

## LAW 67/2005

# LAW FOR THE COMPENSATION, EXCHANGE AND RESTITUTION OF IMMOVABLE PROPERTIES WHICH ARE WITHIN THE SCOPE OF SUB-PARAGRAPH (B) OF PARAGRAPH 1 OF ARTICLE 159 OF THE CONSTITUTION

## CONTENTS

- Section 1** Short Title
- Section 2** Interpretation
- Section 3** Purpose
- Section 4** Application
- Section 5** Production of Documents to the Commission
- Section 6** Burden of Proof and Elements as Basis of Decision
- Section 7** Parties to the Application
- Section 8** Hearing and Reaching a Decision
- Section 9** Right to apply to Court
- Section 10** Loss of Ownership upon Award of Compensation and Exchange of Property
- Section 11** Composition of Immovable Property Commission
- Section 12** Duration of Term of Office of the President, Vice-President and Members of the Commission
- Section 13** Duties and Powers of the Commission
- Section 14** Binding Effect of the Decisions of the Commission
- Section 15** Offences and Penalties
- Section 16** Procedure and Principles Applicable to Witnesses in Proceedings before the Commission
- Section 17** Responsibility
- Section 18** Payment of Compensation
- Section 19** Reservation of Rights of Persons who have not applied to the Commission
- Section 20** Non- Prevention of Proceedings under Certain Laws
- Section 21** Right of application of persons that have applied to the European Court of Human Rights
- Section 22** Authority to Make Rules
- Section 23** Repeal
- Section 24** Executory Powers
- Section 25** Entry into Force

The Republican Assembly of the Turkish Republic of Northern Cyprus enacts as follows:

- Short title
1. This Law shall be cited as the Law for the Compensation, Exchange and Restitution of Immovable Properties, which are within the scope of sub-paragraph (b) of paragraph 1 of Article 159 of the Constitution.
- Interpretation
2. In this Law, unless the context otherwise requires,  
“Ministry” means the Ministry Responsible for Housing Affairs.  
“Applicant” means the person applying to the Commission with a claim of right in respect of immovable properties which are within the scope of sub-paragraph (b) of paragraph 1 of Article 159 of the Constitution, and in respect to movable property which is claimed to be owned by such person, such property having been abandoned in the North prior to 13 February 1975, being the date of the proclamation of the Turkish Federated State of Cyprus.  
“Commission” means the commission constituted under section 11 of this Law.  
“Movable property” means property remaining abandoned on 13 February 1975, the date of the proclamation of the Turkish Federated State of Cyprus, and property described by law as such after that date, or described by law as movable property not being owned by any person.  
“Immovable property” means immovable property within the scope of sub-paragraph (b) of paragraph 1 of Article 159 of the Constitution.
- Purpose
3. The purpose of this Law is to regulate the necessary procedure and conditions to be complied with by persons in order to prove their rights regarding claims in respect to movable and immovable properties within the scope of this Law, as well as, the principles relating to restitution, exchange of properties and compensation payable in respect thereof, having regard to the principle of and the provisions regarding protection of bizonality, which is the main principle of 1977-1979 High level Agreements and of all the plans prepared by the United Nations on solving the Cyprus Problem and without prejudice to any property rights or the right to use property under the Turkish Republic of Northern Cyprus legislation or to any right of the Turkish Cypriot People which shall be provided by the comprehensive settlement of the Cyprus Problem.
- Application  
Cap.6  
9/1971  
28/1984  
31/2003  
85/2007
4. (1) All natural or legal persons claiming rights to movable and immovable properties specified in this Law may bring a claim until December 21, 2009 by way of an application in person or through a legal representative, to the Immovable Property Commission constituted under section 11 of this Law, requesting restitution, exchange or compensation for such property. Applications made to the Commission shall be subject to the Rules made under the Civil Procedure Law and the Rules made under this Law, notwithstanding any other provision to the contrary in any law or legislative instrument, only a fee of 100 YTL (one hundred New Turkish Liras) shall be paid for each application.
- (2) The entry in and the exit out of the Turkish Republic of Northern

Cyprus of persons, their legal representatives or agents applying to the Commission with a claim under the provisions of this Law, as well as of any person to be heard as witnesses on their behalf, shall be free.

