# THE ISSUE REGARDING THE CITIZENSHIP AND PROPERTY RIGHTS OF ETHNIC MACEDONIAN REFUGEES FROM THE CIVIL WAR IN GREECE (1946-1949)

**Donche Tasev** *

**Abstract**

The aim of this article is to analyze instances of human rights violations of ethnic Macedonian refugees, exiled from Greece during the Greek Civil War (1946-1949), with a particular focus on the continued deprivation of their citizenship and property rights. In addition, the Greek legislation that enabled the deprivation of the said rights, as well as the so-called 'amnesty laws' promulgated some 40 years after the civil war, will be examined. These 'amnesty laws' of 1982 and 1985; perpetuate the discrimination against ethnic Macedonian refugees, by preventing them from reclaiming their right to Greek citizenship, as well as their confiscated properties. The second part of this article devotes itself to possible sequential remedies available to ethnic Macedonians, first through administrative and judicial procedures within Greece, followed by, should domestic remedies become exhausted, petitioning the case before the European Court of Human Rights, invoking several articles and using precedent cases from the Court's jurisprudence. The article will close with a brief assessment addressing the possibility for the Republic of Macedonia to initiate an inter-state case against Greece via the ECtHR and CERD.

## I. Introduction

A contemporary issue that strongly effects bilateral relations between the Republic of Macedonia and Greece, is the legacy of the Greek Civil War (1946-1949). Namely, 65 years after the event, the two countries strictly adhere to different stances with respect to the subject of human rights violations against ethnic Macedonian refugees. Over the last six decades, the status of the ethnic Macedonian refugees has often been a 'hot topic', susceptible to political misuse in bilateral relations between Macedonia and Greece.

It should be emphasized that in the years that followed the war, these refugees, in addition to being expelled from their traditional homeland, were stripped of their citizenship, and in most cases had their properties confiscated, expropriated without compensation, and/or

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nationalized. This group, inclusive of its descendants, amounts to approximately 80.000 people,[1] of whom some 14.000 were children aged between 2 and 14, during the years of the Macedonian exodus from northern Greece.[2] They have often been designated in Macedonia and abroad as child-refugees (*деца бегалци/detsa begalci)*.

Taking into consideration the complexity of the topic, this article intends to assess the possible ways and means by which members and descendants of said group could grieve their rights before the European Court of Human Rights (ECtHR) in Strasbourg, with emphasis on the jurisprudence and case law of the latter.Two possibilities stand here: initiating procedures of an individual complaint by members of the group, or an inter-state case filed by the Republic of Macedonia against Greece. The possibility of an inter-state case was somewhat enhanced when the Assembly of the Republic of Macedonia unanimously passed "*The Resolution on the Refugees from Military Actions in the Republic of Greece during the Civil and Second World War*" in August 2007.[3] Concomitantly, I will briefly consider the possibility that Macedonia, as a member state of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), has the ability to invoke Article 11, and submit an inter-state communication to the attention of the Committee on the Elimination of Racial Discrimination (CERD/C).

Before commencing any assessment regarding the possibility of submitting individual applications to the ECtHR, I will present all the relevant legal documents (laws, regulations, decrees, ministerial decisions, etc.) passed or enacted by Greek authorities that more or less regulated issues about the acquisition, loss, deprivation and reacquisition of Greek citizenship, as well as the confiscation and restitution of property rights. Some of these legal documents were

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[1] See: Evangelos Kofos, *The Macedonian Question from the Second World War to the Present Day*, in Ioannis Koliopoulos, Ioannis Hassiotis (eds.), *Modern and Contemporary Macedonia. History, Economy, Society, Culture: Macedonian between Liberation and the Present* Day, Vol. II, Papazissis Publishers, 1995, pp. 246-295, at p. 281.

[2] See: George Vlahov, *A Survey of the 'Macedonian Question' in Relation to Greek Nationalism*, in Jim Hlavac, Victor Friedman (eds.), *On Macedonian Matters: From the Partition and Annexation of Macedonia in 1913 to the Present*, Verlag Otto Sagner, 2015, pp. 343-387, at p. 373.

[3] According to the Resolution's provisions, the Assembly of the Republic of Macedonia obliged the Government of the Republic of Macedonia to conduct activities with a view to enable the refugees from the military actions in Greece, Macedonian nationals, to complete the whole documentation that would enable them to initiate legal actions for restitution of their property rights before the competent administrative and judicial authorities in Greece, and before international organizations, and, if necessary, to apply the general substitution institute; to provide financial support in order to assist the whole complex process and activities, and to provide free trans-border movement especially for these purposes; to support the international cooperation within the framework of Conference on the private real estate organizations in the Balkan countries, and to undertake activities within the bilateral cooperation through the communication with authorities of the Republic of Greece, in the field of possible consideration the property claims of these Macedonian nationals in Greece.

promulgated prior to adherence on the part of Greece to the European Convention on Protection of Human Rights and Fundamental Freedoms (ECHR) [4] and its Protocol No. 1.[5]

Notwithstanding the legislation promulgated by the competent Greek authorities in the 1980s, the so-called 'amnesty laws' declared previous ones to be void, and deliberately allowed the principles of repatriation and restitution of property rights to be applied only to refugees that were "Greek by genus". This deliberate maneuver in the Greek legislature some 40 years after the civil war ended, therefore, serves as confirmation of the human rights breaches made with the previously enacted laws, which makes these conventions relevant for this article's purpose.

## II. Legal acts with respect to the citizenship rights

Bearing in mind that Greece was traditionally an emigration country, it was natural then, that the principle *jus sanguinus* served as a guiding premise that determined the acquisition of Greek citizenship.[6] Therefore, instead of using the place of the birth (*jus soli*) as a qualifier, the origin of a person, by means of whether at least one parent was a Greek citizen, played a key role in determining one's citizenship eligibility.[7] In the same manner, since the existence of modern Greece, legislative issues related to the acquisition or loss of citizenship were dependent on an individual's ethnic descent.[8] Consequently, the differentiation between persons of Greek (*homogenis*) and non–Greek (*allogenis*) descent has a long legal history, and is deeply

[4] Greece signed the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1950 and ratified only after the fall of Military junta, i.e. Colonels regime (1967-1974), by adopting Legislative Decree No. 53/1974. The chart of signatures and ratifications of Treaty is presented in the following web-link: http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=&DF=&CL=ENG

[5] Greece signed the Protocol 1 to ECHR in 1950 and ratified it in 1974. The chart of signatures and ratifications of the treaty is presented in the following web-link: http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=009&CM=8&DF=12/07/2009&CL=ENG

[6] Dimitris Christopoulos, Konstantinos Tsitselikis, *Legal Aspects of Religious and Linguistic Otherness in Greece. Treatment of Minorities and homogeneis in Greece: Relics and Challenges*, Jahrbuecher fuer Geschichte und Kultur Suedosteuropas, Vol. 5, 2003, pp. 81-93. Authors rightly pointed out that "*jus sanguinus holds a hegemonic position for the certification of Greekness, whereas recourse to the inferred will of the subject is rather auxiliary*".

[7] Sitaropoulos observes that the principle *jus soli* was introduced in the Greek Citizenship Code, mainly with the aim of avoiding or reducing the number of statelessness cases for persons born in Greece. See: Nicholas Sitaropoulos, *Freedom of Movement and the Right to a Nationality v. Ethnic Minorities: The Case of ex Article 19 of the Greek Nationality Code*, European Journal of Migration and Law, Vol. 6, 2004, pp. 205-223, at p. 208.

[8] Dimitris Christopoulos, *Acquisition and Loss of Nationality in Greece*, in Rainer Baubock, Eva Ersboll, Kees Groenendijk, Harald Waldrauch (eds.), *Acquisition and Loss of Nationality: Politics and Trends in 15 European States, Volume I: Comparative Analyses*, IMISCOE Research, 2006, pp. 253-287, at pp. 256-264.

entrenched in legislation on citizenship.[9] Not surprisingly, then, one of the purposes of domestic policy since 1920 was to reduce the number of non–Greek persons (*allogenis*) in the country. [10]

The first legal decree that regulated the aforementioned loss of citizenship was the Presidential Decree of September 13 1927. Article 4 of the Decree stipulated: "*Greek citizens that are non-ethnic Greeks and have left Greek territory with no intention of returning, lose their Greek citizenship…The intention of no return can be substantiated by any relevant evidence, such as the declaration of the emigrant that he is leaving the country permanently, emigration of the entire family, the acquisition of foreign citizenship etc*".[11] It was exactly this article that was arbitrarily used by authorities to strip the citizenship from a substantial number of ethnic Macedonians, Turks and members of other *allogenis* groups that temporarily emigrated out of the country. Or, as Christopoulos noted, "*the target group of the legislation on the withdrawal of nationality from allogenis belonging to minority groups was gradually being differentiated: in the first stage, the main victims…were ethnic Macedonians. In the following…the measure targeted the Turkish minority of Thrace*".[12]

The violent events that took place during the war witnessed a new large scale of terror, internal deportations and citizenship deprivations conducted under the label of governmental security policies that, ironically, intensified hostilities among the two belligerent sides.[13] Namely, in 1947, the Fourth Revisionary Parliament of Greece passed Resolution 'LZ' (FEK 267/1947) "*On the withdrawal of the Greek nationality from persons that are acting in an anti-national way abroad*".[14] Most affected by this resolution of statutory character were those actively involved and supportive with the Democratic Army of Greece (DAG), and those who fled Greece and concomitantly were sheltered in countries sympathetic to DAG's cause.

