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REPORT ON CITIZENSHIP LAW: CYPRUS

Nicos Trimikliniotis

Revised and updated November 2015



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European University Institute, Florence
Robert Schuman Centre for Advanced Studies
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Cyprus¹

Nicos Trimikliniotis

1. Introduction

Mapping out the complex historical, structural, politico-legal and cultural setting that has generated a specific kind of citizenship in the context of Cyprus is no easy task. In fact, we cannot speak of a citizenship policy as such; such a policy has never been formally declared or publicly discussed, save for times in which the media hysterically criticised the granting of citizenship.² It is, however, possible to deduce a policy from the practices since independence (Trimikliniotis 2010).

In an area of 9,251 square kilometres the total population of Cyprus is around 754,800, of whom 666,800 are Greek-Cypriots (living in the Republic of Cyprus-controlled area). Upon independence in 1960, Turkish-Cypriots constituted 18 per cent of the population, whilst the smaller ‘religious groups’, as referred to in the Constitution—consisting of Armenians, Latins, Maronites and ‘others’ (such as Roma)—constituted 3.2 per cent of the population. It is the third-largest island in the Mediterranean; its geographical position, in the far eastern part of the Mediterranean Sea, historically adjoining Europe, Asia and Africa, has been both a blessing and a curse. Invaders and occupiers for centuries sought to subordinate it for strategic reasons, and this was followed by British colonial rule.

It became an independent Republic in 1960. In the post-colonial years, there was inter-communal strife and constant foreign intervention of one kind or another until 1974, when a coup by the Greek military junta and EOKA B³ was used as a pretext for an invasion by the Turkish army and the subsequent division of the island (Hitchens 1997; Attalides 1979). Turkey still occupies 34 per cent of the territory, whilst 162,000 Greek-Cypriots remain displaced in the southern part of the country and 80,000 Turkish-Cypriots remain in the northern, occupied territories. Attempts to resolve the Cyprus problem have not been successful. Following the overwhelming rejection of a UN plan to resolve the problem by the Greek-Cypriots, and its overwhelming endorsement on 24 April 2004 by the Turkish-Cypriots, Cyprus entered the EU in a state of limbo. Cypriot policymakers still hope that the policy of accession to the EU will eventually act as a catalyst in the effort to find a settlement, but in the immediate aftermath of the referenda the two sides were divided about

¹ This report was initially authored by Nicos Trimikliniotis and published in 2009. It was subsequently revised and updated by Nicoletta Charalambidou in May 2013, and again by Nicos Trimikliniotis in 2015. The second version of the report, co-authored by Nicoletta Charalambidou and published in 2013, can be consulted online at: http://cadmus.eui.eu/bitstream/handle/1814/37659/EUDO_Citizenship_2013_30.pdf?sequence=1&isAllowed=y

² This occurred when the government decided to grant citizenship to children of Turkish-Cypriots married to settlers in 2004 and 2005.

³ This was an illegal terrorist organisation launched allegedly to campaign for *enosis*, i.e. union with Greece; it carried out bombings, murders of civilians and tried several times to assassinate President Makarios (Droussiotis 1994).

how to proceed (Hannay 2005; Palley 2005, Pericleous 2009, Varnava & Faustmann 2009).⁴ The election of Demetris Christofias as President of the Republic of Cyprus in February 2008 has given new impetus to solving the partition problem. Direct negotiations between Cyprus' two leaders, the Greek-Cypriot Demetris Christofias and the Turkish-Cypriot Mehmet Ali Talat, both left-wingers, began in September 2008 and have continued ever since. The two leaders have agreed on the parameters of the future solution; it will be a bi-zonal, bi-communal federation with a single sovereignty, territory and citizenship (see Trimikliniotis, 2009a; 2010). However, the expected progress in the negotiations that would lead to a resolution of the long standing division did not materialise, particularly after the election of Derviş Eroğlu as President of the Turkish Republic of Northern Cyprus (TRNC). In May 2012, the Greek Cypriot leader, President Demetris Christofias officially announced that he would not seek re-election to the presidency of Cyprus in 2013, citing lack of progress in the negotiations as a key factor in his decision (United Nations, 2012). His successor Nicos Anastasiades has been engulfed in a severe fiscal and banking crisis and negotiations on reunification have not been resumed as of May 2013 whereas his official position was that negotiations may not resume before October 2013. However some preparations for the official re-launch of talks between the two community leaders later on in 2013 are already under way.

