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## **Multidisciplinary Assessment of Citizenship Approach in Modern Law and Problem of “Denaturalisation” on the Basis of Law and Communication**

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### **Abstract**

Through the provision of general definition for the concepts of “modernisation” with many dimensions and “law”<sup>1</sup> as there is no main consensus on the doctrine, our study discussed the concept of “modern law” reached through the related impacts” and addressed the issue of “denaturalisation”, which is defined as “against the modern law system” in the field of “cizitezenship law” as one of the modern law domains covering various concepts within, and is not under the scope of European Convention on Nationality and Turkish Law, however is covered under the applicable citizenship law of the Turkish Republic of Northern Cyprus and under the new law on citizenship aiming the revision of existing law and elaborated that the related issue is not only constitute a question of law but also with another significant aspect harms the communication and relationship between state-individual and state and other states/international organizations. Consequently, our study delivered concrete proposals to eliminate/prevent the divergences caused by the relevant organisation regarding the legal, communication and other domains of social sciences.

**Keywords:** Modern law, Citizenship, Denaturalisation, Legal, Communicative, Multidisciplinary.

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## **Introduction**

The legal dimension of our study analysing the modernisation, modern law and problem of denaturalisation in relation with the citizenship law as a modern law based on the “Turkish Law” and “Cypriot Turkish law” in comparison with the analysis of European Convention of Nationality, and the communication dimension in terms of “deterioration” the relationship of state-individual would be argued *only* within the framework of communication/relationship between the Cypriot Turkish state and Cypriot Turkish citizens and regardless of being an unrecognised state, the state of TRNC and other states and international organisations in consequence of not making any amendment on the Cypriot Turkish Law and in the draft law regardless the amendments on the European Convention of Nationality and Turkish Law.

The European Convention on Nationality is considered as a primary text within the domain of citizenship law and with the approach of Montesque should be “ *in compliance with the size, geographical location, climate, soil quality of country, basic occupations of community as farmer, hunter of shepherd, degree of liberty under the constitution, religion, tendencies, wealth, population, business life, education and upbringing, and traditions and customs of a community*” (Gürkan, 1988: 15). This approach recognised as a basis cannot be avoided. However, concerning the modern legal system, such system has also various requirements. Therefore, a concern referred as “out-dated” in general may be subject to criticism as being regulated under the Cypriot Turkish Law.

The study, in which the content analysis method will be used as the “law analysis” in terms of analysing the related legal regulations, will be considered as a field research through covering the criticism regarding the existing and potential issue/issues in terms of communicative and sociological aspects.

Thus, for expressing/reiterating with a single sentence, the *main aim* of this study is to identify and/or underline the legal problem of denaturalisation in terms of Turkish Cypriot Community, and propose solutions for the issue that damages and would possible continue to damage the relations between state-individual and state-international organisations.

### **I. General Aspect**

#### **A. Theoretical Framework**

The article utilizes such disciplines of the social sciences indicated below in the order of weight given them:

*Criminal Law, Communication Science, History of Law, Human Rights, Jurisprudence, Legal Philosophy, Moral Philosophy: Political Philosophy, International Law, International Relations, Private International Law: Citizenship Law, Sociology.*

In consideration with the main framework given above (1<sup>st</sup> note), the jurisprudence on the basis of “Denaturalisation” – private international law was regulated by the citizenship law and with regard to the identification of legal status of society and therefore individual, as the headstone of society, it is within the domain of legal philosophy *that analyse the existing situation rather than the tone in society*; and is under the scope of human rights with the approach that *statelessness would impose a violence to the human rights*; through the interpretation of denaturalisation as a “penal” practice and that the denaturalisation covers the spouse and child/children if any under YKYY (TRNC Draft Law of Citizenship), the issue is under the scope of penal law –*with limitation* –with regard to the idea of “*being against the fundamental principle of individual criminal responsibility*”. Additionally, prior to claiming “a contradiction” of the concept of denaturalisation to the citizenship law system, which is under the modern law system, a historical assessment should be conducted to form a basis at the level of “modern law” and express the difference of “modern law” from the previous legal system, and consequently the history of law sets light to the subject of study.

The *impact of denaturalisation caused/to be caused on the communication/relation between state/individual* given in the study intersects at the point<sup>2</sup> of *regulating individual relations/interactions within the scope of communication as well as state-individual communication/relations with the rules of law*; the matter in hand has the nature of being a “main” communication study through its dimension. Therefore there is a requirement to analyse in detail from the perspective of communication science.

On the other hand, since there is a possibility that at the level of state-individual relationship, *a social problem* may arise in case of denaturalisation of too many individuals with acquired citizenship from the much narrow aspect or in relation with different subjects, the frequent denaturalisation of different individuals, and from much general aspect *regulation the social relations via legal arrangements* (Bahar 2009: 182) and through the related legal arrangements *there is a regulation/regulations towards the society are matters of fact*, the issue is covered under sociology.

Moreover, the political philosophy *analysing the relations of political authority (state)-individual and activities of political authority (state)* directly covers the issue.

Since “denaturalisation” is against the modern citizenship understanding as well as being “penal” and “out-dated” practice, the issue becomes a part of international relations with the

fact that the relations of state with other states and international human rights organisations-institutions are deteriorated in the event of statelessness of an individual; and since TRNC as the relevant state in question is an unrecognised state, there is a necessity to refer the international law regarding the extend of relations with the international legal organisations-institutions and the points to be damaged.

In consideration with the given explanations, there is a “requirement” and “aim” to perform an interdisciplinary analysis through using the disciplines which was given.

In this study, related regulations legislated was analyzed via method of law analysis and the data about all the given disciplines was analyzed via method of content analysis.