According to the official position of the government, these countries purportedly provided logistic to the 'bandits', a pejorative term used by the Greek government with regard to

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[9] According to the Greek Supreme Administrative Court 57/1981, the "*rather tricky term allogenis*" was interpreted as follows: "*Greek citizens of non-Greek descent are those whose origin, whether distant or not, is from persons coming from a different nation and who, by their actions and general behavior, have expressed sentiments testifying the lack of Greek national consciousness, in a way that they cannot be considered as having assimilated into the Greek nation*". Christopoulos, Tsitselikis, *Legal Aspects of…*, *supra* note 7, at pp. 82-83.

[10] See: Konstantinos Tsitselikis, *Citizenship in Greece: Present Challenges for Future Changes*, in Devorah Kalekin-Fishman, Pirkko Pitkanen (eds.), *Multiple Citizenships as a Challenge to European Nation*-States, Sense Publishers, 2007, pp. 145-170, at p.156.

[11] Τάσος Κωστόπουλος, *Αφαιρέσεις Ιθαγένειας. Η σκοτεινή πλευρά της νεοελληνικής ιστορίας (1926-2003)*, Σύγχρονα θέματα, Vol. 26, No.83, 2003, pp. 53–75, at p. 56.

[12] Dimitris Christopoulos, *Acquisition and Loss of…*, *supra* note 8, note no. 20 at p. 282.

[13] David Close, *The Changing Structure of the Right, 1945-1950*, in John Iatrides, Linda Wrigley (eds.), *Greece at the Crossroads: The Civil War and Its Legacy*, Pennsylvania State University Press, 1995, pp. 122-156, at p. 139, 141.

[14] Ireneusz Adam Slupkov, *The Communist Party of Greece and the Macedonian National problem (1918 - 1940)*, Wroclav University, 2006, p. 112.; Ристо Кирјазовски, Егејскиот дел на Македонија по Граѓанската војна во Грција, ИНИ, Матица Македонска, Скопје, p. 89.

DAG's military units and their members.[15] In a respectable number of cases, the resolution was applied to ethnic Macedonians, members of DAG, and the National Liberation Front (NOF) units, as well to those that fled abroad.[16] Concurrently, persons of Greek descent were not spared from the resolution, and were also subject to its arbitrary and voluntary use by Greek authorities. Namely, a circular document dated March 14 1947, signed by the Minister of Interior, orders that a 1927 decree on the deprivation of citizenship could also be applied against "*those persons of Greek descent who have proved, by their anti-national behavior, that they are lacking the appropriate national consciousness*".[17]

With respect to the deprivation of citizenship, the procedure enshrined in the resolution prescribed that a special security commission for "*persons engaged in anti-national activities*" would first give an opinion in each individual case, followed by a final decision handed down by a special governmental commission.[18] The resolution's provisions proclaimed that its validity was related to the war's duration. Moreover, Decree No. 3370 of 1955 "On the ratification of the Greek citizenship", enabled the applicability of the former resolution to be extended, and hence all previous decisions on the deprivation of citizenship were confirmed.[19] According to Tassos Kostopoulos, over a period of fifteen years (1948-1963), due to approximately 155 orders and ministerial decisions prescribing such measures, of the 22.266 individuals that were stripped of their citizenships, roughly 15.000 of cases concerned ethnic Macedonians.[20]

Article 19 from the Citizenship Code of 1955 continued this policy and "*provided a means to sever the links between the Greek state and those who did not assimilate*".[21] Specifically, "*a citizen of non-Greek descent (allogenis) who leaves the Greek territory with no intent to return may be declared to be a person who has lost the Greek nationality*".[22] Some 60.004 persons (mostly ethnic Turks) in the period between 1955 and 1998 were deprived of

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[15] See: Peter Siani-Davies, Stefanos Katsikas, *National Reconciliation After Civil War: The Case of Greece*, Journal of Peace Research, Vol. 46, No. 4, 2009, pp. 559-575, at p. 562.

[16] See: Dimitris Christopoulos, *Acquisition and Loss of…*, *supra* note 8, at p.262.

[17] Konstantinos Tsitselikis, *Citizenship in Greece…*, *supra* note 10, at p.148.

[18] Ристо Кирјазовски, *Правната дискриминација на Големо – грчката политика во Егејскиот дел на Македонија по Втората светска војна*, ППС "МИС", Скопје, p. 81-82.

[19] According to Dimitris Christopoulos, this Resolution was "*maintained in force even following the enactment of the Code of Greek Nationality and ceased to be in force in 1962, however not retroactively*". Anyway, it is indicative that the resolution of 1947 was expressly abolished only in 1985. See: Dimitris Christopoulos, *Acquisition and Loss of…*, *supra* note 8, at pp.262-263.

[20] Κωστόπουλος, Τάσος, *Η απαγορευμένη γλώσσα: Η κρατική καταστολή των σλαβικών διαλέκτων στην ελληνική Μακεδονία σε όλη τη διάρκεια του 20ού αιώνα*, Μαύρη Λίστα, Αθήνα, 2000, p. 219

[21] Dia Anagnstou, *Deepening Democracy or Defending the Nation? The Europeanisation of Minority Rights and Greek Citizenship*, West European Politics, Vol. 28, No. 2, 2007, pp. 335-357, at p. 337.

[22] Nicholas Sitaropoulos, *Freedom of Movement and…, supra* note 7, at p. 212. According to Sitaropoulos, Article 19 was a legal provision with an arbitrary character that provided the Greek administration with an unduly wide margin of action, which led to unlawful administrative decisions, some of which have been quashed by the Supreme Administrative Court.

their citizenship on the grounds of this Article.[23] Concomitantly, Article 20 of the same Code allowed the government to strip citizenship from those citizens living abroad who "*commit acts contrary to the interest of Greece for the benefit of a foreign state*". Despite its applicability to all citizens, regardless of ethnicity, in actuality, the implementation of Article 20 shows that it "*has been applied mostly to persons who identify themselves as Macedonians*".[24]

In the decades after the civil war, Greece vehemently refused to recognize the refugee status of those that fled or were expelled from the country. Its position was that this issue was exclusively a matter of domestic jurisdiction, and that these individuals voluntarily left the country.[25] With the rise of international awareness on the issue, it was only on 16 April 1980 that the Greek Parliament adopted legislation, that finally assigned a status of "political refugee" to this group composed of former Greek citizens.[26] In addition, the legislation reclassified events that were previously labeled as '*guerilla warfare*' as part of the larger civil war, and now listed DAG as one of the belligerent parties to war.

As for the repatriation question, it continues to be relevant as varying modalities for their implementation exists. Whereas refugees advocated for free and unconditional repatriation for all, irrespective of any political, national, or religious differences, the Greek government favored the idea for repatriation on an individual, case-by-case basis. Such was the Law No. 660/1977 that envisaged a principle of limited repatriation dependent on previous opinions issued on individual repatriation requests by local authorities. It was not uncommon that the few cases initiated by ethnic Macedonians in accordance with this law were overruled by local authorities, which were composed in considerable portion of former Greek settlers in the Macedonian villages.[27]

In 1981, when PASOK became the ruling party in Greece, rumors were disseminated throughout the country and among the political refugees that the government would "*settle, once and for all, the question of the repatriation of political refugees from the civil war*".[28] Conversely, according to various statements by top Greek officials, it was undisputedly clear that

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[23] *Ibid*, p. 214.

[24] European Commission Against Racism and Intolerance (ECRI), *Second Report on Greece*, Adopted on 10 December 1999, para. 5.

[25] Greek historian Ioannis Koliopoulos, in a biased manner, explained that allegedly "*Greece's Slav-Macedonians were forced out of the country by the choices of their leaders, who throughout most of the Occupation identified with Bulgaria and then hastened to identify with the People's Republic of Macedonia to erase the memory of their pro-Bulgarianism*". See: Ioannis Koliopulos, *Macedonia: Between the Two Lords (1945-1949)*, in Ioannis Koliopoulos (ed.), *The History of Macedonia*, Museum of the Macedonian Struggle Foundation, Thessaloniki, 2007, pp. 317-325, at p. 320.

