

Home (Property) Buying in the TRNC – January 2015

Below is a copy of the speech given by Taner Erginel on this topic in January 2015.

Dear friends,

Thank you for the invitation of ATA. It is an honour for me to speak to such distinguished guests.

Before coming to legal issues I would like to make some observations about Northern Cyprus. I think we all agree that we have a nice Mediterranean climate. However, we cannot say nice things about the administration of our country. If a person does not have any problem with the Government and administration he may have nice life here. Otherwise he may face a lot of problems.

The Turkish Cypriot Community is a peace loving, tolerant community with kind feelings for the foreign residents. The kindness of people for foreigners is sometimes at surprising levels. I would like to give more colour to this claim and tell you a story told me by an English lady living at Arapköy village. She said that they had excellent relations with their Cypriot neighbours. One day she fell from the stairs and broke her leg. Her neighbours took her to the hospital. The next day she was surprised to see that most of the village residents came down to the hospital to visit her. She said she would never expect the same treatment from neighbours in England.

Unfortunately these nice stories end up when a foreign resident have anything to be done with the Government offices. This same lady if she had any problem to be solved by the Government she would not speak the same way. However, even at the Government offices she could find a consolation. She would realise that Turkish people with the same problem are treated the same way, if not worse.

We have to ask then. Why the TRNC Government, the Government of nice people is so negative? When we try to find an answer to this question we have to go back to the years following 1974 Peace Operation. Then the country was full with high spirits. They wished to have the best of everything. Best of democracy. Therefore in 1976 a very democratic election law was passed. Like everything else democracy has its handicaps. It turns to chaos and anarchy if not properly administered. Unfortunately, when we search we find that excessive and spoiled democracy is the cause of many problems here.

In England and in Europe civil servants are appointed and promoted according their merits. Unfortunately, this is not the case in TRNC. They are appointed according their service to the political party they belong. These civil servants are without qualification and do not know how to run the country. They don't have experience and they are not interested to run the country efficiently.

As expected after each election the Government may shift from one party to another. What happens then? Each party coming to power changes all directors and senior civil servants at the Ministries. Directors and senior civil servants are appointed by the political decision of

the new Government. Then you have to ask what happens to the existing directors. In TRNC they become “müşavir” which means adviser. What they do? They stay at home but receive the same salary. There is an army of advisers without work in TRNC. They wait for the next election and hope that their party will come to power again. In a nutshell in TRNC an inefficient administration is created. Most of the civil servants are not experienced and they are not capable to solve any problem.

You may ask “Why this strange system is not changed”. Unfortunately it is very difficult to correct a situation like this. Once an inefficient administration is created in a country, one cannot upset it easily.

Last year we had general elections and new parties came to power. Before the election the present ruling parties declared that they will put an end to this system of political appointment of the civil servants. However, as soon as they came to power they had an enormous pressure from their party members. A lot of people worked for the party. They were waiting to receive a piece from the cake. The ruling parties realised that if they disappointed their followers they will never come to power again. Therefore the same practise was carried on.

Some people ask me. You were the Chief Justice in TRNC. Why didn't you change this strange set up? I must clarify that as in England Judges duty is distant from the Government. This is called separation of powers principle which is another rule of democracy.

I am one of the legal advisers of the President. But our President has nothing to do with actual running of the country. After 1974 we changed our system from Presidential system (American system) to Parliamentary system (English system). Because we thought this will be more democratic. In our system the President has duties similar to the duties of the Queen of England. With the exception that he has the duty to conduct the intercommunal negotiations.

On the Greek side the system is still Presidential. Therefore the President has the right to conduct the negotiations. Negotiations should be carried on the same level. That's why our parliament gave our President the duty to do the same. I am giving him legal advice on legal matters concerning negotiations only.

Officially, I never had opportunity to solve local problems. However, I am not indifferent to them. I try to help groups with legal problems. I joined “Making North Cyprus Better Movement” headed by Malcolm Mitcheson. He is trying to solve the property problems of foreign residents in TRNC. The movement tries to put pressure on the Government to solve the problem.

How can it be solved? What is the main cause of the property problem in TRNC?