## **B. The Concept of “Modernisation”**

The concept of “*modern*” is originated from the French word *moderne* (contemporary, up-to-date) cited from the Latin word –*modernus*- (appropriate and duly). The word *modernus* is originated from the Latin word *modus* (style, mode, size) (Origin of the Word Modern, n.d.)

On the other hand, the concept of “*modernisation*” had the meaning of changes in the field of *the secular idea and rational thinking*, leaving the dictation of western beliefs/liberation until XVII. Century (Ulusoy 2015: 514).

In the following period (from the end of XVII. Century until now), the level of western countries as the *level of science and technology* “growth” is used with the concept of “*westernization*” in other words the adoption of western idea (Atakul, n.d.)

“*Modernization*” was first used in the 5<sup>th</sup> century to define “the Christian world” independent from the “Roman and Pagan” history.

The theory of modernising was introduced by the American social scientists and/or social scientist living in America. Such theory means the idea of “social change” accepting that the communities around the world may be “modernised” through taking the west as a model.

On the other hand, the modernization may vary between the eastern and western societies even within the eastern and western societies independently; however, they all find a common ground at “building the new human” (Ulusoy, 2015: 517).

Therefore, the concept of modernisation as can be noted as “a theory to change and develop” is based on the approach indicating that the communities require *a cultural and social* “change” in order to reach modern economic development.

There are *three* main type/dimension of modernisation:

- *Political modernisation*: a type of modernisation covering the “key concepts” gathered at the participatory decision-making as political party, parliament, right to vote and stand for election etc.
- *Socio-Cultural Modernisation*: a type of modernisation, which is cultural from the aspects of “secularism” and nationalism”; and social from the aspects of improvement in literacy, urbanisation process, increasing weakening of absolute authorities etc.
- *Economic Modernisation*: Different from “the Industrialisation”, a type of modernisation covering division of labour integrating and growing with rising economic changes, use of management techniques, technological development, enhancement of business skills etc.

Regardless, the modernisation is not a concept that only embody itself under the three headings given, it also had many impacts in various fields and created concrete outcomes. Therefore, one of the fields that the modernisation had an impact on is “law”, which has a significant role in terms of the subject of this study.

It should be noted that the significance of the relation between modernisation and law stands out with the formal rules in terms of society towards regulating and leading human relations.

Together with the change, the legislator acts in a more “conscious” norm determination way. As stated by the Habermas, prior to creating norms through adjudication, the rules applicable in the community in an informal way become legal norms (Yüksel, 2002: 185).

No doubt that life under the state sovereignty would not be possible without “law. Particularly the state, law surrounding the social living spaces build a foundation suitable for moral rules and judgments (Yüksel, 2002: 186).

### **C. Concept of “Law”**

The concept of “law” that express various components in daily life is originated from the word “*right*” within the framework of “jurisprudence” and the way it is used in our study and means the meaning of “rights” as the plural version of the relevant term.

Within the framework of such use, there is no consensus at the doctrine level regarding the definition of “law”; there are different proposals regarding the definition as can be understood with no consensus.

In accordance with the definition by Ulpianus given in the fundamental legal text enacted in 533 AD, “*the jurisprudence is the knowledge of celestial and humane and science of rightful and wrongful*” (Işıқтаç, 2011: 5).

Pursuant to another definition; “*law is the whole regulatory, prohibitive and permissive code of conduct in the communities that regulate the relations among or between people and state and are imposed by the state through sanctions*” (Aybay, et al, 2013: 64).

According to other definition, the law is " a rule or method that is designed, instructed or built in accordance with the compliance of facts or actions together and interdependently (What is Law?, n.d.)

In consideration of another idea that we also agree with that the law should be defined with “adjectives” in terms of its use in our language such as “positive law”, “statue law” etc. in this context, the law should be categorised under two headings: “Positive (Existing – *legal data*) Law” and Ideal (Future– *lege ferenda*) Law (Aybay, et al, 2013: 64).

As can be understood from the clear statements, place and time are significant for the positive law as the law in a certain country at a certain time is considered as the positive law of that country (Aybay, et al, 2013: 64). On the other hand, different/independent from this definition, the ideal law is defined as the most appropriate law system to meet the requirements of a society in the most suitable way that is most compliant law system for “justice” at the “abstract level” (Aybay, et al, 2013: 65).

#### **D. “Law” Before and After the Modernisation**

The Roman law was in general applied in Rome and geographies under the rule of Rome from 753 BC accepted as the foundation date of the city of Rome until the Eastern Rome Emperor *Iustinianus* passed away in 565 AD.

The impact of Roman law continued in almost all Continental Europe after the mentioned period until the legalisation movement in 19<sup>th</sup> century. Although it was not possible to directly apply afterwards, its impacts maintained at a significant level. Therefore, it constituted a basis for the applicable private legal system in the Continental Europe and a majority of its fundamental rules (Ceylan, 2004: 75).

Islamic law is a legal system based on *Qur’an, Tradition (Sunna), Ijma and Comparison* (See. Ekinici, 2006). Other than the issues that are not related with public, the Islamic Law was only applied for the Muslims and the foreigners were judged before their own religious institutions.

The Customary law “*was comprised of rules regulated in accordance with the Turkish*

*customs and traditions an orders of Sultan provided that not being against the principles of Islamic law.* The principles of customary law were combined as “codes”. Some established customs and traditions of the legal system (legal practices) were taken into consideration in the determination of customary law rules and additionally, the head of state in the Islamic law was granted with a comprehensive discretion and regulatory power (Koşum, 2004: 146).

Apart from the aforementioned significant dimensions/outcomes of modernisation, it also had major impacts on the other domains; yet from the aspect of our subject under this study, the main impact of modernisation on the law was the occurrence of “modern law” system and/or modernisation of law.