To evaluate the question of citizenship, one is forced to view the ever-present 'Cyprus problem' in the historical and politico-social context of the island and the wider troubled region of the near Middle East. While the 'Cyprus problem' persists and the *de facto* divide continues, the politics of 'citizenship' has not been frozen in time. Citizenship has played a central role in political discourse, both during and following the referendum on the UN plan in April 2004. The particular construction of the Republic of Cyprus was such that the struggle for legitimacy was elevated to the primary struggle for control of the state. In this conflict the two communal leaderships, the Greek-Cypriots and the Turkish-Cypriots, sought to materialise their 'national aspirations': for Greek-Cypriots the aim for *enosis* (union with Greece) and for the Turkish-Cypriots the goal of *taksim* (partition) would continue post-independence. The very concept of citizenship was not only ethnically/communally defined by the Constitution, but it was also a sharply divisive issue between the Greeks and Turks, acquiring strong ethnic and nationalistic overtones (see Tornaritis 1982; Chrysostomides 2000; Trimikliniotis 2009a and 2010; Bozkurt & Trimikliniotis, 2012).

⁴ These are two contrasting approaches regarding the referendum on 24 July 2004 and they have implications on how to proceed if a solution is to be found.

2. History of citizenship policy since 1945

2.1 The national subject under the colonial spell: ‘Modernising’ the millet system, divide and rule and the rise of irredentist nationalism

Following the opening of the Suez Canal in 1864, the British persuaded the Ottomans to cede Cyprus to the UK.⁵ The British colonialists took over from the Ottoman rulers by Order in Council on 7 October 1878. They immediately embarked on a programme of ‘modernisation’ from above and from outside by introducing an administrative system superseding Ottoman law with English law. Britain formally annexed Cyprus in 1914, following Turkey’s support for Germany in the First World War; in 1923, under the Treaty of Lausanne, Turkey formally relinquished all its claims to Cyprus which became a Crown Colony in 1925.

In the historical setting prior to the modern era,⁶ ‘identity’ was not based on ‘ethnicity’: the notion of ‘citizenship’ did not exist under Ottoman rule outside the ‘millet system’, which is explained below. This implied that the Ottomans basically recognised the religious leaders of the flock, who spoke for their community and collected taxes for the Ottoman administration (Katsiaounis 1996; Kyrris 1980).⁷ With the annexation of Cyprus by Britain, Cypriots became ‘natives of the colony’, but the essential characteristics of the Ottoman millet system, a system which was based on communal organisation and leadership along the lines of faith, were the bases upon which the faith-groups would be ‘modernised’ as ethnic communities. Hence, the Muslim community and Christian-Orthodox community millets were gradually ‘modernised’ by the British administrator. There was a transformation of the quasi-medieval community elites into ‘ethno-communal’ elites: on the one hand, the traditional religious leader of the Christian Orthodox flock, the archbishop, became the leader of the Greek community and, on the other, the old Ottoman administrators, who represented the fusion of the political and religious order of the sultanate-caliphate at local level, were transformed into the new political leadership of the Turkish community. The Cypriot ‘natives of the colony’ were thus gradually ethnicised. Nevertheless, the leaders of the autocephalous Greek Orthodox Church retained their ‘ethnarchic role’ (i.e. political leadership of the flock), despite a serious challenge from the mass secular movement AKEL (the Progressive Party for the Working People) from the 1940s onwards (Katsiaounis 2007). Moreover, the old Ottoman administrators were eventually transformed into the Kemalist elite, following the rise of Mustafa Kemal to power in the Turkish Republic (which succeeded the Ottoman Empire).⁸

⁵ In return for protection from the expansionist aims of Russia and an annual payment to Turkey of the sum of £12,000.

⁶ The ‘modernisation’ began before the British arrived in Cyprus; however, it was intensified with the arrival of the British colonists at the end of the nineteenth and the beginning of the twentieth century (see Katsiaounis 1996).

⁷ Such were the privileges granted to the Cypriot Greek Orthodox Church of Cyprus that the Archbishop of Cyprus had direct recognition from the Sultan, as ethnarchic leader, the *millet bashi*.