[26] Ристо Кирјазовски, *Егејскиот дел на Македонија...*, *supra* note 14, at p. 93.

[27] *Ibid*, at p. 94.

[28] Evangelos Kofos, *The Macedonian Question from…*, *supra* note 1, at p. 281.

the government would not allow for the free return and repatriation of properties to ethnic Macedonian refugees, due to 'national interest policies'.[29] Ironically, the said statements revealed the very existence of the Macedonian minority, and moreover, a desire for their suppression via the state sponsored policies.

Ministerial decree No. 106841, adopted on 29 November 1982, was the key legal act regulating issues regarding the return and repatriation of political refugees from the civil war. According to its provisions, the decree provides:

"*Free to return to Greece are all* ***Greeks by genus*** *(*emphasis added*), who during the Civil War of 1946-1949 and because of it have fled abroad as political refugees, in spite that their Greek citizenship has been taken away from them*".[30]

As for the deprived citizenships, the decree envisaged that such a procedure for the return of citizenship would be based in accordance "*with existing regulations for the cancellation of administrative acts by the Ministry of Internal Affairs*".[31] The same rules and procedures prescribed for the return of refugees identified as "Greek by genus" and their citizenship acquisition would apply for spouses and children, as well as for their descendants.

Wording used in the decree is unequivocally discriminatory, or as two Greek scholars clearly stressed, "*the hidden aim of this decision was to exclude Slav-Macedonian refugees*".[32] Therefore, the ostensible national reconciliation legislation provided amnesty, solely to refugees of Greek ethnic origin. It is by far evident that such arbitrariness and voluntarism, that discriminated against persons based on ethnic/national origin contravened with Article 5 of Greek Constitution of 1974.[33]

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[29] The Minister of Public Order, Balkos said that Greece will not permit free and unconditional repatriation in general because "*among refugees there are foreign states collaborators engaged in past secessionist activities, persons that served in foreign military and police forces, crime perpetrators and deserters*". Ристо Кирјазовски, *Правната дискриминација на…*, *supra* note 18, at p. 144-145. The Greek Minister of Foreign Affairs during his visit to Romania in 1980 on the question regarding the repatriation issue responded that "*government will not allow return of the Slav-Macedonian element in the country*". АУГН, 01.09.1980. Leonidas Bournias, a Greek Member of the European Parliament, explained that possible free repatriation was overruled because of the alleged "*fierce propaganda that favors the establishment of an independent Macedonia, because refugees are declaring adherence to non-existent Macedonian nation and moreover they deliberately had Slavicized their Greek names and surnames*". Ристо Кирјазовски, *Егејскиот дел на Македонија…*, *supra* note 14, at p. 96.

[30] The ministerial decision is attached as Appendix B to the publication Human Rights Watch, *Denying Ethnic Identity: Macedonians of Greece*, 1994, New York, p. 68

[31] *Ibid.*

[32] Christopoulos, Tsitselikis, *Legal Aspects of…*, *supra* note 6, at p. 83.

[33] Article 5, paragraph 2 of the Greek Constitution stipulates that "A*ll persons living within the Greek territory shall enjoy full protection of their life, honour and liberty irrespective of nationality, race or language and of religious or political beliefs. Exceptions shall be permitted only in cases provided by international law*". See: *The Constitution of Greece*, 18 April 2001.

With all this in mind, Tsitselikis rightly underscored that the, "*Greek government…constantly denies the right of return and the acquisition of Greek citizenship to political refugees of 'Macedonian descent'. Once again, national ideology prevailed over fundamental legal principles*".[34] Moreover, Christopoulos contends that the express exemption of refugees that were not 'Greeks by genus' from possible repatriation, makes quoted ministerial decisions "*the sole instrument in force that recognizes, through exclusion, the existence of Slav-Macedonians in the country*".[35]

Consequently, due to their national and ethnic origins, tens of thousands of ethnic Macedonians born in Aegean Macedonia (Northern Greece), including their descendants, continue to be denied the possibility of applying for the reacquisition (or acquisition) of revoked citizenship. Conversely, most refugees that are ethnically Greek were repatriated according to the amnesty laws passed in 1982 and 1985, respectively. Although in 2004, the Greek Parliament promulgated the new Citizenship Code, the continued injustice against ethnic Macedonians remains. All in all, one might rightly contend that this dark legacy is the impetus behind any hesitation and deterrence for Greek legislators to proceed with ratifying the European Convention on Nationality.[36]

In 2003, Greek authorities for the first time tacitly allowed for ethnic Macedonians born in its northern provinces to visit their birthplaces without impediment.[37] Simultaneously, rumors of an ostensible repatriation of this group were spread through the Greek media.[38] Expectedly, Evangelos Kofos quite sharply criticized the rumors and wrote, "*the return to Greece of thousands of people with a deeply entrenched Slav-Macedonian consciousness…cannot logically be 'repatriation'. It is rather the arbitrary transplant of an alien nationalistic minority to the frontier of Greece's Macedonian prefecture*".[39] Any possible repatriation, in the words of Kofos, would be a move towards "*a re-drawing of the ethnological map of our border districts*", and concomitantly "*the implantation of thousands of fervently nationalistic 'Aegean*

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[34] Konstantinos Tsitselikis, *Citizenship in Greece…*, *supra* note 10, at p.148.
[35] Dimitris Christopoulos, *Acquisition and Loss of…*, *supra* note 8, at p.262. It is worth to note that whereas in the whole article the author uses the word 'ethnic Macedonians' with regard to the Macedonian minority in Greece, in this part of the text uses the appellation 'Slav-Macedonians', the one that apart from being quite undetermined adjective in the same time offends feelings of the Macedonian people.
[36] Nicholas Sitaropoulos, *Freedom of Movement and…, supra* note 7, at p. 220.
[37] European Commission Against Racism and Intolerance (ECRI), *Third Report on Greece*, Adopted on 5 December 2003, 8 June 2004, para. 84.
[38] Iakovos D. Michalidis, *Searching for a Motherland: Slav-Macedonian Political Refugees in the People's Republic of Macedonia (1944-2003)*, in Dimitris Tziovas (ed.), *Greek Diaspora and Migration since 1700*, Ashgate Publishing, 2009, pp. 73-82, at p. 81.
[39] Evangelos Kofos, *Unexpected Initiatives: Towards the Resettlement of a Slav–Macedonian Minority in Macedonia?*, To Vima (English edition), June 25, 2003.

*Makedonci'…will inevitably provoke a mini cultural war for the prize of the history, the culture and the very name of Macedonia*".[40] Unfortunately, even at present, this mindset dominates the Greek society, hence hindering the sincere and real reconciliation, and rapprochement between the two ethnic communities.

## III. Legal acts regulating property rights of refugees

The following subsection deals with legal acts regulating property rights, with emphasis on those whose provisions enabled properties owned by refugees to either be confiscated or pass into state possession. In more concrete terms, I will enumerate acts concerning property rights that were decidedly selected and partially repealed with the 'national reconciliation' package of 1980s.

1) Provisions of the **Decrees M/1948/FEK 17** and **N/1948/FEK 101** provided for the mandatory confiscation of real estates belonging to persons that had participated in the Civil War on the side of DAG and NOF, as well as to those that were stripped of Greek citizenship in compliance with Resolution LZ of 1947.[41] Once confiscated, either the Ministry of Finance or the Ministry of Agriculture managed these real estates. According to some estimates, with permission given by the above-mentioned decrees, including legally imposed punitive measures for non-compliance, some 2 million acres of farmland, forests and grazing land that served approximately 30.000 households in the pre-war years, passed into the state's possession. Though it was assumed that confiscated real estates would be distributed amongst the original owners' relatives or landless workers, authorities intentionally settled military and police officers, who mainly originated from Greece proper.[42]

2) Probably the most controversial legal act was the *Law on Resettling Border Areas and Boosting their Population* (No. 2536/1953). According to John Shea, the leitmotiv of authorities in enacting such a law was "*to separate Macedonians living in Greece from their kin living in the Republic of Macedonia…and to create a 60-kilometer-wide belt along the border with then Yugoslavia where 'the faithful sons of the Greek nation' could be settled*".[43] In this context, the ongoing media campaign at the time,that allowed for the stigmatization and even

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[40] *Ibid.*
[41] Ристо Кирјазовски, *Правната дискриминација на…*, *supra* note 18, at p. 97.
[42] *Ibid*, стр. 100.
[43] John Shea, *Macedonia and Greece: The Struggle to Define a New Balkan Nation*, Mc Farland & Company Inc., Publishers Jefferson, North Carolina and London, 1997, p. 118.

dehumanization of the Macedonian minority, traced the path for the acceptance of such legal measures.[44]

Urgency for the adoption of this law was explained with the need to resettle the abandoned areas with "*people of confirmed and healthy national consciousness*",[45] or, even further, with "*the best human material in Greece*".[46]

Under Article 6 of Law 2536, real estates and agricultural plots belonging to refugees that had left Greece 'without permission' who did not return within three years' time, were seized and managed by the Ministry of Agriculture. The measure as such applied even if owner's relatives were using the property.