The legal systems such as Roman Law, Islamic Law and Customary Law had lost their validity after the periods given above, and “Modern Law” had arisen as a new legal system.

Roman Law that can be considered as in a way "modern" when compared to the given legal systems is also a basis for the Modern Law.

The Modern Law System is divided into two as “Civil Law” and Anglo-Saxon Legal System” the Anglo-Saxon Legal System is utilized in the countries such as America, England, Australia while “Civil Law” in the countries like Turkey, France, Germany.

The main feature that distinguishes modern law from other legal system is its occurrence as a product of its effectiveness introduced by the people with deliberative or certain aims, and it's being a system of rules determined with rationale.

The changes in the socio-cultural conditions and mentality had a significant impact on the formation of variation between modern law- legal systems in the previous legal system in the course of time. Therefore, the law as integration of value(s), concept(s), rule(s), organisation(s) and behaviour(s) reflect the effects of its own socio-cultural structure and world of thought (“Modernleşme Sürecinde Hukuk” [Law in Modernization Process], n.d.).

Just as the modern culture and the individuals within have a different standard of judgments, behaviours and perspective when compared with the individuals living pre-modernisation; similarly the modern law has different characteristic features with regard to previous legal systems.

Thus, modern law has two main features:

- In pre-modernisation legal systems, the individuals missed or unseen in a community or groups are highlighted,
- When compared with pre-modernisation legal systems, it is mainly based on abstraction.

Both two main features had a major role in the development of liberal legal systems that consider “individual” as the main subject of fundamental rights and freedoms. For instance, compared with other geographies and periods, the Western Law shaped in the last couple of decades is different in terms of natural characteristic and significance vested on the individual (“Modernleşme Süresinde Hukuk” [Law in Modernization Process], n.d.).

From the perspective of Turkey, the positive law was the Islamic and customary law during the Ottoman period. Within this scope, the customary law regulated the areas that were outside of the scope of Islamic law or when shortcoming arose due to its structure of not being able to follow the change. In the following period, the Tanzimat movements (the reorganisation of Ottoman Empire) happened but no accomplishment was reached. The modern law was introduced with the foundation of the Republic of Turkey.

On the other hand, for Cyprus, the Islamic and customary law were applied during Ottoman period, Common Law during the British administration; Common Law during the Republic of Cyprus; Common Law and new movements during Turkish Cypriot Administration; hybrid system in the Turkish Republic of Northern Cyprus period.

TRNC is an exception from this perspective. As given above, due to being a British colony for eighty years, TRNC Legal System is based on the Anglo-Saxon Legal System in terms of its origins; with the impact of Turkish legal System and laws in accordance with the "Civil Law" yet transformed into "a Hybrid legal System" that bears both systems.

As being a significant part of our subject “citizenship law” as one of the various sub-branches of modern law would be discussed at this point.

## **E. The Concept of “Citizenship Law”**

“*Citizenship law*” regulates the issues regarding to acquire and lose a citizenship and procedures in relation to the acquisition and loss of citizenship within the scope of the applicable legislation.

As a concept; “*Citizenship*”<sup>3</sup> refers to the *legal bond* that incorporates “the natural persons” and connects with “the state”.

In addition to the concept of "citizenship" preferred to be used in the study, the concepts of "allegiance" and "nationality" are also used in relation to the issue. Therefore, it is required to explain how the concept of "citizenship" varies with the other concepts and the reason of its use: as given above, the citizenship incorporates "the natural persons" and connect them "legally to the state". Nationality also incorporates the natural persons yet refers to connect



with the "nation"; so it differs with our subject and directly becomes irrelevant. (Göğër, 1979: 3). Although the concept of citizenship refers to a "legal relation"; the fact that the concept of nationality (and similarly the concept of "race") covers race, religion, language and culture and it is not technically a legal concept, supports the given idea. (Aybay & Özbek, 2015: 7). The other concepts listed above like the citizenship other than the nationality express to be under the state. (Göğër, 1979: 3). As the citizenship and nationality have two synonyms then we would have fewer concepts to consider. (Aybay & Özbek, 2015: 7). Consequently, the concepts of citizenship and nationality differ from each other from the point of legal relations. Unlike the view that we agree, there is also a view defending that the scopes of nationality and citizenship are the same (Göğër, 1970: 187; Nomer, 2014: 16). To note that the nationality is a superior concept that binds not only natural entities but also "legal entities" and "things" while the citizenship only defined to be the sub-concept that binds the natural entities to the state (Berki, 1970: 15; Fişek, 1959: 12; Turhan & Tanrıbilir, 2010: 21). In consideration with the historical use/practice, the citizenship is defined as "the relationship between the individual and state in the state structures on the basis of Roman law", and that the citizen enjoys all "rights and privileges" in the country; while the nationality is originated from feudal period and used to express the connection between the individual and territory-country, and the people were given an unquestionable loyalty duty towards the owner of the territories and the people were much limited from the legal status when compared with the citizens, and thus both concepts are different. (Uluocak-Erdener, 1968: 19). Within the framework of explanation, the use of citizenship in the study would be appropriate in terms of the study subject.

The "types" of citizenship are discussed under two headings: "Original" citizenship and "acquired" citizenship.

Such differentiation is obvious in many countries under the effect of Civil Law and Anglo-Saxon Legal System (Common Law), and has the traces of Turkish Law that under the impact of Civil Law and Anglo-Saxon Legal System<sup>4</sup> as well as comes into being in the Cypriot Turkish law what we call "Hybrid System".

In this context, pursuant to the Turkish Law on Citizenship no. 5901 "*Turkish citizenship is acquired by birth or after birth*".