As you know before the year 2000 TRNC was an undeveloped country. In 2003 Europeans mainly British started to come to North Cyprus to buy holiday homes or homes for retirement. This was a nice development. Both President and Prime Minister announced that they were very pleased to see this happening. They invited more British people to come and buy property here.

When you are invited to buy property in a country you expect security. Security in purchasing property means that when the purchaser follows the conditions of the sale contract, he will not suffer. He will have the title deed of the purchased property and he will live peacefully at his home.

Unfortunately this was not the case in TRNC. There were some loopholes in the laws. In the beginning no one noticed them. Everything went well during the first three years.

These were golden years of TRNC history. Home selling is one of the most profitable ways to develop a Mediterranean country. It helped Spain , Italy, France and certainly North Cyprus.

Until the year 2007 so much money came to the country that the standard of living improved enormously. The development was unbelievable. The budget increased so much that the salaries of the civil servants trebled in a short time. The Turkish Cypriots started buying better homes, better cars. They obtained better medical care. They started to send their children to better schools in Europe. In other words a poor society, very rapidly reached the European standards.

You would expect that The Government would take measures to protect this development. Unfortunately this did not happen. The Government stood aside and let the problems follow one another. Maybe they did not know how to solve the problems. Foreign residents got frightened. They stopped coming. Some returned. The economy suffered. The budget could not balance itself any more. The Government started begging money to run the country. This is the short story of our country after 2003.

What were the legal problems disturbing the foreign residents. There have been two Court cases that shocked everyone. Orams and Kulaksız 5 cases. We have to analyse these cases to understand the root of the problem.

Orams were a family who bought a building site at Lapta and built a house for themselves. When they went to the land registry office no one told them that the property was originally Greek owned. They were about to settle in their new home.

Unfortunately, the Greek original owner sued them in a Greek Court and obtained a judgement against them.

In the European Union there two opposite movements. One movement, led by Germany and France is trying to create a strong unity, turning EU into a federal state. U.K. on the other hand prefers to keep it as loose union as possible. In 2001 an agreement was reached to strengthen the union. According the regulation 44/2001 a Courts judgement in one of the EU countries could be implemented in others.

The Greek original owner tried to make use of this regulation and applied to execute the Greek Court's judgement in England. He tried to persecute Orams who were completely innocent people. The TRNC Government was very inefficient in defending them. The property of Orams family in England was in danger.

Long hearings took place against the Orams family. First English High Court said that the Greek Courts do not have jurisdiction over the properties in the North and rejected the Greek

claims. However, later the case was referred to European Court of Justice at Luxemburg. The President of this Court was the ex-interior minister of Greece. In the past, Greek Cypriot Government gave him highest medals for serving Greek Cypriot community. Naturally the judgement was in favour of the Greeks. ECJ accepted that Greek Courts will have jurisdiction over the properties in the North. This meant that buying property in North Cyprus was totally insecure.

Fortunately, this insecurity did not continue for long. Turks were inefficient in defending their international Court cases. But the Greeks were prepared to shoot at their own feet. They were so greedy that they kept pushing the matter for further victories.

Apart from European Court of Justice there is another important Court that could make decisions on Cyprus properties. This is the European Court of Human Rights at Strasburg. The Greeks used to go and get judgments of compensation against Turkey in this Court. However ECHR could not handle all Greek property claims. They had to find another way and avoid this rush.

At Demopoulos case the President of ECHR was an Italian. He was aware that the Greek Government took over Turkish properties in the South and gave nothing to the Turkish Cypriot owners. The Court decided that the people who own properties in the North also have human right protections. They should not be disturbed by the original Greek owner. If the Greeks have any claim they should apply to the Immovable Property Commission of the TRNC Government. Turkey would compensate them for their losses. After that decision of ECHR the Greeks started to apply to the Turkish Immovable Property Commission and the fear created by Orams case is over.

The second big disaster came up with Kulaksız 5 case Karşıyaka.