Production of Documents To the Commission

5. In applications made to the Commission under this Law, original documents, or copies of documents certified by a certifying officer for purposes of control together with the original documents which the parties wish to submit, shall be produced and filed.

Burden of Proof and Factors as Basis of Decision

6. In proceedings before the Commission the burden of proof shall rest with the applicant who must satisfy the Commission beyond any reasonable doubt as to the following in order for a decision to be taken in his favour:

(1) That, the movable or immovable property in respect of which rights are claimed is the one claimed in the application.

(2) That, in case of immovable property in respect of which the applicant claims rights, that the property was registered in his name before 20 July 1974 and/or he is the legal heir of the individual in whose name the immovable property was registered.

(3) That, according to the Land Registry records, there are no other persons claiming rights in respect of the immovable properties subject to the claim other than those claiming rights under this Law.

(4) That, in the case of a claim for compensation, the compensation claimed by the applicant represents the total of the market value of the immovable property on 20 July 1974, together with compensation for loss of use and, if the immovable property is claimed and proved to be used as a home prior to that date, includes the non-pecuniary damages arising out of its non-use, and in case of movable properties, that the compensation claimed is the market value at the date of the application.

(5) That, the immovable property in respect of which rights are claimed was not subject to a mortgage and/or to a seizure or any other restraint imposed by a judgment or order of a competent court before 20 July 1974; otherwise, it must be clearly stated in whose favour such liabilities are, the amount of debt and the rate of interest, the date on which the debt has been incurred and its amount, and the date and amount of partial payment if any.

(6) That, the movable property in respect to which there is a claim for compensation belonged to the applicant prior to 13 February 1975 and that he had to abandon it due to conditions beyond his own volition.

Parties to the Application

7. In respect of applications to be made under this Law, the defendant party shall be the Ministry and/or the Turkish Republic of Northern Cyprus's Attorney-General representing the Ministry. The Commission shall issue an invitation to the individual who, according to the legislation of the Turkish Republic of Northern Cyprus, holds the property right or the right to use the property in

Hearing and  
Reaching a Decision

respect to which a claim is made, to participate in the proceedings before the Commission. The individual invited to the Commission has the same rights as interested parties in administrative cases.

8. The Commission, after having heard the arguments of the parties and witnesses, and having examined the documents submitted, shall, within the scope of the purposes of this Law, taking into consideration the below-mentioned matters, decide as to restitution of the immovable property to the person whose right in respect to the property has been established, or to offer exchange of the property to the said person, or decide as to payment of compensation. In cases where the applicant claims compensation for loss of use and/or non-pecuniary damages in addition to restitution, exchange or compensation in return for immovable property, the Commission shall also decide on these issues.
  - (1) Immoveable properties that are subject to a claim for restitution by the applicant, ownership or use of which has not been transferred to any natural or legal person other than the State, may be restituted by the decision of the Commission within a reasonable time period, provided that the restitution of such property, having regard to the location, and the physical condition of the property, shall not endanger national security and public order and that such property is not allocated for public interest reasons and that the immovable property is outside the military areas or military installations.
  - (2) If the restitution of an immovable property, other than property described in paragraph (1) above, is claimed by the applicant, the following rules shall apply, provided that the said immovable property has not been allocated for public interest or social justice purposes.
    - (A) If the increase in the value of the immovable property due to improvement made on such property between the date it was abandoned and the date of application with the Commission for restitution, is less than the value of the property when it was abandoned; or if there is no increase in the value of property between these dates; or if no project was approved by competent authorities that would cause such an increase; or if this immovable property is not property of equal value in accordance with the legislation in force, which has been acquired by any person in exchange of property left in South Cyprus, such person having had to leave the south of Cyprus and to move to the North, the decision for restitution of such property may take effect after the settlement of the Cyprus Problem, in line with the provisions of the settlement. In such a case, the person who is in possession or holds the ownership of the property in question under the legislation in force but would have to abandon the property after a settlement, shall not have to do so unless such person has been provided with compensation or alternative accommodation under the provisions of the settlement.  
As from the date of the announced decision of the Commission no construction shall be permitted on the