Similarly, in the Cypriot Citizenship Law no. 25/1993 under the Cypriot Turkish law, Chapter 2 with the title of "*Acquisition of Citizenship by Law*" states that the citizenship is acquired in two different ways either by birth or after birth.

The original citizenship is acquired at the time of birth or *because of birth*<sup>11</sup>. Such acquisition of citizenship does not require the decision of any authority; and the person is considered as a citizen from the moment of birth (Doğan, 2012: 25).

The original citizenship may be acquired through the right of blood or *jus sanguinis* and right of soil or *jus soli*<sup>5</sup>.

The acquired citizenship is not based on the birth but acquired after birth *due to other reasons*. For the elimination of a possible confusion; the first citizenship acquired/to be acquired by a person that is stateless from the birth should be interpreted as the “original citizenship” rather than the “acquired citizenship”.

The acquired citizenship is possible through the personal agency or decision of a competent authority or legal outcome of a legal procedure or international conventions<sup>6</sup>.

## **II. Problem Of “Denaturalisation” From The Legal Perspective**

Within the scope of the Universal Declaration of Human Rights Article 15/1, “*everyone has the right to a nationality*”.

Additionally according to the Article 4/a under the European Convention on Nationality, “*everyone has the right to a nationality*” while Article 4/b notes that “*statelessness shall be avoided*”.

The aim of the related legal regulation is to avoid the statelessness for everybody.

“Statelessness” may be defined as “the lack of citizenship or improvable citizenship”. Therefore, the people who are not bound to any state with citizenship or whether they cannot prove their bond are considered as “statelessness” (Göger, 1970: 16; Turhan & Tanrıbilir, 2010: 29)<sup>7</sup>. According to the convention of 1954 regarding the status of stateless people; “the statelessness” is defined as follows: “*within the scope of this convention, the statelessness person is the one that is nor recognised as a citizen by any state within the own law*” (Handbook On the Safeguarding the Stateless People, n.d.: 9).

The statelessness is interpreted as “*an undesired*” event that “*should be avoided, prevented*” (Aybay & Özbek, 2015: 52).

Some of the negative aspects of statelessness<sup>16</sup> are briefly listed below as; (Aybay & Özbek, 2015: 54-55)

- *For the individual:*

- (1) Lack of national law in case of determining an existence or a lack of legal capacity,
  - (2) Since the person is not a citizen of any state; he/she may be deported by all countries,
  - (3) The person cannot request any protection from any state.
- *For the state:* the state cannot demand the performance of “civil rights and civic duties” such as military service etc. due to the lack of citizenship.

On the other hand, although the principle that everyone should have a citizenship is de facto, it is that absolute in practice.

The recommendations of the United Nations regarding the avoidance of statelessness provide “advices” to the states, while multilateral conventions<sup>8</sup> are concluded to minimize the statelessness.

As given above, the applicable Turkish Law on Citizenship no. 5901 under the Turkish Code does not mention “the denaturalisation”; however since the former TCL no 401 regulated “the denaturalisation” and the applicable CLN no. 25/1993 takes the Law no. 401 for the Cypriot Turkish law, the denaturalisation is regulated under the Cypriot Citizenship Law.

Pursuant to the CLN, Article 18 with the sub-title “Denaturalisation” is as follows:

- (1) *The people,*
  - (A) *who are abroad and act against the favour of internal and foreign security of the Turkish Republic of Northern Cyprus and are not possible to have a criminal prosecution about and do not follow the call to return the country within three months without any excuse;*
  - (B) *who have found asylum in a foreign country;*
  - and*
  - (C) *who live within the country or abroad, and behave in the way to deteriorate the good relations between the Turkish Republic of Northern Cyprus and the other state or states, and acquired the Turkish Republic of Northern Cyprus citizenship may be denaturalised with the Council of Ministers' decision.*
- (2) *The person, who was decided for denaturalisation, would be notified;*
  - (A) *Through publication; or*
  - (B) *Through regular notification.*
- (3) *) The denaturalisation procedure shall be terminated for the people that return to the Turkish Republic of Northern Cyprus prior to the notification of denaturalisation*

*decision or publication in the Official Gazette. However, such shall not affect the criminal prosecution.*

*(4) The denaturalisation shall only be applicable for the person that the decision was related to. The decision of denaturalisation shall not affect the spouse and children of the related person.*

*(5) The person that was decided to denaturalise shall not enjoy the rights vested to the foreigners.*

The denaturalisation, which imposes a significant legal problem and constitutes a contradiction against the modern citizenship system, in our perspective, should be taken out from the Cypriot Law on Citizenship.

Pursuant to the Cypriot Law on Citizenship no. 25/1993 Article 18, there is no regulation on any measures regarding the statelessness of the person that would be denaturalised. Paragraph 4 of the same Article indicates “*The denaturalisation shall only be applicable to the person in relation with the decision. The denaturalisation shall not affect the citizenship of spouse and children*”.

In consideration with such provisions, the denaturalisation has personal impacts and if any and citizens of the Turkish Republic of Northern Cyprus, shall not affect the citizenship of his/her spouse and children; and in case that the spouse and children do not have any other citizenship, the issue of statelessness is avoided.

Additionally, the concept of “denaturalisation” is “*criminal*” from a perspective. Therefore, it may lead to major outcomes. On the other hand, the extension of a provision that has “a criminal” nature in the way to cover the spouse and children, contradicts with “the principle of individual criminal responsibility” which is one of the main criminal law; and- *so to say*- “contradicts to law”.

Unfortunately, regardless –*all the criticism*- the denaturalisation did not taken out of the Cypriot Law on Citizenship and even the new draft Law have a related provision. This issue is still *subject to significant criticism*.