Persons settled on refugees' properties initially had to receive a certificate from the army or police confirming that no security impediments existed for its settlement in a given area. Afterwards, the settlers were accommodated in the abandoned, renewed or newly built residential units and even received state–sponsored financial and agricultural incentives for the first growing season.[47]

One peculiarity that further exemplifies the law's discriminatory aspect is its application to properties belonging to ethnic Turkish refugees from Western Thrace. To prevent further deterioration of Greek–Turkish bilateral relations, a decision was made to implement a two-year delay before enforcement towards these properties would begin.[48] It would not be an exaggeration to underline that once again, with legally imposed measures, members of the

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[44] Lazo Mojsov in his book "*On the Issue of Macedonian National Minority in Greece*" presented various texts that were disseminated through the popular Greek newspapers and periodicals that disclosed various incitements for state sponsored suppression of Macedonians and elimination of their presence in the border areas with measures such as stimulation of permanent emigration, imposing the entry bans to those that fled the country as well as resettling the border areas with ethnic Greeks from southern Greece. See: Лазо Мојсов, *Околу прашањето на македонското национално малцинство во Грција*, Институт за национална историја, Скопје, 1954, at pp. 307-310. Writing on the same issue, Greek historian Kofos acknowledged that "*the departure of the 'Slav-Macedonians' from Greek Macedonia doubtlessly prevented the adoption of certain stern security measures, i.e. mass deportations or transfer, which the Greek government,* ***under pressure of public opinion*** (emphasis added - DT)*, might have considered in order to safeguard the northern departments of the country from a recurrence of Yugoslav or Bulgarian subversion. As it turned out, the only concrete measure taken…was the refusal to allow the return of those who had fled*". Evangelos Kofos, *Nationalism and Communism in Macedonia: Civil Conflict, Politics of Mutation, National Identity*, Aritstide D. Caratzas Publisher, New York, 1993, at p. 187.

[45] Ристо Кирјазовски, *Егејскиот дел на…*, *supra* note 14, at p. 78.

[46] Лазо Мојсов, *Околу прашањето..., supra* note 44, at p. 18.

[47] Ристо Кирјазовски, *Правната дискриминација на…*, *supra* note 18, at p. 107. The author notes that in 1956 the Constitutional Court of Greece proclaimed that Resettlement Law 2526/1953 was unconstitutional and allegedly all confiscations decisions were annulled. Though on the base of this decision original owners could reclaim its properties, ethnic Macedonian refugees, as we saw above, were stripped of their citizenships and entry bans were imposed on them, and thus were prevented from the possibility to reclaim their confiscated properties.

[48] Hugh Poulton, *The Balkans: Minorities and States in* Conflict, Minority Rights Publications, 1994, at pp. 178-179; Лазо Мојсов, *Околу прашањето на…*, *supra* note 44, at pp. 331–336.

Macedonian minority were discriminated against with regards to undermining the possibility for the consolidation of a once sizeable and prosperous Macedonian community in Greece.[49]

3) Article 13 of the *Regulation 3958/1959,* allowed for the confiscation of agricultural land belonging to refugees that left Greece who did not return within five years' time, reclassifying the land, as state owned property.[50]

4) Abandoned properties that belonged to refugees, were confiscated under Article 34 of *Special Law 1539/1938*. Finally, in compliance with administrative decisions, persons that were imprisoned, interned or persecuted because of their participation in the civil war, in addition to sanctions affecting their civil rights, were also faced with confiscation of their properties.

As in the case with deprived citizenships, the issue of property rights has provoked various debates both within the country and abroad. In the political climate after the Colonels regime (1967-1974), refugees expected the newly elected democratic government to deal with thorny issues emanating from the civil war and its legacy. The sudden enlargement of the European Economic Community with the inclusion of post-dictatorship Mediterranean countries, such as Greece, enhanced the expectation on the part of the refugees for 'national reconciliation legislation' that would include the possibility for restitution of property rights.[51] Until the promulgation of Law No. 1540 of 1985, there were some attempts for the partial resolution of these issues.[52]

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[49] Associates with the Thessaloniki/Solun based "Society of Macedonian Studies", an organization that researches the history and folklore of the region Macedonia, conducted a research project in the archives of the former Ministry of Foreign Affairs of SFR Yugoslavia and published a book where legal views on the Resettlement Law 2536 of 1953 issued by the Legal Section of the Yugoslav MFA were disclosed. According to one opinion, former Yugoslav diplomats considered that *"there can be no doubt that the factual application of the Law will make for discrimination against and that those most affected from its application will be, exclusively or to a great extent, Aegean Macedonians. Legally, however, the text does not reveal discrimination against. Until we are able to adduce actual cases of its discriminatory application, we cannot speak of discrimination against Macedonians. Indeed, the text of the Law concerns all citizens of Greece possessing properties in border areas. Consequently, any official demarche…will be rejected by the Greeks – justifiably, in a formal sense – as interference into their internal affairs*". With respect to possible talks between Yugoslav and Greek government regarding the property rights of ethnic Macedonian refugees, legal advisers of the MFA suggested that "*with respect to the refugees not possessing our nationality, it would not be legitimate to express such claims in their name…In respect to the refugees that possess our nationality, expressing property claims in their name we should violate the principle according to which the state does not have the right to provide legal aid to its citizens with regard to questions arising from the period of time in which they were not our citizens*". See: Society of Macedonian Studies, *THE HOSTAGES OF SKOPJE: Fugitives, Properties and Repatriation: Yugoslav Confidential Documents*, Thessaloniki, 2008, pp. 23, 25.
From the quoted opinions, one may conclude that legal issues related to ethnic Macedonian refugees for former Yugoslav authorities presented an 'undesirable burden' that possessed the capacity to impede in the long-term on the bilateral relations between the two countries.

[50] Ireneusz Adam Slupkov, *The Communist Party of…*, *supra* note 14, at p. 112; John Shea, *Macedonia and Greece…*, *supra* note 43, at pp. 118-119. In addition to this regulation, special decree was adopted that provided for the restitution of property rights for the original real estate's owner once he submitted within the period of six months a certificate providing no objection for such an action by the present property possessor. Having in mind that at that time refugees were banned from returning back into Greece, such a decree was completely or partially inapplicable.

[51] See: Siani-Davies, Katsikas, *National Reconciliation…*, *supra* note 15, at p. 560.

[52] Law 666/1977 "On the amendment of the settlement provisions" provided a three year period for reclaiming property rights for those that would disclose the property deed or any other proof of ownership. Once again, in 1979, the proposal originating

On April 10 1985, the Greek Parliament adopted the proposed *Law No. 1540 Provisions concerning the properties of the political emigrants and other regulations*, defining the composition of political emigrants who fled during the civil war. With wording reminiscent to the proposal entrenched in the Ministerial decree on refugees' repatriation, its Article 1, paragraph 1 states:

*"As political emigrants, for the purposes of this Law, shall be considered the* ***Greeks by genus*** (emphasis added), *who, because of the Civil War, had fled abroad before January 1945 or were imprisoned or interned".*[53]

Once again, ethnic Macedonian refugees were deliberately excluded from the possibility to reclaim their deprived rights, being, in this case, confiscated properties. Whereas for ethnic Greek refugees, the law indeed enabled the restoration of property rights, yet for the group that composed a considerable portion of the refugees as a whole, this was a continuation of Greece's official policy for their exclusion from the amnesty law's provision on the grounds of ethnicity. Therefore, favoring members of one ethnic community with a provision of this type, and discriminating against all those that are not 'Greek by birth', the Law as such, clearly contravened with Constitutional Articles 5 and 17 (protection of private property).[54]

As for the Law itself, it is worthy to note that its provisions apply to properties confiscated in compliance with the above enumerated laws, decrees and regulations. Moreover, Article 2 prescribes that "*property stated in the previous article are returned to the beneficiaries political refugees that reside in Greece or repatriate and have or regain or receive Greek citizenship".*

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from the Ministry of Justice, a new law was promulgated and prescribed the possibility confiscated properties according to provisions of Decrees M and N to be returned to original owners in case they possessed Greek citizenship, and the property, as such, was not allocated to another person. See: Ристо Кирјазовски, *Правната дискриминација на…*, *supra* note 18, p. 114-115.

[53] Excerpts from the Law No. 1540/1985 are attached as Appendix C to the publication Human Rights Watch, *Denying Ethnic Identity: Macedonians of Greece*, 1994, New York, p. 69.