immovable property that would be restituted after the settlement of the Cyprus Problem within the framework of the provisions of the settlement or in any event within a 3-year period; such immovable property cannot be improved, purchased or sold. However, the Ministry may permit the improvement of such property in a way that is also beneficial for the applicant. The principles governing the issue of permits under this sub-paragraph shall be regulated by rules. Natural or legal persons who under the legislation of the Turkish Republic of Northern Cyprus, are in possession or hold the ownership of property to be reinstated after a settlement, shall have the right to be compensated for the damage caused by such a decision of the Commission or to apply to the authorities, in order to have the property they own or possess purchased by the authorities. If this right is not exercised, the immovable property to be reinstated after a settlement, shall, prior to restitution, be expropriated in accordance with the legislation in force.

- (B) If the increase in the value of the immovable property as a result of the improvement made to such property between the date it was abandoned and the date of the application to the Commission for its restitution is more than the value of the property at the time it was abandoned; or if a project that would cause such an increase in the value of the property has been approved by the competent authorities, the claim of the applicant for restitution shall be subject to the provisions of paragraph 3, below.
- (3) If the applicant claims restitution of immovable property and such an immovable property is not immovable property within the provisions of paragraph (1) and sub-paragraph (a) of paragraph (2) of this section, a proposal for exchange may be made, or compensation may be awarded to such person. The compensation shall be determined on the basis of the market value of the immovable property on 20 July 1974, and, if claimed, on the basis of damages for loss of use and non-pecuniary damages due to the loss of the right to respect for home.
- (4) If the applicant applies to the Commission with a claim for compensation in return for immovable property and the Commission decides in favour of the applicant; or if the Commission decides to award an applicant compensation in return for the immovable property, the compensation to be paid shall be determined on the basis of the following criteria:
  - (A) If the immovable property is a building its market value on 20 July 1974, taking into consideration the date of its construction.
  - (B) Loss of income and increase in value of the immovable property between 1974 and the date of payment.
  - (C) Whether the applicant is in possession of any immovable property in the south of Cyprus owned by citizens of the

Turkish Republic of Northern Cyprus.

- (D) Whether the applicant is receiving income from such property; if so, the amount of such income; whether such person is paying rent in respect of immovable property in his possession in the South which is owned by any citizen of the Turkish Republic of Northern Cyprus; if so, the amount and the identity of the beneficiary of rent.
  - (E) The non-pecuniary damages which the Commission shall decide in favour of the applicant shall be assessed having regard to the manner of the use of the property, as well as the establishment of individual, family and moral links to such immovable of the applicant on the date the property had to be abandoned.
  - (F) Where compensation is decided to be awarded for movable property, the amount shall be the market value of such property at the time the Commission reaches its decision.
- (5) In cases where the applicant claims exchange or where the Commission decides to propose exchange to the applicant, the current market value of the immovable property to be proposed for exchange shall be approximately equal to the current market value of the immovable property on which the applicant has a right. If the property which is proposed to the applicant in exchange is of a value higher than the value of the property on which he claims a right, he shall pay the Commission the difference between the two values. If the property which is proposed to the applicant is of a value lower than the value of the property on which a right is claimed, the difference between the two prices shall be paid by the Commission to the applicant.
- If exchange is decided upon, precedence shall be given to the evaluation of the immovable property forming the subject matter of the applicant's application, which the owner or user thereof had to leave in the South.
- The rights of the person applying to the Commission for exchange of property shall be reserved in respect of claims for compensation for loss of use and non-pecuniary damage due to loss of the right to respect for home.
- (6) Upon the request of the applicant, the Commission may award restitution, exchange, compensation in return for rights over the immovable property and compensation for loss of use if claimed.

Right to Apply to Court 9. Parties have the right to apply to the High Administrative Court against the decisions of the Commission. If the applicant is not satisfied with the judgment of the High Administrative Court, he may apply to the European Court of Human Rights.

Loss of Ownership  
Upon Exchange of  
Property or  
Award of  
Compensation

10. (1) Applicants who receive compensation in return for their rights over immovable properties in virtue of the application of the provisions this Law, can under no condition, make a claim of right of ownership over immovable property for which they have received compensation.
- (2) Applicants who receive new immovable property by way of exchange in virtue of the application of the provisions of this Law, can, under no condition, make a claim to a right of ownership over the immovable property on which their application was based.