Additionally, the possibility of statelessness in case of a denaturalisation is not taken into consideration due to the nature of the subject matter, and under the circumstance of not having any other citizenship; there is a possibility of statelessness. In addition to this negative aspect, a provision concerning the denaturalisation of, if any, spouse and children, which is against the modern citizenship system leading to statelessness is also covered under the new draft Law on Citizenship in the Turkish Republic of Northern Cyprus. Such events may lead

to statelessness in case of not having any other citizenship of the spouse and children, which may be interpreted as "negative" in terms of the prevention of statelessness<sup>9</sup>.

Moreover, in relation with the political approach, the subject matter might be used “as a threat tool”, which underlines the critical nature of the issue. For example, there were many arguments upon a claim of a politician that the people who voted in the south will be denaturalised from the TRNC citizenship. Of course, this is not a justification for denaturalisation as regulated under the TRNC Constitution Article 67 (4) “...*No one shall be deprived of citizenship acquired by birth from Turkish Cypriot father or mother*”. Even in the cases that the conditions in Article 18 under the Law on Nationality of Cyprus are fulfilled, the people with original citizenship shall not be denaturalised. In case of the inclusion of much broader power of discretion to be vested in the state through the denaturalisation provision under new legislation, the extent of “the risk” is embodied through such approach<sup>10</sup>.

Moreover, in consideration with the court cases concerning the denaturalisation<sup>11</sup> we can encounter with the appeals towards the issue. For instance, Gary John Robb, a TRNC and English citizen, whom the President of that time requested a criminal prosecution of, was denaturalised from the TRNC citizenship with the Council of Ministers' decision. Robb, who appeal to the decision, and found justified in his case filed under the Supreme Administrative Court. Upon the decision of Supreme Court, the Council of Ministers shall not give such a decision due to the outstanding criminal proceedings in England about Robb; such decision can only be in the way of “termination of citizenship” provided that Robb hid the related proceedings during the naturalisation point (through false statement or understatement), and that the decision of denaturalisation shall not be given (both concepts are completely different<sup>12</sup>), thus the related Council of Ministers decision is null and void, and Robb still retains his TRNC citizenship (TRNC SAC, D. 18/09, 22/06, 2009).

While the concept has a critical nature and contradicts with the citizenship law, which is one of the branches of modern, law, and shall not have any legislation accordingly; the concept has also a significant aspect in terms of communication too.

### **III. Problem Of “Denaturalisation” Concept From The Communicative Perspective**

#### **A. Impact on the Relationship between the State-Individual**

The studies regarding the association of communicative action theories with law highlight the importance of the relationship between communication and law. In the communicative action theory of Habermas, the society theory is based on two basic components as the life-world and system. Habermas defined law an environment, a medium between the life-world and

system (Yükselbaba, 2008: 222). Habermas claimed that the law, independent from money and power considered as the directive mediums, served to reinforcement and institutionalisation.

Additionally, he stated that through the “legalisation”, elaboration of legislation, the western societies went through “the colonisation of life world”. Although such elements are so comprehensive that might be a subject to another study; they indicate that law and communication are very close internally and mutually complementary (Deflem, 1996: 5-6; Deflem, 2014: 881-883).

As the concept of denaturalisation is mainly regulated under jurisprudence-citizenship law; the impact of denaturalisation on the communication/relation between state and individual intersects with the regulation of individual relations/interactions and state-individual relations that are under the communication (See. Hoecke, 2002: 7); and as mentioned in the beginning of study, the subject matter, from this perspective, constitutes a subject of communication science; thus a requirement to discuss the issue from the communication science perspective occurs.

It can be reiterated that while various issues concerning the inhabitants (particularly citizens and foreigners) of country are regulated under the legal rules; at the same time, there is a relation/communication between the legislator-individual through the adopted laws.

The issue of sender-receiver address in the communication theories is also significant in terms of law and legal rules. Namely, the legislator is defined as the “norm-sender” while the inhabitants (particularly the citizens) as “norm-receiver”. Additionally, a “realistic” perspective brings the laws to the perspective of norm-receivers (Hoecke, 2002: 80-81).

The positive approach of the community caused as a result of sender-receiver communication towards the law and consequently the state is also crucial for the implementation of the laws (Hoecke, 2002: 30-31).

For instance, just as the citizens of a government providing democratic conditions and foreigners living in a country can express themselves freely and therefore would be “happy” and behave positively towards the government of the country that they are living in within the acceptable perspective; then consequently when the individuals feel more “free” and “safe” with all the adopted arrangements adopted under legal rules, proportionally their trust towards the government (state; legislator) would be more accordingly.

On the other all, the conditions of country or regulated issues and their associated aspects that leads the individuals not to feel safe and free would have a negative impact on the views of individuals towards the government (state; legislator); in case of any increase in the related

approach and arrangements, “disturbance” within the country, “instability” based on the “disturbance” of individuals and hence the community (vital problems that are required to be analysed in detail within itself) and consequently an undesired circumstance “anarchy” may arise<sup>13</sup>.

Within this perspective, the existence of denaturalisation as the main subject of our study, under the applicable law in TRNC and additionally being regulated under the new draft law cause “deterioration” between the relationship of state-individual. Such deterioration develops around the sense of trust and belonging of individual towards the state.

The concept of denaturalisation, as stated, has the nature to undermine the trust of individual and hence the community towards the state.

This is primarily applicable for the denaturalised person. The individual denaturalised by the state bind through the citizenship law would completely lose the sense of trust towards the state and with some exceptions, would mainly lose the sense of belonging, which is related with residing in the country and at least with the physical status to enter the country.

As there is a possibility to think that losing the sense of individual trust and belonging and associated reactions may not be important for the state; such circumstance have a negative impact on the reputation of existing states and the state of TRNC, which are all citizen-oriented<sup>14</sup>, aiming to be a social state.

