

**Cyprus Problem Zero Hour:
The Thorny Issue of Property
[Κυπριακό Ώρα Μηδέν:
Το Αγκάθι του Περιουσιακού]**

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The book entitled '*Cyprus problem zero hour: The thorny issue of property*' deals with a difficult aspect of the Cyprus problem, that of property, as the title suggests. It is addressed to a wide public, which includes not only politicians, academics, technocrats and people whose properties are affected, but also anyone who is interested in the Cyprus problem. It aims at presenting the property issue in a concise and comprehensive way. As Mr. Symeou states, the book seeks to (a) help towards a better understanding of the property issue, (b) classify and simplify its various parameters, (c) lay out number details, data and possible scenarios, (d) locate past mistakes and overt dangers for the Greek Cypriots, (e) suggest specific solution ideas, (f) draw the red lines of the Greek Cypriot side, and (g) demolish myths that go round from time to time. It is worth noting that the academic and professional training of the author and his practical occupation with the property issue are conducive to writing a book with the aims stated above. Mr. Symeou is a lawyer and has served in the Land and Surveys Department of the Republic of Cyprus for 40 years. In addition, he headed or participated in the Greek Cypriot task force for the property issue in the context of the negotiations for the Cyprus problem, during 2008-2012 and 2014-2015.

Structurally, the book can be divided in three parts.

In the first part, the author presents the firm positions of the Greek Cypriot and Turkish Cypriot sides, the Guterres framework, the basic case law of the European Court of Human Rights (ECHR) relating to the property issue, as well as relevant aspects of the European Union law (EU law). As regards the positions of the two sides, Mr. Symeou starts by making the point that the agreed solution framework of the Cyprus problem is the Bizonal Bicomunal Federation. In this respect, the position of the Greek Cypriot side on the property issue has been and continues to be that (a) priority must belong to the owner, (b) there should be no ceilings to the right of resti-

tution, and (c) any limitations to the exercise of the right to property must be temporary. By contrast, the position of the Turkish Cypriot side has been and continues to be that (a) priority must belong to the user, (b) there should be ceilings to restitution so as to ensure a 'clear land majority', and (c) there must be permanent limitations to the exercise of the right to property. As regards the Guterres framework, the author notes that the two sides disagree not only on its interpretation, but also on its precise wording. He maintains that the most prevalent version of it is the following: In the areas of territorial adjustments, i.e. the areas that would be liberated, priority should be given to the owner, but not 100%. In the areas outside the territorial adjustments, priority should be given to the user, but not 100%. At this point, it has to be noted that the above version is not the one reflected in the Guterres document as delivered to the two sides on 30/6/2017. It resembles the version of the document as recorded by the Greek Cypriot side following the oral clarifications given by Mr. Espen Barth Eiden on 4/7/2017. The author succinctly singles out certain issues that arise from the above. What is the content of the terms 'owner' and 'user'? What does it mean that priority should be given to a certain person? In which cases will the owners and users have no priority in areas of territorial adjustment and areas outside territorial adjustment respectively? Mr. Symeou's position is that the Greek Cypriot side must insist on a strict definition of the word 'user', on restitution being compulsory where it is deemed to be possible and on cases of exemption being clearly defined. Likewise, he argues that a collective right to 'clear land majority' for the Turkish Cypriot side should not be accepted and that there should be no ceilings to the right of restitution -as a rule at least. Concerning the ECHR case law, the author lays emphasis on the *Demopoulos a.o. v. Turkey*. In this case the ECHR recognised for the first time the Immovable Property Commission -which is based and functions in the occupied areas- as an effective legal remedy of Turkey, i.e. as a national legal remedy to which the owners of affected properties in the occupied areas must resort before and in order to apply to the ECHR. The court also recognised that the users have acquired certain rights worthy of protection, since after the passage of so many years it would be arbitrary and unfair to impress on Turkey to provide restitution in all cases. As regards EU law, the author notes the effect this could have, especially the freedom of capital movement, on the support of the Greek Cypriot positions. Mr. Symeou seems to believe that, from all the above, a series of *faits accomplis* emerges, on which the solution of the property issue shall be built.

In the second part, these facts are presented and approached in a critical light. The

author starts by stating that restitution, exchange and compensation are concerned as available remedies, while he notes that alternative property, i.e. the exchange of property with other property in the same constituent state, was put forward during the negotiations. An issue on which the author also lays emphasis is whether the right of priority for the owners and users in areas within territorial adjustments and outside territorial adjustments respectively would mean that they have an absolute right to choose remedy or they have no right at all to choose remedy. He personally maintains a middle ground approach. An expression of it is the support of the categorisation of properties, accompanied by a proposition for a specific approach to each category. Another expression is the support of the remedy of alternative property versus, in particular, the remedy of compensation. Mr. Symeou also supports the view that a series of alternative remedies could be used, such as the long-term lease of property to the user, the granting a life-long right of residence or usufruct to the user, and the granting of ownership to the user with a priority right to the owner in case the former decides to sell.

The difficult issue of compensation is examined next. The basic question that arises is how to define the compensation due. The author states that the ECHR case law does not give any guidelines on the matter, while noting that, depending on the parameters and factors taken into consideration, the compensation due is subject to great changes. In order to prove this, the author presents two hypothetical scenarios for calculating compensation using different factors, whereby different amounts are produced. He also presents the compensation amounts claimed by the Greek Cypriots who apply to the Immovable Property Commission and the substantially lesser amounts awarded by the latter. It is argued that the use of the market value as a basis of calculation for the compensation owed should not be accepted by the Greek Cypriot side. The current value and the nominal value are preferable as bases for compensation. He also argues that, in any case, there should be provision for loss of use compensation and that during the latter's calculation the benefits already received by the person entitled to it shall be taken into account. Yet another major question raised is who will shoulder the expense of the compensation. According to the author, a large part should be borne by Turkey, while it is expected that the Republic of Cyprus will be called to provide part of the compensation related to the Turkish Cypriot properties in the free areas. Part of the revenues from hydrocarbon exploitation could be used relevantly.