[54] Article 17 reads as follows:

"*1. Property is under the protection of the State; rights deriving there from, however, may not be exercised contrary to the public interest.*

*2. No one shall be deprived of his property except for public benefit which must be duly proven, when and as specified by statute and always following full compensation corresponding to the value of the expropriated property at the time of the court hearing on the provisional determination of compensation...*

*3. Any change in the value of expropriated property occurring after publication of the act of expropriation and resulting exclusively there from shall not be taken into account.*

*4. Compensation is determined by the competent courts..."*

The concerned property would not be returned to its original owner in cases where it was granted by state organs to another person, if it is leased more than 10 years, and if there are considerable improvements to the property's conditions by the state or by the present possessor. If, for any reasons, restitution of property is inconceivable, the Ministry of Economy would allocate a property of the same size as the one confiscated, and in the same area or county where the refugee resettled. In the case where there were no available sites for property distribution, financial compensation, based on the assessment of Expropriation Commission, was prescribed as a last recourse.[55]

## IV. Possible ways for challenging the discriminatory clauses and realization of deprived rights

Some brief comments should be made prior to approaching possible legal grounds for individual applications to the ECtHR by refugees, or their descendants, that could eventually be lodged against Greece. First and foremost, Article 35 of ECHR, with respect to the admissibility criteria, states that "*the Court may deal with the matter after all domestic remedies have been exhausted…and within the period of six months from the date on which the final decision was taken*".[56] Moreover, the obligation to exhaust domestic remedies forms part of customary international law, recognized as such in the International Court of Justice's practice.[57] As for the domestic procedures, it should be underlined that the possibility for a successful outcome before the ECtHR will, to a large extent, depend on the argumentation presented before the domestic court and the reasoning on which the latter will premise their decision. Therefore, invoking the legal acts that are in breach, both with the domestic and contemporary international human rights law before the Greek courts is crucial.

1. First and foremost, ethnic Macedonian refugees before the competent Greek judicial and administrative organs, could claim that they still possess citizenship with the initiation of the determination procedure. With *jus sanguinus* being a "*principle deeply embedded in Greek legislation on nationality*",[58] there is a legal assumption that a considerable portion of the refugees (mostly from the generation of *child refugees*), are actual citizens of Greece by birth.[59]

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[55] Ристо Кирјазовски, *Правната дискриминација на…*, *supra* note 18, at p. 90–91.
[56] Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, para. 35.1.
[57] Council of Europe, *European Court of Human Rights: Practical Guide on Admissibility Criteria*, 2014, p. 22.
[58] Konstantinos Tsitselikis, *Citizenship in Greece…*, *supra* note 10, at p.149.
[59] It was this procedure that enabled several ethnic Macedonians born in Northern Greece (Aegean Macedonia) to determine their civil status in Greece and, hence upon their request, identity cards and Greek passports were issued by the authorities.

Additionally, if one's citizenship was stripped of, in the vast majority cases, the person concerned was never informed, and most cases were described as "*relevant administrative decisions (*which - DT*) lacked any form of reasoning*".[60] Human Rights Watch observed that people were deprived of their citizenships, regardless of the internationally accepted rights to due process, the presumption of innocence, notice of the charges, a fair hearing before an independent and impartial court and opportunity to defend oneself.[61] In the words of Donner, "*where exile, or expulsion, is followed by deprivation of the nationality of the persons so excluded then such deprivation may be in the nature of an abuse of rights*".[62]

Therefore, initially, a person concerned needed to trace his/her own personal data with the civil registries by requesting the issuance of a birth certificate, which in most cases indicates which citizenship the document holder possess. [63] If for some instance there is no data for refugees in the civil registries, their identity could be confirmed with two sworn statements of persons registered in the municipality before a magistrate or notary. In cases where the birth certificate provides information on the loss of citizenship, the person concerned may request the decision on the loss of citizenship, and hence take legal action against such a decision before the Ministry of Interior, or the corresponding administrative courts.

Descendants of the refugees that were born in exile are also entitled to obtain Greek citizenship according to the Citizenship Code of 2004, since at the time of their birth one or both parents were Greek citizens.[64] As Christopoulos rightly pointed out "*the process of definition (*of citizenship - DT*) leaves not room for manoeuvre: if someone can demonstrate that once upon a*

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[60] Nicholas Sitaropoulos, *Freedom of Movement and…*, *supra* note 7, at p. 212.

[61] Human Rights Watch, *Denying Ethnic Identity: Macedonians of Greece*, 1994, New York, footnote no. 50 at p. 27.

[62] Ruth Donner, *The Regulation of Nationality in International Law*, Transnational Publishers, 1994, at p. 153.

[63] Associations of the Macedonians originating from Aegean Macedonia has numerous birth certificates that indicates the information with respect to the status of the document holder, by means of whether the person concerned was stripped of his/her citizenship or is still considered as a citizen according to the official civil registries. At the same time, occasional negative responses are issued due to the fact that some civil war participants were erased from the civil registries. If this is the case, there is a possibility for the applicant to address the local section of the Ministry of Defense and trace his/her personal/parental information within the military service records.

[64] Official Gazette of the Hellenic Republic, *Greek Citizenship Code*, Law 3284/2004, 10 November 2004. Article 14 reads as follows:

*"1. A child born before May 8, 1984, of a mother who was Greek during her pregnancy or at the time of marriage, from which this child was born, can become a Greek national if he/she expresses his/her wish to the General Secretary of the Prefecture or to the Greek Consular authorities of the area of residence.*

*2. A child born of a Greek father and an alien mother before the enforcement of Law 1250/1982 (16/7/1982), can became a Greek national, as long as he/she is considered legitimate in accordance with the provisions of article 7 paragraph 3, of the above mentioned law, if he/she expresses his/her wish to the General Secretary of the Prefecture or to the Greek Consular authorities of the area of residence…*

*4. According to this article, the children of those acquiring Greek citizenship, become Greek nationals, without any other formalities, if at the time of submission of the application the children are minors and unmarried."*

*time one of their forebears was a Greek citizen (and never had that nationality revoked), then the authorities are obliged to ascertain their nationality*".[65]

2. With respect to the other segment, usually the possession of property deeds are valid proof of property rights for persons directly concerned, or their forebears.[66] Once the property records have been located in the land registry office, applicants could proceed with seeking the confiscation act. In case no confiscation act is found, applicants may proceed with the lawsuit requesting the restitution of property. Conversely, if such a confiscation act exists, the person concerned could lodge an application simultaneously requesting the annulment of the impugned act, and either the restitution of the property if its entitlement belongs to the state, or compensation based on the assessment of the property's market value in case the latter was transferred or sold to a third party.[67]

As underlined above, the punitive measures that deprived refugees from their human rights, including the right to property, were in clear violation of substantial international principles and constitutionally enshrined rights, such as *audiatur et altera pars* (right to be heard). With respect to the impugned acts that were taken for reasons of national security, applicants could rightfully emphasize their political nature.[68]

3. Refugees' claims could be grounded on numerous legal acts. Namely, with regards to the possibility for repatriation, re-acquisition of citizenships, and property rights restoration, they should invoke provisions prescribing such a possibility in the above mentioned 'amnesty laws' of 1982 and 1985 respectively, to be read in conjunction with non-discriminatory laws, human rights law, and, moreover, international bodies' recommendations on Greece.

The equality clause in Article 4 of the Greek Constitution, and its paragraph 3 concerning the citizenship issue, are of utmost importance.[69] It should be emphasized that in its judgment 3587/1997, the Supreme Administrative Court stressed that "*in accordance with Article 4.1 of Constitution, uniform treatment is to be provided by law to all citizens whose legal and/or*

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[65] Dimitris Christopoulos, *Defining the Changing Boundaries of Greek Nationality*, in Dimitris Tziovas (ed.), *Greek Diaspora and Migration since 1700*, Ashgate Publishing, 2009, pp. 111-123, at p. 114. They just need to provide the marriage certificate of their forebears and, if the marriage is considered valid in Greece, the person concerned can acquire Greek citizenship *ipso jure* and retroactively.

[66] In case the property is registered under the father's or grandfather's name, person concerned should enclose their birth certificates, where the ancestor's name is stipulated and will seek issuance of a kinship certificate with a view to prove its relationship with property owner.

[67] See above, n. 55.

[68] It is worth to note on numerous examples of fabricated witness deposition implicating alleged involvement on the part of the refugees in illegal acts that were used to legitimize various sanctions imposed on them and their property.

[69] Constitutional Article 4 read as follows: "*1. All Greeks are equal before the law…3. All persons possessing the qualifications for citizenship as specified by law are Greek citizens. Withdrawal of Greek citizenship shall be permitted only in case of voluntary acquisition of another citizenship or of undertaking service contrary to national interests in a foreign country, under the conditions and procedures more specifically provided by law*." See: *The Constitution of Greece*, 18 April 2001.