A group of British people bought homes at Karşıyaka village. They paid their sale prices and started living in their new homes. While waiting for their title deeds the contractor borrowed money from a bank. The land owner agreed to put a mortgage on the land. The mortgage was put on the bare land and no one informed the house owners about the mortgage. The debt had %250 per cent interest. The debtor could not pay the debt. Eventually the Bank sued the land owner without the knowledge of the home owners and obtained a judgement to sell the land. Later the District Lands Office declared that the land would be sold by auction but houses were going to be sold jointly with the land. They claimed that the land owner legally owned the houses also.

This meant that the British people lost their houses without any fault of theirs.

British people knew that the laws of North Cyprus were similar to the British laws. However, now they were facing a dangerous situation. In TRNC one could lose his house without his fault. Such an injustice would never happen in England. In UK, the laws are secure for anyone willing to buy property. One would not fall into difficulty unless he himself breached his contract.

What was the difference between UK and TRNC laws?

This problem is still continuing and we have to study it properly. The main difference between UK and TRNC laws remained from the colonial times. Although UK laws were adopted in Cyprus, two principles on property law remained different.

During the Ottoman times, a person could have the title deed of carob or olive tree. One could have the title of a tree and the land could belong to another. This caused a lot of disputes and problems. An anonymous Englishman who bought property during colonial times wrote an amusing poem to explain the situation. I think you will like this poem. It explains how different the problems were a century ago.

THE OLIVE TREE

I bought a field in Cyprus where grew an olive tree.
I watered it and pursued it with assiduity.
Until I found I owned the ground but did not own the tree.
I bought the tree; for weeks I thought the haggling would not stop.

Now I can pick my olives and start a little shop
“Off no!” they said. “You have bought the tree but not the olive crop”.
At least I sit under it: a little seat I made.
Where I could smoke my cigarette and drink my lemonade.

But no, although the tree was mine, I did not own the shade.
In my despair, I cut it down, if not for the shade or food.
It might provide a cheerful fire, if that was all it could.
Alas, although I had the tree I did not have the wood.

Colonial administration wished to put an end to this predicament and adopted the principle that a land owner would own everything over the land. They never thought that many years later this principle would be used by crooks to grab the houses of others.

The second principle causing problem is about specific performance. During Colonial times there were few properties sold. The British Administration thought that it would be safer to encourage people to buy and sell property at the District Lands Office. People would go to the District Lands Office, pay the sale price to the vendor and get the property transferred into their names. Simple and safe procedure.

If they signed a contract it would remain as an obligation between two people only. Therefore no power was given to the Courts to order the transfer of the property. If the vendor violated the contract the purchaser could get compensation but not the property. He could force the vendor indirectly to transfer the property by claiming high compensation, but since the Courts do not have power to order the transfer of the ownership, the purchaser would remain in a vulnerable situation.

At Kulaksiz 5 case, purchasers bought their houses. They paid their sale prices. They were living happily in their homes. However until they got their title deeds legally they were not considered owners.

On the other hand there were indications that the mortgage over the land was fraudulent. The bank could recover its money by following the landowners property only. The land owner

had three houses for himself. Unfortunately, the bank was not interested in landowners houses, but was trying to grab the houses of innocent people.

This was an arranged set up, based on outdated principles. Despite strong resistance the bank managed to push the auction through and bought the houses themselves. The house owners sued the Bank. After a long litigation Kyrenia District Court found that both the mortgage and the auction was fraudulent. Therefore registration in the name of the Bank was revoked.

This is a great success for the house owners and a great blow to the Bank. However, this is not the end of the story. Now the house owners are protected against outside demands, but cannot have full property rights. The problem is not completely solved until they get their title deeds and no one has the authority to order the transfer. So there is a stalemate situation between the house owners and the land owner.

This success of Kulaksız 5 purchasers is a consolation to other foreign residents in TRNC, but is not enough to restart the economic development. Further things should be done to create security in property sales.

The Government is trying to provide a security in a clumsy manner.

In 2007 the Estate Agents Law was passed, which made it possible for the home buyers to register their contracts at the District Lands Office. This prevented the vendor from selling or mortgaging the property sold. Since then, purchasers are protected to a certain extent. However, this is only one step towards the solution. The Estate Agents Law does not provide protection against the previous mortgages and the Courts still do not have power to order the transfer of the property.

So we have to put more pressure on the Government to solve the remaining problems.