⁸ The beginning of the twentieth century saw a conflict between the ‘traditionalists’ and the ‘modernists’ in the Turkish-Cypriot community; a battle that was decisively won by the modernists (Anagnostopoulou 2004, Nevzat 2005).

2.2 Moments of (in)dependence: Ethno-communal citizenship and the nationalising of legally divided subjects (1959–1963)

The establishment of the Republic of Cyprus marks an important development in the history of Cyprus, as the island became an independent republic for the first time since antiquity, albeit in a limited way (see Attalides 1979; Faustmann 1999). The anti-colonial struggle had started in the 1930s.⁹ The four-year armed campaign by the Greek-Cypriot EOKA (1955–59) for *enosis* and the Turkish-Cypriot response for *taksim* brought about a regime of ‘supervised’ independence, with three foreign ‘guarantor’ nations (the UK, Turkey and Greece).

The Cyprus Constitution, adopted under the Zurich-London Accord of 1959, contains a rigorous bi-communalism, whereby the two ‘communities’, Greek-Cypriots, who made up 78 per cent of the population, and Turkish-Cypriots, who accounted for 18 per cent of the population, share power in a consociational system. Citizenship is strictly ethno-communally divided. There are also three other minority groups who have the constitutionally recognised status of ‘religious groups’: the Maronites, the Armenians and the Latins, all of which had to adhere to one of the two dominant communities and have chosen to adhere to the Greek Cypriot one. In addition, there is a small Roma community, perceived by both communities to belong to the Turkish-Cypriot community, but never recognised as a religious/minority group (Trimikliniotis & Demetriou 2009). The Constitution does not allow recognition of further religious groups/minorities.¹⁰ 2.3 The ‘national’ rift: Collision and division between Greek-Cypriots and Turkish-Cypriots (1963–1974).

In 1963, following a Greek-Cypriot proposal for amendment of the Constitution, the Turkish-Cypriot political leadership ‘withdrew’ from the government. Since then, the administration of the Republic has been carried out by the Greek-Cypriots. Inter-communal strife ensued until 1967. In 1964, the Supreme Court ruled that the functioning of the government must continue on the basis of the ‘law of necessity’, or, better yet, the ‘doctrine of necessity’, in spite of the constitutional deficiencies created by the Turkish-Cypriot leadership withdrawal from the administration.¹¹ The short life of consociation did not manage to generate a strong enough inter-communal or trans-communal citizenship. This brief period of peaceful inter-communal political co-existence was tentative; we cannot therefore speak of a ‘citizenship policy’ as such, above and beyond the politics of the Cyprus conflict and the separate national aspirations of Greek- and Turkish-Cypriots, who continued to work towards *enosis* and *taksim* respectively, even after independence. Although de jure the Republic continued to exist as a single international entity, with the collapse of the consociationist power-sharing, the Republic in practice was controlled by the Greek-Cypriots.

⁹ The 1920s saw the radicalisation of workers and the rise of the trade union movement on the left (largely Greek-Cypriot but bi-communal from its inception) and the radicalisation of the Greek-Cypriot right. By 1931 there were the first mass riots against the British which ended with the burning of the Governor’s residence, known as the Octovirana. In the 1940s, the left had risen as a mass movement and competed with the church for leadership of the anti-colonial movement (Katsiaounis 2007). By the mid 1950s the church re-established its authority with EOKA. EOKA (*Ethniki Organosis Kyprion Agoniston*, National Organisation of Cypriot Fighters) was the Greek-Cypriot nationalist organisation which started a guerrilla campaign against British colonial rule aimed at self-determination and union with Greece (*enosis*). The political leadership of EOKA was the church.

¹⁰ Cyprus ratified the Council of Europe Framework Convention for the Protection of National Minorities, under which it recognises as national minorities only the three religious groups. For the minority questions in Cyprus see the collective volume by Coureas and Varnava (eds.) (2009).

¹¹ The case was *Attorney General of the Republic v Mustafa Ibrahim and Others* (1964) Cyprus Law Reports 195 (see also Nedjati 1970; Loizou 2001).

The Turkish-Cypriot leadership exercised *de facto* power within small enclaves throughout the territory of the Republic. The fierce fighting between 1963 and 1967 was followed by efforts at reconciliation until 1974, but these efforts failed.