On the other hand, in addition to undermining the sense of trust and belonging in case of denaturalisation, the other citizens in the country *-particularly when the community think that this is an unjust decision-* would undermine their trust towards the state; and consequently, the community will undergo “disturbance” from a social aspect.

As mentioned earlier, due to the generally accepted opinion, each approach that would downgrade their sense to feel “safe” and “free” would lead to a sociological problem; and would create an environment to inject a structure on the way to anarchy.

Moreover, this whole matter might be based on a moral foundation: as agreed upon, the most concrete political power is “the administration” equipped with the most effective and power above all individuals, organisation, institution; in other words “the state” with the nature of legislator. When such a power is not taken under supervision from the moral aspect, curial negative outcomes may arise accordingly.

Within this perspective, the supervision should be performed through the adoption of moral criteria related with the source, boundaries, aim and objectives of government. This duty is under the responsibility of philosophy of ethics and political philosophy as the sub-branch of

philosophy of ethics (Alan, 2011: 349). “Although ethics is a relative concept; this idea should be considered as the generally accepted values in the society.

At this point, the denaturalisation is also against the legal arrangements that should be performed within the borders not going beyond the related values. Because these borders also cover the borders in the utilisation of state authority; the related application would be behind the abstract boundaries.

Up until now, the subject matter is discussed under the basis of state-individual; at the last heading of study, the subject matter would be discussed on the basis of communication (relationship) between state-other states and international organisations.

## **B. Impact on the Relationship between State- other States and/or International Organisations**

In case that the denaturalisation leaves the person stateless, the relationship/communication of state with international human rights organisations/institutions might be deteriorated; hence the subject then become under the scope of international relations. However since TRNC is an unrecognised state in terms of international law, the international law should be referred in case of such circumstance regarding the dimension and aspects to be deteriorated.

The recognition in terms of International Law is used in two different meanings as *de jure* and *de facto*. Therefore, the recognition in general sense is a unilateral legal procedure declaring that an international legal person agrees on an event, document or claim happened out of one's control, and that person would establish his/her legal relations on the basis of these data (Aybay, 2006: 3; Dolunay, 2015: 97).

The *de facto* recognition may be defined as a unilateral political action that a state agrees the status or action of another state causing domestic and international results (Çelik, 1968: 275)<sup>14</sup>.

The recognition might be *de facto* or *de jure* recognition and generally occurs through an official declaration of the state that recognises.

Pursuant to the international law, the proper recognition is divided into two as the recognition of state and recognition of government (Janis, 1988: 127-128; Talmon, 1998: 1-4; Dolunay, 2015: 98).

In consideration to our subject matter, we will discuss the recognition of the state.



Within this framework, with the fulfilment to be acknowledged as a state, an entity must be recognised by the recognised states as ‘a state’ in terms of the international politics regardless being legally a state (Aybay, 2006: 4).

Pursuant to the international politics, when the states are considered as not having the nature of state by other states, such states are defined as “unrecognised”.

There are some circumstances of being an unrecognised state. Regarding our subject, the issue would concentrate on the impact of being an unrecognised state on the relationship with the international organisations and institutions, and the extent of impact in case of the “enjoyment” of “denaturalisation” by the relevant unrecognised state.

The Turkish Republic of Northern Cyprus was founded on the 15<sup>th</sup> November 1983 through the fulfilment of the requirements as a state.

The foundation of the Turkish Republic of Northern Cyprus was condemned by the UN Security Council by the decision no. 541 on 18<sup>th</sup> November 1983, which also called for withdrawing the declaration of independence of the Turkish Republic of Northern Cyprus and to be considered as legally invalid; implementing the resolutions of the Security Council no. 365<sup>15</sup> and 367<sup>16</sup>; called upon the parties to respect the sovereignty, independence, territorial integrity, and all states not to recognise any Cypriot State other than the Republic of Cyprus (Tamçelik, 2013: 1252).

This action was put to the vote and approved with the affirmative votes of 13 countries despite of the dissenting vote of Pakistan and abstaining vote of Jordan.

Within this scope, the recognition of the Turkish Republic of Northern Cyprus from the international politics was prevented.

The only exception of this situation is that the Republic of Turkey politically recognises the Turkish Republic of Northern Cyprus.

On the other hand, the UN and EU acknowledge some organisations and institutions of the Turkish Republic of Northern Cyprus as “legal”.

For instance, the European Court of Human Rights, officially acknowledged the Turkish Republic of Northern Cyprus Immovable Property Commission that distributed the Turkish lands in the South to the Greek Cypriots with lands on the northern part of the Cyprus post-1974 exchange, as a domestic legal mean. Some states and international organisations also refer the officials of the Turkish Republic of Northern Cyprus as the officials of the Turkish Cypriot Community; and the president as the Leader of the Turkish Cypriot Community.

Similarly, the parliamentarians of the TRNC were also represented the TRNC internationally. Within this perspective, there are TRNC representatives in the organisations such as the European Parliament and the Organisation of Islamic Cooperation at the level of observer and member.

Such are promising circumstances concerning the political recognition of the Turkish Republic of Northern Cyprus; yet the desire to be recognised in terms of international law should be addressed; otherwise, instead of recognition, the state would be unrecognised (Aybay, 2006: 10).

Although the Turkish Republic of Northern Cyprus is not politically recognised; as mentioned earlier there are international relations with other states, various representations while the relations with Turkey and different countries apart from Turkey also exist.

The issue of unrecognition that was concentrated a lot is vital for TRNC. Therefore, we think that the legislator has a different obligation in the TRNC, which is not recognised from the level of international law and has limited international relations. Such obligation is based on the “individual” oriented approach, which is essential anyway, as well as not creating any negative issues regarding the “prestige” of TRNC on the international arena.

