.htm>
- ✓ http://www.cyprusemb.se/Dbase/cypemb/svenska/archive_305.asp