2.4 The *de facto* partition: 1974–2003 following the invasion and occupation

Since 1974 the northern part of Cyprus, some 35 per cent of its territory, has been under Turkish occupation and outside the control of the Cypriot government. Some 100 Greek-Cypriots inhabit the northern territory, whilst only a few hundred Turkish-Cypriots continue to live in the government-controlled south (ECRI 2001, 2006; Kyle 1997). However, since the end of May 2003 the regime in the occupied territories has allowed Turkish-Cypriots to visit the Republic-controlled south—on the condition that they return before midnight—and Greek-Cypriots to visit the north—on the condition of passport inspection and with restrictions on their stay.

During this 30-year period the *de facto* partition meant that in effect there were two separate ‘stories’ about citizenship: the story of the Greek-Cypriots, who lived in the reduced territory of the internationally recognised Republic of Cyprus, and that of the Turkish-Cypriots, who lived under an unrecognised regime. Turkish-Cypriots are entitled to citizenship of the Republic of Cyprus and tens of thousands have obtained a passport. However, the vast majority of Turkish-Cypriots did not have access to the authorities of the Republic and were not allowed to cross over to the ‘other side’ by the occupying regime. Up to April 2003 there were few opportunities for ordinary Greek-Cypriots and Turkish-Cypriots to meet; while Greek-Cypriots did not have access to the occupied territories, Turkish-Cypriots were not allowed by the regime in the north to enter the area controlled by the Republic.

The period between 1974 and 2003 was characterised by the attempts of the break-away regime to consolidate partitionism in Cyprus (Dodd 1993). In spite of the efforts to reach an agreement on a solution based on the ‘High Level Agreements’ of 1977 and 1979,¹² the Turkish side continued its route towards separatism. The ‘Turkish Republic of Northern Cyprus’ (TRNC), a regime recognised only by (and heavily dependent on) Turkey, was declared in 1983.

The constitution of the unrecognised TRNC provides for an ethno-religious-based citizenship, to a large extent reproducing the provisions of the Republic of Cyprus (Dodd 1993). However, TRNC nationals cannot make use of the citizenship of an unrecognised state. Therefore, many Turkish-Cypriots sought passports from Turkey (see Kadirbeyoglu 2009) and the Republic of Cyprus particularly after accession to the EU. In the late 1990s, the TRNC leadership attempted to criminalise access to the passport of the Republic of Cyprus, but such efforts were subsequently abandoned as the numbers of Turkish-Cypriots seeking passports grew and there was a reversal of this policy once the Annan Plan (version 1) was first introduced in late 2002. In fact, many Turkish-Cypriot politicians now criticised the authorities of the Republic of Cyprus for failing to respond quickly enough to ensure the swift and full provision of access to citizenship, passports and the public goods that are available to the citizens of the Republic of Cyprus.

During the post-1974 period the Republic of Cyprus attempted to reinforce its legitimacy claiming that Turkish-Cypriot citizens enjoy full and equal rights under the

¹² These agreements set the basis for a bi-communal and bi-zonal federal republic following the invasion.

Republic's Constitution, such as general civil liberties and the rights provided by the European Convention on Human Rights (ECHR) as well as other human rights, save for those provisions that have resulted from (a) the 'abandoning' of the governmental posts in 1963–1964 and (b) the consequences of the Turkish invasion. The 'doctrine of necessity' would apply to allow for the effective functioning of the state, whilst the relevant provisions of the Constitution would be temporarily suspended, pending a political settlement (see further Chrysostomides 2000; Loizou 2001). However, Turkish-Cypriot citizens of the Republic had been denied their electoral rights since 1964, a matter which was found to be in violation of the European Convention on Human Rights,¹³ save for the European Parliament elections in 2004. A new law was passed to at least partially remedy the situation before the parliamentary elections in May 2006.