*factual status is of the same or similar nature*", which means that "*any arbitrary differentiation among Greek nationals by the Greek state is proscribed*".[70] Additionally, discriminatory clauses affecting ethnic Macedonians may be challenged by invoking the general provision in Constitutional Article 111 stipulating that "*Greek citizens deprived in any manner whatsoever of their citizenship prior to the coming into force of this Constitution shall re-aquire it upon a decision by special committee of judicial functionaries, as specified by law*".[71] Finally, it should be emphasized that the anti-discrimination law 3304/2005, clearly prohibits discrimination on the basis of ethnic origin.[72]

Laws that prescribe preferential treatment for persons of Greek ethnic origin contravened in a flagrant manner with Article 12.4 of the International Covenant on Civil and Political Rights.[73] This article of ICCPR stipulates, "*no one shall be arbitrarily deprived of the right to enter his own country*".[74] The Human Rights Committee (HRC) in its General Comment No. 27 interpreted the notion "*own country*", and underlined that it embraces "*nationals of a country who have there been stripped of their nationality in violation of international law*".[75] Most importantly, from the ethnic Macedonian refugee point of view, is the HRC's reasoning that "*a state party must not, by stripping a person of nationality or expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country*".[76] Therefore, invoking the contemporary human rights law, provisions could rightfully be considered as added value to the whole process, and even a crucial step towards the positive outcome.

The reports and recommendations of international bodies, apart from its undisputed soft-law nature and legally non-binding character over the past two decades, greatly contributed towards the assessment and improvement of records for human and minority rights in numerous countries. These findings may enhance the argumentation of refugees before administrative and judicial authorities.

With respect to the 'amnesty laws' of 1982 and 1985, a UN independent expert on minority issues unequivocally stated that "*a 1982 Ministerial Decision (Law no.*

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[70] Nicholas Sitaropoulos, *Equal Treatment between Persons Irrespective of Racial or Ethnic Origin: The Transposition in Greece of EU Directive 2000/43*, International Journal of Human Rights, Vol. 8, No. 2, 2004, pp. 123-158, at p. 129.
[71] *The Constitution of Greece*, Section III, Transitory Provisions, Article 111, para. 5.
[72] See particularly: Ruby Gropas, Anna Triandafyllidou, *Discrimination in the Greek Workplace and the Challenge of Migration*, European Commission, September 2008, pp. 19-21.
[73] See: Nicholas Sitaropoulos, *Freedom of Movement and…*, *supra* note 7, at p. 218.
[74] UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, Article 12.4.
[75] UN Human Rights Committee, *CCPR General Comment No. 27: Article 12 (Freedom of Movement)*, 2 November 1999, para. 20.
[76] *Ibid*, para. 21.

*106841)…excludes those identifying as ethnic Macedonians and is therefore considered discriminatory. Law no. 1540 of 1985 allowed political exiles to reclaim confiscated property, again establishing that only "Greeks by Genus" qualify.*"[77] With this in mind, the European Commission against Racism and Intolerance recommended several times to the Greek authorities to "*take steps to apply, in a nondiscriminatory manner, the measures of reconciliation taken for all those who fled the civil war.*"[78] Finally, with regard to persons who were deprived of Greek citizenship, the Commissioner for the Human Rights of the Council of Europe urged Greek authorities "*to proceed to the immediate restoration of their nationality*". [79]

## V. Assessing the possible individual applications at the ECtHR

Once domestic remedies have been exhausted, applicants may proceed and lodge an individual application before the ECtHR, claiming a violation of rights enshrined in the ECHR. The problem of "*excessive length of proceedings in the Greek administrative courts, especially in the Greek Supreme Administrative Court*", the one that was "*highlighted in both of the* (Council of Europe-DT) *Commissioner's* (for Human Rights-DT) *Reports on Greece*", and produces delayed justice should not be forgotten.[80] However, recent developments in Greek administrative law indicate that a faster pilot judgment directly by the Supreme Administrative Court may be introduced before the year's end. Additionally, pilot judgments procedures are now possible at the ECtHR level after the entry in force of Protocol 14.[81]

I will now briefly analyze several Convention articles that could be invoked by the refugees, or their descendants, in seeking realization of their deprived rights:[82]

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[77] UN Human Rights Council, *Report of the Independent Expert on Minority Issues, Gay McDougal: Addendum: Mission to Greece (8-16 September 2008)*, 18 February 2009, A/HRC/10/11/Add.3, para. 44.

[78] Council of Europe: European Commission Against Racism and Intolerance (ECRI), *ECRI Report on Greece (Fourth Monitoring Cycle)*, Adopted on 2 April 2009, 15 September 2009, para. 116.

[79] Commissioner for Human Rights, *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Greece on 8-10 December 2008. Issue reviewed: Human rights of minorities*, 19 February 2009, para. 58.

[80] Nikolaos Sitaropoulos, *Delayed Justice in Greek Administrative Courts and Lack of Effective Domestic Remedy – Comment on Interim Resolution CM/ResDH (2007)/74*, Essex Human Rights Review, Vol. 7, No. 2, 2011, pp. 16-31, at p. 18.

[81] See: Janneke Gerrards, *The Pilot Judgment Procedure Before the European Court of Human Rights as an Instrument for Dialogue*, in P. Popelier, M. CaesIntersentia (eds.), *Constitutional Conversations,* Intersentia, 2011, p. 25.

[82] It goes without saying that the possibility for invoking other articles in addition to or differently than the ones assessed here is nearly possible. Simultaneously, it is evidently that Article 3 of Protocol 4 to the ECHR prescribing "*No one shall be deprived from the right the territory of the state of which he is national*", and moreover the general prohibition of discrimination in the enjoyment of any right set forth by law enshrined in the Protocol 12 to the ECHR, may be relevant for the article's purposes. Regardless, said articles are avoided from the following analyses, due to the fact that Greece signed but has yet to ratify these treaties.
The charts of signatures and ratifications of Protocols 4 and 12 to ECHR respectively are presented in following web-links:
http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=046&CM=8&DF=20/07/2009&CL=ENG
http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=177&CM=8&DF=20/07/2009&CL=ENG

1. Article 13 of ECHR proclaims that everyone whose rights and freedoms enshrined in the Convention are violated "*shall have an effective remedy before a national authority*".[83] In its essence, according to ECtHR, Article 13 requires that "*where an individual considers himself to have been prejudiced by a measure allegedly in breach of the Convention, he should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress*".[84]

Ethnic Macedonian refugees may invoke Article 13 mainly because they were prevented from the possibility to challenge infringements of their citizenship and property rights, and to obtain a redress for such violations. I will recall the ECtHR reasoning that this article, as such, "*guarantees the availability within the national legal order of an effective remedy to enforce the Convention rights and freedoms in whatever form they may happen to be secured*".[85] Conversely, but not surprisingly, in 1990, the Greek Ministry of Justice promptly returned requests received for property restitution from 107 Macedonian citizens born in Northern Greece (Aegean Macedonia), to the Yugoslav MFA, with the explanation that such questions were not included in Convention on Mutual Legal Relations of 1959.

Simultaneously, in the case where eventual administrative procedures in Greece would be rendered ineffective and inadequate for this group of people, the possibility for direct recourse to ECtHR stands as an option.

2. The legal obstacles that exclude ethnic Macedonians from the possibility to restore their citizenship and property rights because they are not "Greeks by origin" may also raise issues under the Article 3 of the ECHR that envisages that "*no one shall be subjected to…inhuman and degrading treatment*".[86]

The Former European Commission of Human Rights stressed that racial discrimination, in certain circumstances, may "*amount to degrading treatment within the meaning of Article 3 of the Convention*".[87] In the Commission's words, "*publicly to single out a group of persons for differential treatment on the basis of race might...constitute a special form of affront to human dignity*", and, as a consequence, such "*differential treatment of a group of persons on the basis of*

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[83] *European Convention on Human Rights*, *supra* note 56, Article 13.
[84] European Court of Human Rights, *Case of Klass and others v. Federal Republic of Germany*, 6 September 1978, para. 64; *Case of Silver and others v. United Kingdom of Great Britain and Northern Ireland*, 25 March 1983, para. 113; *Case of Leander v. Sweden*, 26 March 1987, para. 77.
[85] European Court of Human Rights, *Case of James and others v. United Kingdom of Great Britain and Northern Ireland*, 21 February 1986, para. 84.
[86] *European Convention on Human Rights*, *supra* note 56, Article 3.
[87] European Commission on Human Rights, *Case of East African Asians v. United Kingdom*, 14 December 1973, para. 196.