Mr. Symeou goes on to stress the importance of gathering and using real numbers

and data concerning the property issue. In this context he proceeds to make an interesting exercise on paper. Initially, he presents the area and percentage of the Greek Cypriot and Turkish Cypriot properties (a) in the occupied areas, (b) in the buffer zone, and (c) in the free areas as applicable in 1974. Then, he presents the changes that would affect these figures in five different scenarios.

In the first scenario a 'total' exchange of Greek Cypriot and Turkish Cypriot properties of equal area takes place. In the second scenario a ceiling of 1/3 on the area of the properties to be restored is imposed. In the third scenario concurrent ceilings of 1/3 on the area and 1/3 on the value of the properties to be restored are imposed. In the fourth scenario all the properties 'apportioned' in the two constituent states are exchanged. In the fifth scenario all the properties 'apportioned' in the Republic of Cyprus and in the 'TRNC' are exchanged.

Mr. Symeou suggests, in the context of confidence building measures, an exchange of numbers and data in relation to the properties in the free areas and the occupied areas to take place and technical support in computerising the properties in the occupied areas to be provided by the Greek Cypriot side to the Turkish Cypriot side. Likewise, he suggests a committee of technocrats to be set up, in order to deal with the property issue on the basis of gathering and using real numbers and data. Finally, he stresses the need for political decisions to take numbers into account and be geared towards them, so as to show practical results and avoid sudden developments that would prove, as has happened before, adverse for the Greek Cypriots. Furthermore, Mr. Symeou refers to the significance of having in place an effective implementation mechanism for all things included in the solution of the property issue. It should be noted that the setting up of a joint Property Commission with equal participation of the two communities has been agreed upon, which would be tasked with the implementation of the relevant provisions. The conferral of a particularly broad scope of powers to this commission is proposed.

The author supports that the institution of land redistribution could be used as part of the solution of the property issue. Indeed, illustrated scenarios of property management are presented in a hypothetical area of a solution case, in order to demonstrate the advantages of land redistribution. He proposes, as an extension, the creation of a Redistribution, Development and Housing Department under the umbrella of the Property Commission, which would have a broad scope of powers related to the redistribution process.

In the last unit of the second part, the author focuses on the importance of aware-

ness by the people for the solution of the Cyprus problem to become feasible. The starting point here is that any solution agreement should be put before the two communities in simultaneous and separate referenda. In order to have a positive majority in both referenda, public opinion should (a) be sounded out early enough and its concerns be taken into consideration to the greatest extent possible, (b) be prepared for and familiarised with the Bizonal Bicomunal Federation and its particularities, and (c) be fully, objectively and timely informed about the solution agreement that would be placed before it. Finally, it is stressed that the maintenance of the status quo cannot lead to any solution or improvement concerning the property issue. To the contrary, it could only have a negative effect on it.

In the third and last part of the book, all the above are summarised under the basic concepts/parameters of the property issue. Due to the extensive analysis so far, it is deemed suitable not to expand further.

It is a fact that the book is written in a simple, concise and comprehensive way. It can be read and understood easily by any person interested in the Cyprus problem, particularly in the property issue. It also truly serves the objectives set by the author as stated above. These are its basic advantages.

To fully understand the property issue, one has to fully understand the Cyprus problem as a whole. And this cannot be done without a thorough and critical examination of the historical, political, legal, even the social aspects of it. It is stated that this is not the purpose of the author and this is not a disadvantage, since it is more than useful to have manuals on the issue addressed to a wide public. Notwithstanding, we consider that a further analysis would be beneficial regarding the points which although they appear and/or are approached as being *faits accomplis* on the political level, they should not be so or indeed they are not. A characteristic example of this is the Guterres framework. As the author himself notes, the two sides disagree not only on its interpretation, but also on its precise wording. It is also a document which, due to its nature, is not legally binding, the two sides have not accepted it as such, while it is a basic principle of the negotiations that nothing is agreed until everything is agreed. It is therefore too risky -if we may use the term- to assume that whatever is stated in the Guterres framework has been agreed by the two sides and should be treated as a binding and unavoidable basis for talks on the property issue.

Moreover, as Mr. Symeou writes, any solution should be applicable in practice. This holds both for its substantive as well as its procedural provisions. The property issue is by nature complicated. It directly affects a significant number of people with

conflicting interests, it has to do with property not only as an economic load, but also a sentimental one, it being intertwined with other aspects of the Cyprus problem. This makes imperative the need for its solution to be as simple as possible. Providing for many alternative remedies, many categories, many criteria, instruments with many and wide powers, obviously offers certain advantages. However, at the same time, it may make things more complicated, even inapplicable or non-feasible. Drawing guidance from examples in other countries, where large scale changes on immovable property have taken place, can be particularly helpful.

In conclusion, the book is a positive example of how to approach not only the property issue, but also every aspect of the Cyprus problem and the Cyprus problem as a whole: multi-prismatically and critically, with exercises on paper, political strategy and technocratic analysis. This is undoubtedly an important addition to the relevant bibliography.

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