Composition of  
Immovable Property  
Commission

11. (1) For the implementation of this Law, an Immovable Property Commission composed of a President, a Vice-President, and minimum 5, maximum 7 Members, whose qualifications are specified below, shall be established. At least 2 members of the Commission to be appointed shall not be nationals of the Turkish Republic of Northern Cyprus, United Kingdom, Greece, Greek Cypriot Administration or Republic of Turkey. The decisions regarding the appointment of the members shall be published in the Official Gazette.

(A) The President, Vice-President and the Members of the Commission shall be appointed by the Supreme Council of Judicature from among persons nominated by the President of the Republic. The President of the Republic shall nominate a number of candidates twice the number of members to be appointed.

(B) The President, Vice-President and Members of the Commission may be appointed from among lawyers or from among persons with experience in public administration and evaluation of property.

Any persons directly or indirectly deriving any benefit from immovable properties on which rights are claimed by those who had to move from the north of Cyprus in 1974, abandoning their properties, cannot be appointed as members of the Commission.

(C)(a) The salary of the President of the Commission is equivalent to the salary received by a Supreme Court Judge at initial appointment.

(b) Salaries of other members are equivalent to the amount prescribed for the salary scale 19, degree 10 as set forth in the Article 113 of the Law for the Public Servants plus 5% appropriation.

(c) Upon approval by the Council of Ministers, foreign members of the Commission may also receive an appropriation payment of a certain amount.

(2) The Commission shall convene by minimum two-third majority of the total number of members and shall take decisions by simple majority of the members attending the meeting, including the President.

(3) The term of office of a member not participating in the

59/2006

Commission meetings without a valid reason (illness, official duty abroad, and the like) for three times, may be terminated by the Supreme Council of Judicature upon the request of the President of the Commission. The term of office of the President of the Commission not participating in the Commission meetings without a valid reason (illness, official duty abroad, and the like) for three times, may be terminated by the Supreme Council of Judicature upon the request of the President of the Republic. In other cases, the conditions for the termination of the term of office of a member of the Commission shall be the same as those applied to a Supreme Court Judge.

(4) A secretariat shall be established in order to carry out the clerical and administrative work of the Commission. A sufficient number of personnel shall be employed in the secretariat upon the proposal of the President of the Commission and in accordance with the authorisation of the Council of Ministers. Employment of personnel under this section may be on a contractual basis. The number of personnel employed in this manner shall be no more than 10.

However, if the President of the Commission reaches a conclusion that the secretariat is not able to carry out its legal obligations within a reasonable period of time, he has the authority to employ an additional number of personnel on contract, subject to the authorisation of the Council of Ministers.

(5) All employees of the Commission, including the President, Vice-President and Members, shall be employed as long as their services are required and subject to conditions determined by the Council of Ministers, notwithstanding any provision to the contrary in any other law relating to employment of service, duration of service, age limit, duration of contract, renewal of contract and condition of non-retirement.

(6) The President, Vice-President and Members of the Commission shall not hold any other office during their term of office.

(7) Decisions taken shall be served on those concerned with the signature of the President and at least one Member.

Duration of Term of Office of the President, Vice-President and Members of the Commission

12. The President, Vice-President and Members of the Commission established in accordance with the provisions of this Law shall be appointed for a period of 5 years. At the end of this period the President, Vice-President and Members may be re-appointed in the same manner. The President, Vice-President and Members of the Commission shall carry out their duties objectively and independently during their term of office which may only be terminated before the end of term subject to the provisions of section 11, above. No person or authority can give any order or instruction to the President, Vice-President and Members of the Commission.

If the function of the Commission is completed before the period envisaged in the Law the terms of office of the Commission members shall be automatically terminated.