*race might therefore be capable of constituting degrading treatment*".[88] It was with the well known inter-state case of *Cyprus v. Turkey* that the ECtHR, with respect to the interferences imposed on persons from the Greek-Cypriot community "*on the base their 'ethnic origin, race and religion'*", reiterated clearly that such "*discriminatory treatment attained a level of severity which amounted to degrading treatment*".[89]

It is to be noted that many of the acts cited above concerning the deprivation of rights were motivated and applied in a "*racially/ethnic biased manner*", and hence such continuing discrimination against the ethnic Macedonian refugees on the grounds of ethnicity could be amounted to degrading treatment, according to the ECtHR's case-law.[90]

3. Article 14 prescribes that the Convention's rights and freedoms shall be secured without discrimination on any ground, including race, language, religion, political or other opinion, national or social origin, association with a national minority, etc.[91] One peculiarity is that Article 14 has an autonomous meaning but not an independent existence, which means it could be invoked in combination with other rights recognized in the Convention.[92] In this case it might be invoked in conjunction with Article 1 of Protocol 1 concerning an individual's enjoyment of their property (possessions).

At its core, according to the Court's view, Article 14 "*safeguards individuals, **placed in similar situations*** (emphasis added - DT)*, from any discrimination in the enjoyment of the rights and freedoms set forth in those other provisions*".[93] With this in mind, I will reiterate that refugees from the Civil War in Greece include all those associated with the DAG and NOF, regardless of their ethnicity, and, because of the war, fled the country or were expelled from their birthplaces. Moreover, with respect to the deprivation of human and civil rights, each fugitive was in an identical or comparable position with other members of the group. Even the most conservative estimates originated from the Greek scholars, acknowledged that of roughly 120.000 refugees from the Greek Civil War, some 60.000 were "Slavic speakers", i.e. ethnic Macedonians.[94] Therefore, ethnic Macedonian refugees are supposed to be the natural beneficiaries of what was to be proclaimed as reconciliation legislation.

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[88] *Ibid,* para. 207.
[89] European Court of Human Rights, *Case of Cyprus v. Turkey*, 10 May 2001, paras. 304, 310.
[90] See: Nicholas Sitaropoulos, *Freedom of Movement and…*, *supra* note 7, at p. 219.
[91] *European Convention on Human Rights*, *supra* note 56, Article 14.
[92] See: Athanasia Spiliopoulou Akermark, *Justifications of Minority Protection in International Law*, Kluwer Law International, 1996, p. 205.
[93] European Court of Human Rights, *Case of Marckx v. Belgium*, 13 June 1979, para. 32.
[94] See: Siani-Davies, Katsikas, *National Reconciliation…*, *supra* note 15, at p. 563

The ECtHR stressed that "*the principle of equality of treatment is violated if the distinction has no objective and reasonable justification...assessed in relation to the aim and effects of the measure under consideration*".[95] Hence, with regard to the pursued aim, in the Court's view, violation of Article 14 occurs "*when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realized*".[96]

As ECRI noted, "*in a number of spheres, Greek law draws a distinction between non-citizens of Greek origin...and non-citizens of another origin*", and the inevitable results of such preferential treatment is the "*privileged status for persons of Greek origin*".[97] Therefore, despite the fact that ethnic Greek and Macedonian refugees alike had left the country under the same conditions, it was the latter's inability to categorize under the ethnically motivated label "Greeks by genus" who were deliberately excluded from the property restoration process.[98] It is probable, then, that the aim of the Greek authorities was to prevent ethnic Macedonians from resettling in Greece. Such conduct cannot, however, be labeled as a 'legitimate aim', precluding the need to assess the proportionality between the means employed and the pursued aim and finally violates Article 14 in conjunction with Article 1 of Protocol 1.

All in all, refugees excluded from the property restitution process will suffice to prove that they were subject to treatment that interfered with their possessions, and that such treatment was unjustifiably different to the one offered to those in comparable positions.[99]

4. Article 1 of Protocol 1 to the ECHR envisages that every natural or legal person is entitled to the peaceful enjoyment of his possessions, and moreover that no one shall be deprived of his possessions except if in the public's interest, and subject to the conditions provided for by law and by the general principles of international law.[100] It is generally accepted that the notion of 'possessions' in Article 1 of Protocol 1 has an autonomous and wider meaning than in domestic laws.[101]

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[95] European Court of Human Rights, *Case of "Relating to certain aspects of the Law on the use languages in education in Belgium" v. Belgium*, 23 July, 1968, para. 10.
[96] *Ibid.*
[97] ECRI, *Third Report on Greece*, *supra* note 37, para. 60.
[98] *Ibid*, para. 61.
[99] See: Council of Europe, *The right to property under the European Convention on Human Rights: A guide to the implementation of the European Convention on Human Rights and its protocols*, June 2007, Human rights handbooks, No. 10, p. 24.
[100] Council of Europe, *Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, 20 March 1952, ETS 9, Article 1.
[101] Council of Europe, *The right to property under…*, *supra* note 99, at p. 7.

The ECtHR acknowledged that whereas Article 1 "*in substance (guarantees) the right of property*", such a right applies solely to one's existing property and "*does not guarantee the right to acquire possessions*".[102] In the Court's assessments, Article 1 is comprised of three distinct but not unconnected rules,[103] and should as a whole be construed in the light of general principles, enunciating the peaceful enjoyment of property, as described in the first rule.[104]

As it was stressed above, Law 1540/1985 intended to correct the illegal violations and interferences with respect to the property rights of refugees, by promoting a conditional restitution dependent on one's ethnicity, instead of complete restitution for confiscated properties. It goes without saying that the enactment of such a law caused an arising concern for legitimate expectations for property restitution amongst ethnic Macedonian refugees that were in an identical or comparable position as the refugees of Greek ethnic origin.

One commentator underlined that "*Article 1 may be considered to protect three categories of property: acquired property; property falling under the head of legitimate expectation, because sufficiently established; and property resulting from rights to restitution*".[105] In the Court's view, expectations are legitimate if they have a sufficient basis in national law and are in accordance with long-standing jurisdiction of the national courts.[106] In our case, property restitution was indisputably enshrined in the law passed by the Greek parliament, and considerable practice exists regarding the law's afforded property restitution to those refugees that were 'Greek by genus'.[107]

The concept of *continuing violation* of the right to property, confirmed in the case-law of the ECtHR, may also be of relevance for the article's purposes.[108] "*Continuing violation"* is worth noting for the reasoning in the well-known case *Loizidou v. Turkey*. Here, the Court held

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[102] European Court of Human Rights, *Case of Marckx v.Belgium*, 13 June 1979, paras. 50, 63.

[103] See: European Court of Human Rights, *Case of Sporrong and Lonnroth v. Sweden,* 23 September 1982, para. 61. The Court stressed that "A*rticle (P1-1) comprises three distinct rules. The first rule, which is of a general nature, enounces the principle of peaceful enjoyment of property; it is set out in the first sentence of the first paragraph. The second rule covers deprivation of possessions and subjects it to certain conditions; it appears in the second sentence of the same paragraph. The third rule recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose; it is contained in the second paragraph*."

[104] European Court of Human Rights, *Case of Malama v. Greece*, 1 March 2001, para. 41.

[105] Laurent Semmet, *The European Convention on Human Rights and Property Rights*, Human Rights Files, No. 11 rev., Council of Europe, 1999, p. 17.

[106] European Court of Human Rights, *Case of N.K.M. v. Hungary*, 4 November 2013, para. 35. But see: Lauren Semmet, *The European Convention… supra* note ?, at p. 50, where the author contends that in one case, the former Commission for Human Rights opposed the possibility to "*extend the concept of legitimate hope to two cases: when it has for a long time been impossible to exercise a former property right in practice, and when a conditional claim lapses because the condition has not been fulfilled*".

[107] Responding to questions from Human Rights Watch about the number of people that used the advantage of the law, the Greek MFA indicated that "*…in the period between 1981 and 1987 [partly before and partly after the passage of the law] the process was completed with the return to Greece of another 17.000 persons, approximately*". See: Human Rights Watch, *Denying Ethnic Identity…*, *supra* note 30, at pp. 27-28.

[108] See: Council of Europe, *The right to property: A guide to the implementation of Article 1 Protocol No. 1 of the European Convention on Human Rights*, August 2003, Human Rights handbooks, No. 4, pp. 44-45.

that the continuous denial of access to the applicant's property and purported expropriation without compensation, must be regarded as interference with their rights under Article 1; in more concrete words, not as the deprivation of property (second rule) or a control of property's use (third rule), but clearly as an interference with the peaceful enjoyment of possessions (first rule).[109] Hence, such an attitude on the part of the respondent state was considered to be a continuing violation of Article 1 of Protocol 1 to the ECHR.

As for the compensation issue, the Court evolved its principle that "*the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference, and a total lack of compensation can be considered justifiable under Article 1 (P1-1) only in exceptional circumstances*".[110] Here, I will reiterate that provisions of the contentious Law 1540/1985 allowed financial compensation to be awarded for refugees as a last recourse, in case no available sites for property distribution could be located.