The concept of denaturalisation, which is regulated under the applicable law on citizenship and the draft law on citizenship, may deteriorate the international relations of the state, which is already limited. Since such concept is already considered as "out-of-date" with "a penal" aspect within, the arguments regarding to be against "the human rights" become approved.

Additionally, since the person to be denaturalised would be stateless in case of not having any other citizenship, and with the adoption of the draft Law of Citizenship without any revision accordingly, the spouse and the children would also become statelessness; hence there might be some reactions from the human rights organisations.

The application regulation of this concept within the TRNC would bring significant problems regarding the international relations in time for the state. Such issues may bring "condemnation" on the international arena, and in case of maintaining such approach, there might be a break away from "the relations", which is also not preferred.

## **Conclusion**

The most appropriate way to discuss the modern citizenship concept under the "modern law" aroused as a result of the basic impact by the modernisation of the law and the denaturalisation concept constituting a contradiction against the citizenship law shaped would be to argue in two main aspects as legal and communicative hereby as throughout the study.

Therefore, in accordance with the order in the study and outcomes within the legal nature of the subject, the denaturalisation is no longer regulated under the European Convention on Nationality, Turkish Law and modern law on citizenship, hence in many countries adopted modern citizenship understanding; the subject matter is regulated under the Cypriot Turkish law both under the applicable CLN and draft CLN.

The concept of denaturalisation is not regulated under the modern systems due to the basis of

- Being considered as “penal”,
- Causing statelessness which is not desired in case of not having any other citizenship,
- Being considered as against the human rights.

It should be reiterated that the avoidance of all these matters under the Cypriot Turkish law as still applicable and again regulated under the new draft law, *against all the arguments in the Cypriot Turkish law doctrine*, constitutes a major issue of criticism.

On the other hand, it would be appropriate to discuss the problems caused by the denaturalisation from the communicative aspect in two parts as state-individual (citizen) and state-state/international organisations in accordance with the order of study.

Within the perspective of state-individual relationship, the individuals lose

- Their sense of trust  
and
- Belonging towards the state as a circumstance of denaturalisation.

As a result of social problem that might be caused through its utilization as a mean to penalise against “the democratic approach”, the anarchy, which is not a desired outcome, might start to build up.

The problems that might occur as a result of denaturalisation between the communication of state-other states and international organisations are as follows:

- The condemnation of state in the international arena,  
and
- Loss of international relations that are limited already.

Consequently, the regulations that would go beyond the “moral” lines of the entity with the public power (state), might cause sociological problems and would greatly deteriorate the

communication with individuals and other states together with the international organisations should be avoided; and such existing regulations should be revised/repealed.

Within this framework, the CLN should be revised and “the denaturalisation”, which constitutes a problem with regard to its legal nature and communicative aspect, should be taken out of the law; and the provision under the new draft law should be amended in the way not to cover the denaturalisation prior to its adoption.

## Notes

1. For the definition of some “main concepts”, the study with the reference of the Dolunay, A. 2015. “Vatandaşlık Hukuku Temel İlkelerinin Türk Hukuku ve Kıbrıs Türk Hukuku Açısından Değerlendirilmesi” [The Evaluation of the Principles of Nationality Law in Turkish Law and Cypriot Turkish Law], *Turkish Bar Association Journal*, January-February 2016, 369-417.

2. In terms of “citizenship”, “statelessness”, “original and acquired citizenship acquisition” and “denaturalisation”) was utilized, and in consequence of being a different subject and a comprehensive issue that might be a subject of another study, the legal problem of “denaturalisation” explained with a couple of sentences formed a basis for this study and our study was prepared through the citizenship law together with human rights, law philosophy, history of law and criminal law, discussed the aspects of moral philosophy and political philosophy, sociology, international relations and international law in terms of “deterioration” the relations between state/individual and state/other states/international organisations; therefore the study “aims” to be a comprehensive multi-disciplinary study.

3. The list in the alphabetical order; however the relevant listing does not bear the aim to express the discipline/disciplines to be concentrated on –*comparing with*- the study among the disciplines given.

4. The relevant relation is based on the regulation of human behaviour through law since while law regulates the human behaviour; it also regulates the communication among people. From this perspective, since the legislator communicates with individuals through the legislation, the relations between individuals are regulated as well as the relation between the legislator-individuals is stood out, thus considered as a subject for communication science. (Hoecke, 2002: 7). Pursuant to such aspect, there is a possibility to have an impact on the communication between state and individuals through all laws adopted by the legislator as well as the citizenship law. The inclusion of denaturalisation as a concept against the modern

law within the applicable Cypriot Turkish law and beyond under the draft law leads "deterioration" of the relation between state-individual.

5. In addition to the concept of "citizenship" preferred to be used in the study, the concepts of "allegiance" and "nationality" are also used in relation with the issue. Therefore, it is required to explain how the concept of "citizenship" varies with the other concepts and the reason of its use: as given above, the citizenship incorporates "the natural persons" and connect them "legally to the state". Nationality also incorporates the natural persons yet refers to connect with the "nation"; so it differs with our subject and directly becomes irrelevant. (Göğer, 1979: 3). Although the concept of citizenship refer to a "legal relation"; the fact that the concept of nationality (and similarly the concept of "*race*") covers race, religion, language and culture and it is not a technically legal concept, supports the given idea. (Aybay & Özbek, 2015: 7). The other concepts listed above like the citizenship other than the nationality express to be under the state. (Göğer, 1979: 3). As the citizenship and nationality have two synonyms then we would have fewer concepts to consider. (Aybay & Özbek, p. 7). Consequently, the concepts of citizenship and nationality differ from each other from the point of legal relations. Unlike the view that we agree, there is also a view defending that the scopes of nationality and citizenship are the same (Göğer, 1970: 187; Nomer, 2014: 16). To note that the nationality is a superior concept that binds not only natural entities but also "legal entities" and "things" while the citizenship only defined to be the sub-concept that binds the natural entities to the state (Berki, 1970: 15; Fişek, 1959: 12; Turhan & Tanrıbilir, 2010: 21). In consideration with the historical use/practice, the citizenship is defined as "the relationship between the individual and state in the state structures on the basis of Roman law", and that the citizen enjoys all "rights and privileges" in the country; while the nationality is originated from feudal period and used to express the connection between the individual and territory-country, and the people were given an unquestionable loyalty duty towards the owner of the territories and the people were much limited from the legal status when compared with the citizens, and thus both concepts are different. (Uluocak-Erdener, 1968: 19). Within the framework of explanation, the use of citizenship in the study would be appropriate in terms of the study subject.