Republic of Cyprus governments have always maintained that Turkish-Cypriots are entitled to full citizenship rights and to citizenship of the Republic. The children born to two Cypriot parents who now reside in the occupied territories or abroad and were born after 1974 are entitled to citizenship (as with Greek-Cypriots and 'others' i.e. naturalised persons). However, bureaucratic elements such as the non-recognition of any documentation (e.g. birth certificates) from the TRNC, impose in many situations de facto restrictions on access to Cypriot citizenship.¹⁴ The policy regarding the treatment of Turkish-Cypriots, who are Republic of Cyprus citizens, is rather contradictory. This reflects the complexity of the Cyprus conflict and the constant conflict for legitimacy and recognition. Inevitably, 'the discourse of recognition' (Constantinou & Papadakis 2002) spilled over into citizenship politics, interfering with the official policy of 'rapprochement'. Ultimately, the consequences of the situation resulted in a failure properly to treat ordinary Turkish-Cypriots as 'strategic allies', in the context of independence from the Turkish-Cypriots' nationalistic leadership, who are perceived as 'mere pawns of Ankara'. Even today, the Republic of Cyprus seems to be failing to address certain basic matters: since Turkish is an official language of the Republic, allowing Turkish-Cypriots to communicate with government officials in their own language and making the laws, regulations and forms available in Turkish is a matter that could have been resolved, without much difficulty, and would protect the Republic from claims of discrimination and unconstitutionality (Trimikliniotis & Demetriou 2008). Moreover, the enjoyment of all rights, including the right to property (of those Turkish-Cypriots who fled their homes in 1963, 1967 and 1974), could have been handled with greater sensitivity and care, so that the Turkish-Cypriots, who are Cypriot citizens, would feel more welcome. At the same time, one has to appreciate the context, particularly the massive displacement of 162,000 Greek-Cypriots from the north, many of whom are housed in Turkish-Cypriot properties. As a consequence, citizenship became inextricable from the Cyprus problem. Complexities emanating from the country's recent history have affected the adoption and development of naturalisation policies and practices in relation to migrants and foreigners in general.

¹³ See *Aziz v Republic of Cyprus* (ECHR) App. No. 69949/01. The full text of the judgement is available on the website of the European Court of Human Rights: www.echr.coe.int.

¹⁴ Hence the requirements to produce documents relating to birth of their Cypriot parents prior to 1974.

2.5 New issues for citizenship and citizenship policies

In the 1990s and early 2000s, a number of key issues opening up the question of citizenship and requiring a declared and consistent policy emerged.

First, the arrival of migrant workers, who today make up over 20 per cent of the total working population of the island, is a significant factor altering the ethnic makeup of the population. Although the initial design was that they should be ‘temporary’, they seem to be a permanent feature of Cypriot society (Matsis & Charalambous 1993; Trimikliniotis 1999; Trimikliniotis & Pantelides 2003; Trimikliniotis & Demetriou 2007).

Second, the arrival of Roma, who are classified as Turkish-Cypriots, from the poorer (occupied) north in the south between 1999 and 2002 created a panic of about the south being ‘flooded’ with ‘gypsies’. In spite of the fact that we are dealing with a group of Cypriots, who moved to the south, the reaction of the authorities, the media and the public at large displayed a hostile attitude as if they were undesirable ‘alien citizens’. Studies indicate that there is wide-spread resentment by the local Greek-Cypriot residents of the Turkish-speaking Roma coming to their neighbourhood in Limassol and ‘causing trouble’. There is evidence of discrimination against Roma in the Republic (Spyrou 2003; Trimikliniotis & Demetriou 2009a and 2009b), as they are generally viewed with suspicion by Greek-Cypriots, but also by Turkish-Cypriots. The arrival of large numbers in the south was greeted with fear and suspicion,¹⁵ particularly when the then-Minister of Justice and Public Order alleged that they may well be ‘Turkish spies’,¹⁶ whilst the Minister of the Interior assured Greek-Cypriots that the authorities ‘shall take care to move them to an area that is far away from any place where any people live’, in response to the racially motivated fears of local Greek-Cypriot residents.¹⁷ The socio-economic position of this generally destitute group renders them particularly vulnerable and dependent on welfare; the rights that derive from their citizenship status were thus mediated by the way various state authorities approached them (e.g. their lifestyle and harassment means that many do not have the necessary documents for claiming citizenship such as birth certificates, identity cards, etc.). Hence the failure to take into account the socio-economic conditions of the Roma may result in the denial of the right to obtain a passport, as was found in cases investigated by the Cyprus Ombudsman.¹⁸

Third, the opening of the ‘borders’ which allowed many thousands of Turkish-Cypriots to visit the south was generally greeted by both Turkish-Cypriots and Roma residing in the south with relief and optimism.¹⁹ However, there was a tense atmosphere generated in

¹⁵ M. Hadjicosta, ‘Fears over gypsy influx’, *The Cyprus Weekly*, 13–19 April 2001. www.domresearchcenter.com.