As previously underlined, the exclusion of a considerable number of refugees from the property restitution process on the grounds of their ethnic origin is "*manifestly without reasonable foundation*", and may not contend to pursue 'legitimate aim in the public interest'. Henceforth, the issue of 'proportionality' has no relevance here.[111]

## VI. Inter-state complaints and communications?

In light of the previously mentioned Resolution passed by the Assembly of the Republic of Macedonia of 2007,[112] I will briefly comment on two possibilities that stand before Macedonia with regards to initiating an inter-state case against Greece. The essence of such procedures could be the constitutionally enshrined duties for the Macedonian state to care for the rights of its citizens abroad. In this case, the deprived rights of those citizens born in Northern Greece.[113]

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[109] European Court of Human Rights, *Case of Loizidou v. Turkey*, 18 December 1996, para. 63.

[110] European Court of Human Rights, *Case of Holy Monasteries v. Greece*, 9 December 1994, para. 71.

[111] The Court in previously quoted case *Malama v. Greece* underscored that "*it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures of deprivation of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities, accordingly, enjoy a certain margin of appreciation. Furthermore, the notion of "public interest" is necessarily extensive. In particular, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues. The Court, finding it natural that the legislature should enjoy a margin of appreciation in implementing social and economic policies, will respect the legislature's judgment as to what is "in the public interest"* ***unless that judgment is manifestly without reasonable foundation***" (emphasis added - DT). See: *Case of Malama v. Greece*, *supra* note 104, para. 46.

[112] See above, p. 2., n. 3.

[113] Article 49 of the Constitution of the Republic of Macedonia, as amended with its Amendment II, read as follows: "*1.The Republic cares for the status and rights of those persons belonging to the Macedonian people in neighboring countries, as well as Macedonian expatriates, assists their cultural development and promotes links with them. 2. In the exercise of this concern the*

1. Article 33 of ECHR prescribes the possibility for initiating an inter-state case. It envisages that "a*ny High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party*".[114] Like in the individual application procedure, a prerequisite exists for domestic remedies to first be exhausted, except in cases where they are considered ineffective or inadequate.

Without prejudice to the possible political impact that an inter-state case could have on the bilateral relations between the two countries, at least from the ECHR perspective, it is much more feasible and conceivable that those individuals facing continuous discrimination against them on the grounds of ethnicity to proceed with submitting individual applications before the ECtHR than to expect the open issue to be closed with a single, inter-state adjudication.

2. With respect to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Republic of Macedonia may exercise its rights under Article 11, paragraph 1 (state complaint mechanism), and bring the discriminatory clauses in the above mentioned laws to the attention of the United Nations' Committee on the Elimination of Discrimination (CERD/C).

The Republic of Macedonia may contend that the construction of the wording, as related to the 'amnesty laws', is not benign, and has clear intent to discriminate against all those who belong to the category of people classified as political refugees who are not "Greek by genus".[115] In this case, it will be alleged that Greece is not giving legal effect to articles 2[116] and 5 of the Convention.[117] Of particular interest is Article 5, by which states are obliged to guarantee enjoyment to everyone of "*the right to leave any country, including one's own and to return to*

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*Republic will not interfere in the sovereign rights of other states or in their internal affairs. 3. The Republic cares for the cultural, economic and social rights of the citizens of the Republic abroad*".

[114] *European Convention on Human Rights*, *supra* note ?, Article 33.

[115] Article 1 defines "racial discrimination" as *"any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."* See: UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660.

[116] Article 2: *"States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:*

*(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to en sure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;*

*(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.*"

[117] Article 5: "*In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:*

*(d) Other civil rights, in particular:*

*(ii) The right to leave any country, including one's own, and to return to one's country;*

*(iii) The right to nationality*."

*one's country*" and "*the right to nationality*". As underlined, these are "*two notable rights that…states are to guarantee to everyone without distinction as to race, color, national or ethnic origin*".[118]

Should the matter result in the establishment of an *ad hoc Conciliation Commission,* and the Republic of Macedonia and Greece fail to reach an agreement (i.e. in the event that Greece refuses to withdraw the discriminatory clauses), the matter will be left to the Commission to make recommendations as it may think proper for the amicable solution of the dispute.[119] However, it should be noted that these recommendations are not binding on the parties. In the event that the Commission recommends that Greece remove the discriminatory clauses and Greece refuses to accept, under the Convention, the Republic of Macedonia will have one more avenue to compel Greece to remove them. Under Article 22, it may refer the matter to the International Court of Justice.[120]

Nevertheless, the possibility for interstate communication should not be overestimated. As Nowak rightly observed, "*despite the fact that Article 11 of CERD even provides for a mandatory inter-State communication procedure…not one of the 169 States Parties has so far availed itself of this opportunity vis a' vis any of the other States Parties where systematic racial discrimination and ethnic cleansing had even led to genocide"*.[121] Therefore, some authors rightfully contend the very existence of such unused procedures (together with one provided in ICCPR) as 'meaningless'.[122]

## VII. Conclusion

Greek scholars underline that a "*better understanding*" of the discriminatory laws of 1982 and 1985 is dependent on a "*deep(er) knowledge of the Macedonian Question and its special and complex relation to the Greek Civil War*", and, ostensibly, "*only in such a historically informed*

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[118] Nicholas Sitaropoulos, *Discriminatory Denationalizations Based on Ethnic Origin: The Dark Legacy of Ex Art. 19 of the Greek Nationality Code*, in Prakash Shah, Werner Menski, *Migrations, Diaspora and Legal Systems in Europe*, Routledge, 2006, pp. 107-125, at p. 119.

[119] See; Malcolm N. Shaw, *International Law*, Sixth Edition, Cambridge University Press, 2008, p. 313.

[120] Article 22 reads as follows: "*Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement*."

[121] Manfred Nowak, *The Need for a World Court of Human Rights*, Human Rights Law Review, Vol. 7, No. 1, 2007, pp. 251-259, at p. 253.

[122] See: Alexander H. E. Morawa, *The United Nations Treaty Monitoring Bodies and Minority Rights, with Particular Emphasis on the Human Rights Committee*, in *Mechanisms for Implementation of Minority Rights*, Council of Europe Publishing, pp. 29-53, at p. 33.

*context may one evaluate – not necessarily justify – the function of such law and decrees in Greece*".[123]

Having in mind this quite odd position that prevails in Greece, one may contend that delayed justice actually represents a denied justice. The case of ethnic Macedonian refugees from the civil war in Greece (1946-1949) reveals the continuing prevalence of political considerations in the approach of Greek authorities instead of the widely accepted legal principles of equality and non-discrimination, that unfortunately precludes final closure to questions aroused by the war. It was the overstepped usage of national/ethnic-minded enactments of various legal acts excluding a particular ethnic community from the 'amnesty laws' which violates peremptory norms of international law, and hence may give rise to a state's international responsibility, as it was observed by a renowned Greek scholar.[124]

The review above showed that discriminatory state practices affecting ethnic Macedonians clearly contravene with some core domestic and internationally recognized human rights and principles, some of which are an inseparable part of customary international law. Particularly, the contentious laws of 1982 and 1985, respectively, are in direct conflict with rights and principles enshrined in the ECHR and its protocols, ICCPR and ICERD. It is inevitable to underline that, according to the Constitution of Greece; international treaties that are ratified by the Greek Parliament have supra-statutory force in the domestic law (Article 28.1).

Therefore, the very existence within the legal system of laws prescribing discriminatory clauses, and enabling one's eligibility to use proclaimed rights dependent on ethnic origin, gives an opportunity to challenge such laws and practices on an individual basis. In that manner, refugees and their descendants may proceed firstly to determine their civil status in Greece, in compliance with the Citizenship Code of 2004, and secondly, in case the previous option is inapplicable due to various legal obstacles, to challenge the original decisions with whom they were deprived of their citizenship and property rights in Greece.

In the later stage, after the domestic remedies have been exhausted without the possibility of obtaining *restitutio in integrum*, they may lodge an application before the ECtHR claiming violations of several Convention rights. In the analysis above, I briefly assessed the possibility for invoking Article 13 (right to an effective remedy), Article 3 (prohibition of inhuman or degrading treatment), and Article 14 (prohibition of discrimination) to be read in conjunction

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[123] Vlassis Vlasidis, Veniamin Karakostanoglou, *Recycling Propaganda: Remarks on Recent Reports on Greece's "Slav-Macedonian Minority"*, Balkan Studies, Vol. 36, 1995, pp. 151-170, at p. 161.

[124] See: Nicholas Sitaropoulos, *Freedom of Movement and…, supra* note 7, at p. 221.

with Article 1 of Protocol 1 to the ECHR, as well as Article 1 of the Protocol 1 to the ECHR (right to peaceful enjoyment of property). There exists considerable case law related directly or indirectly to refugees' claims that may be useful in challenging these discrimination clauses and practices of the Greek administrative and judicial organs before the ECtHR.