6. For the detailed information on the impact of Common Law on the Cypriot Turkish law See. Dolunay, 2015: 151. For the criticism of this situation See. Dolunay, 2015: 172.

7. The right of blood is applicable to acquire the citizenship through the birth from the mother or father or both that are bind with the paternity. At this point, the paternity with mother and father is significant and the place of birth has no importance. The right of the soil is the acquisition of the citizenship of the place of birth. The paternity with mother and father is not important while the place of birth has a major role. Today, under some circumstances

that the original citizenship cannot be acquired through original citizenship, exceptionally the acquisition of citizenship is “provided” through the right of the soil to avoid the statelessness.

8. The acquisition that the self-determination is solely sufficient is called “*naturalisation through the decision of competent authority*”, which requires “*the right to vote*”, self-determination and positive decision of competent authority. Naturalisation as a result of legal procedure may include the acquisition through marriage, adoption etc.; while the population exchange may be an example to the citizenship acquisition through the international conventions (Doğan, 2012: 47).

9. The statelessness is considered to occur through *the lack of state* or in the event of *de facto statelessness*. The lack of citizenship occurs when the person is not bound to any state with a citizenship. The de-facto statelessness occurs when a person is bound to a state with citizenship, yet the state rejects to provide a diplomatic protection and/or provide assistance or cannot provide officially to that person or that person refuses such diplomatic protection and/or assistance. In case of not proving the citizenship, the de-facto statelessness occurs as well.

10. Protocol Relating to a Certain Case of Statelessness, League of Nations, 1930, <<<http://www.refworld.org/docid/3ae6b39520.html>>>, Convention Relating to the Status of Stateless Persons, 1954, <<<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3ae6b3840>>>, Convention On The Reduction Of Statelessness, << <http://www.unhcr.org/3bbb286d8.html>>>, Convention To Reduce The Chamber Of Cases Of Statelessness, 1973, <<<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=3decd5ce4&skip=0&query=1973&querysi=stateless&searchin=title&sort=relevance>>>.

11. The issue of denaturalisation has also seen on news due to their "interesting" feature. See. “*New citizenships and denaturalisation*”, <<[http://www.kibrispostasi.com/index.php/cat/35/news/105670/UserName/KIBRIS\\_HABERLERI](http://www.kibrispostasi.com/index.php/cat/35/news/105670/UserName/KIBRIS_HABERLERI)>>.

12. See. “*Not possible to denaturalise the people voting in the South*”, <<[http://www.kibrispostasi.com/index.php/cat/35/news/54880/UserName/KIBRIS\\_HABERLERI](http://www.kibrispostasi.com/index.php/cat/35/news/54880/UserName/KIBRIS_HABERLERI)>>.

13. The concepts of denaturalisation and withdrawal of citizenship are widely mixed. See. “*New Citizenships and Denaturalisation*”, <<<http://www.kibrispostasi.com/index.php/cat/35/news/105670>>>. While the related title mentioned the denaturalisation, the text discussed the termination of citizenship.

14. This order may change in direct proportion to the social conditions and impacts of the related arrangements on the society.

15. Hegel, who defined the citizen as “the essence of state”, explained the citizen as “free individual” in the modern societies. Also, the citizenship is defined as "enlightenment" and a progress from "the servant human" to "citizen human"; "god city" to “city of citizens” (Kara, 2016: 23).

16. In accordance with the definition that is the basis of this opinion, the recognition is a disposal serving to the objectives of determination that in a concrete event, a community is a state in terms of international law (legal recognition) and the state that recognise this community wants to have normal relations with them (Kelsen, 1952: 267-268; Dolunay, 2015: 98).

17. The resolution of the General Assembly of the United Nations no. 3212 dated 1st November 1974 called upon all states to refrain from any intervention to the island, urged the speedy withdrawal of all foreign military forces, requested the necessary measures to be taken by the North Cyprus in order to allow the Greek Cypriot refugees return to the North Cyprus, noted that the constitutional order the Republic of Cyprus is the issue of both Turkish Cypriot and Greek Cypriot communities and that both communities were called upon to reach freely a mutually acceptable political settlement taking place on an equal footing. Fahir Armaoğlu, 20. Yüzyıl Siyasî Tarihi 1914-1980, Ankara 1989: 278. With the resolution of the General Assembly of the United Nations no. 365 dated 13<sup>th</sup> December 1974, these principles were adopted in exactly the same way.

18. The resolution of UN General Assembly no. 367 dated 12<sup>th</sup> March 1975 has 10 articles. This resolution recommended to condemn the Turkish Federated State of Cyprus declared prior to this resolution, and to withdraw its declaration. Additionally, all the states once more called upon to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus, and they were urgently requested to refrain any attempt at partition of the island or its unification with any other country (Tamçelik, 2013: 1249).

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