Duties and Powers of

13. The Commission shall have the following duties and powers:

the Commission

- (1) To examine and reach a decision on applications made under this Law.
- (2) To determine the amount and method of payment of compensation.
- (3) To take necessary measures and decisions in order to conclude the proceedings concerning the amount of compensation to be paid to the applicants following the application of this Law.
- (4) The Commission, in carrying out its duties and exercising its powers mentioned above, may, if it deems necessary, collect written or oral testimony or hear witnesses.
- (5) The Commission may require written and oral testimony of any witness for the purpose of resolving any problems that may arise in the application of this Law, either under oath or by way of a declaration. Such evidence under oath, or by declaration shall be identical to that required for testimony before a Court of law.
- (6) To summon any person residing in the Turkish Republic of Northern Cyprus to attend any meeting of the Commission in order to give testimony or produce any document in his possession and to be questioned as a witness.
- (7) To compel any person to give evidence or to produce a document, when such person refuses to do so, following a request by the Commission, whether under oath or by way of declaration, if the person concerned does not offer any satisfactory excuse to the Commission for such refusal. However, witnesses may not be compelled to answer any incriminating question and no legal proceedings may be commenced for refusal to do so.
- (8) The Commission may decide that expenses shall be paid to any persons summoned to give evidence in virtue of the application of this Law.

Binding Effect of the Decisions of the Commission

14. The decisions of the Commission have binding effect and are of an executory nature similar to judgments of the judiciary. Such decisions shall be implemented without delay upon service on the authorities concerned.

Offences and Penalties

15. It is an offence to refuse to produce any document or information required by the Commission in accordance with the provisions of this Law, or to fail to appear before the Commission upon being legally summoned to do so, or to refuse to give evidence, without legal excuse, and any such person shall upon conviction be liable to a fine of 2,000 YTL (two thousand New Turkish Liras) or imprisonment up to one year, or both.

<p>Procedure and Principles Applicable to Witnesses before the Commission Cap. 6 9/1971 28/1984 31/2003</p>	<p>16. The processes to be carried out in accordance with the provisions of this Law, summons to be issued to witnesses, the procedure for attendance before the Commission and that relating to the hearing shall be subject to the provisions of the Civil Procedure Law.</p>
<p>Responsibility Cap.154 3/1962 43/1963 15/1972 20/1974 31/1975 6/1983 22/1989 64/1989 11/1997</p>	<p>17. Members and other personnel of the Commission employed under this Law carry the same responsibility in respect of their acts as public servants do and proceedings may be brought against them under the legislation in force.</p>
<p>Payment of Compensation</p>	<p>18. The Ministry responsible for Financial Affairs shall make a provision under a separate item in the Budget Law for each year for the payment of compensation awarded by the Commission and other expenses incurred by the application of this Law.</p>
<p>Reservation of Rights of Persons who have not Applied to the Commission</p>	<p>19. Rights and benefits of persons upon movable and immovable properties located within the boundaries of the Turkish Republic of Northern Cyprus who do not apply to the Commission shall be determined and dealt with in accordance with the framework and principles laid down in a political settlement regarding the Cyprus issue, to be reached after taking into consideration the public interest, housing and rehabilitation needs of refugees and the protection of public order.</p>
<p>Non-prevention of Proceedings under Certain Laws 15/1962 21/1962</p>	<p>20. The provisions of this Law shall not prevent any proceedings being instituted under the provisions of the Requisition of Property Law, or the Compulsory Acquisition of Property Law.</p>
<p>Right to apply of those that applied to European Court of Human Rights</p>	<p>21. Those persons, who have applied to the European Court of Human Rights before the entry into force of this law, claiming that their right of ownership of movable and immovable properties located in the north of Cyprus were infringed, may also apply to the Commission.</p>
<p>Authority to Make Rules</p>	<p>22. Rules for the better implementation of the provisions of this Law, may be prepared by the Commission, approved by the Council of Ministers and published in the Official Gazette.</p>
<p>Repeal 49/2003 18/2005</p>	<p>23. From the date of entry into force of this Law, the Law on Compensation for Immovable Properties Located within the Boundaries of the Turkish Republic of Northern Cyprus which fall within the Scope of Article 159 Paragraph (4) of the Constitution, shall be repealed without prejudice to the proceedings taken under</p>

this law.

Executory Powers

24. This Law shall be implemented by the Ministry Responsible for Housing Affairs on behalf of the Council of Ministers.

Entry into force

25. This Law shall enter into force upon its publication in the Official Gazette.