

Unconstitutional and Unfair Trial in Cyprus

The island of Cyprus has been divided into two parts as north and south since 1963 and because of this division, Turkish Cypriot refugees who moved to the north and Greek Cypriot refugees who moved to the south had to leave their homes and other immovable properties. All these refugees certainly look forward to a comprehensive settlement which will give them the chance to either return to their old places or at least receive compensation instead.

The Annan Plan was a chance for a comprehensive settlement in Cyprus but after the simultaneous referenda on the 24th of April 2004, although 65 % of the Turkish Cypriots said “yes”, it was rejected by the Greek Cypriots.

After the referenda, the Greek Cypriot leaders who encouraged their citizens to say “no” in the referendum in South Cyprus had to find some other ways to show their citizens that to reject the Annan Plan had brought them to a more powerful position especially in the property issue.

The alternative way found was to bring suits against Turkish Cypriots and foreigner individuals living in North Cyprus and using old Greek Cypriot properties. One of the most popular cases of this sort was the “Hurma” case. This case was about the old property of a Greek Cypriot situated in the north which was used as a restaurant by a Turkish Cypriot citizen. Although the immovable property was situated in North Cyprus, the suit was brought to the courts of the Greek Cypriot Administration in the South.

The Greek Cypriot Administration is a member of the European Union representing the whole island and the constitution which is said to be in force in the south is the 1960 Constitution of the Republic of Cyprus. According to article 159 sub section 3, “where in a civil case the plaintiff and the defendant belong to different Communities the court shall be composed of such judges belonging to both Communities as the High Court shall determine”. But in the “Hurma” case, because there was only one judge who was a Greek Cypriot, the composition of the court was a clear breach of this article. Article 159 of the Constitution is a very important article because it not only regulates the composition of the courts in the Republic of Cyprus but it also formulates the basis of fair trial in this country. According to the main principles of the Constitution, without having two judges who belong to two different communities, a fair trial will be impossible in civil cases where the plaintiff is a Greek Cypriot and the defendant is a Turkish Cypriot.

The justification of the Greek Cypriot Administration for this unconstitutionality is the “extra ordinary” conditions in Cyprus. According to the Administration, because of the extra ordinary conditions in Cyprus it is impossible to employ Turkish Cypriot judges in the courts. But it must be stressed that these conditions that “force” the Administration to act unconstitutionally are just the same for the Turkish Cypriots who said “yes” in the referendum for a comprehensive settlement and who continue to use old Greek Cypriot immovable properties after the referendum. It is completely lawful for a Turkish Cypriot to use old Greek Cypriot properties in the North just as it is lawful for a Greek Cypriot to use old Turkish Cypriot properties in the South. We must never forget that this is an outcome of the unsolved Cyprus problem and neither the plaintiff nor the defendant can be held responsible for what has happened on the island.

But if the Greek Cypriot Administration is ready to try Turkish Cypriots in its courts then surely the same Administration must be ready to act in accordance with its own constitution and especially the principle of fair trial. We mustn't forget that unfair and unconstitutional trial of the Turkish Cypriots is not only a breach of the Constitution of the Republic of Cyprus but is also a breach of the European Convention of Human Rights; and as a member of the European Union the Greek Cypriot Administration is under the obligation of applying the Convention in the areas under its effective control without any discrimination.