¹⁶ J. Matthews, ‘More gypsies crossing from north as Koshis warns about spies’, *The Cyprus Mail*, 3 April 2001. www.domresearchcenter.com

¹⁷ The Minister of the Interior at the time, Mr. C. Christodoulou, now Governor of the Central Bank, said that he would not reveal the options discussed, because, ‘in this country, when it comes to illegal immigrants or gypsies (moving into an area), everyone reacts’. See ‘Our reaction to gypsies raises some awkward questions’, *The Cyprus Mail*, 10 April 2001, www.domresearchcenter.com.

¹⁸ A Turkish-Cypriot woman filed a complaint because her application to be registered in the Republic’s Citizens Record was rejected, on the basis that the birth of her mother had not been recorded in the Republic’s archives. The complainant’s mother had been born to Roma parents who failed to register her birth. It was also noted that the complainant was inconvenienced for several months due to bad advice by government officials as to the procedure with regard to her registration. In addition, she complained about the rejection of her application to enrol her child in school because the child did not have a birth certificate from the Republic. Following the Commissioner’s report on the matter, her child was finally enrolled in school.

¹⁹ They thought that they could no longer be singled out, targeted and harassed and there was a general feeling of optimism and rapprochement (Trimikliniotis 2003).

the run-up to and aftermath of the referendum on the Annan plan to reunite the island on 24 April 2004, the rejection of which by the Greek-Cypriots has given rise to nationalist sentiment in the south (see Hadjidemetriou 2006, Pericleous 2009). The political atmosphere appeared to have drastically changed since the presidential election in February 2008, followed by a new round of negotiations. After the failure of the two leaders to make any progress in the negotiations for a comprehensive settlement, high hopes were progressively replaced by an unprecedented rise in nationalism.²⁰ Manifestations of such nationalism included racist and xenophobic discourses amongst politicians and the society at large targeting Turkish Cypriots, migrants and asylum-seekers, predominantly of Muslim religion, by linking their presence in Cyprus with a “well prepared plan of Turkey” to change the demographics on the island (see Kyprianou, Veziroglou, KISA 2011). As long as there is no settlement, unease about the legal, political, socio-economic and everyday consequences of the de facto partition will remain.

The fourth issue concerns the children and spouses of Turkish-Cypriots living in the North who are settlers and/or other Turkish or other foreign citizens. This became an issue for the children of Turkish-Cypriots who married a Turkish Republic citizen in the northern part of Cyprus: paradoxically Turkish-Cypriots married to Turkish nationals outside the TRNC, including Turkey itself, could pass on Cypriot citizenship to their children while Turkish-Cypriots who married Turkish nationals in the northern part of Cyprus could not do so. This is a highly controversial issue as it brings out the conflict over the nature of the Cyprus problem: the Turkish policy of colonising the north seems to be a major obstacle to a solution. There is a misguided conflation of the internationally-condemned policy of an aggressor country, with the fact that we are also dealing with some basic rights and humanitarian issues relating to the rights of children and individuals who marry, found families and continue with their lives. The granting of citizenship rights to children and spouses of Turkish-Cypriots is an important political issue, which has increasingly taken up the headlines and is discussed in the last section of this chapter. Moreover, the condemnation of a war crime (colonisation) must not be conflated and confused with issues regarding the conditions of sojourn and living conditions of poor undocumented workers, who are primarily present to be exploited as cheap foreign labour (see Hatay 2008; Faiz 2008). Finally, the issue of gender has become an important issue as regards citizenship. The position of women in the processes of nation-building and nationalism raises the crucial question of a gendered Cypriot citizenship, which one scholar referred to as ‘the one remaining bastion of male superiority in the present territorially divided state’ (Anthias 1989: 150). This last ‘bastion’ was formally abolished with an amendment of the citizenship law in 1999 (No. 65/99), which introduced entitlement to citizenship for descendants of a Cypriot mother and a non-Cypriot father. However, this entitlement continues to be subject to a discriminatory exception on grounds of gender (see section 3.2 below). The reluctance of Cypriot policymakers to amend the citizenship law, allegedly due to the concern about upsetting the state of affairs as it existed prior to 1974, cannot withstand close examination. After all, there have been seven amendments to the citizenship law prior to the amendment No. 65/99. It is apparent that the issue of gender equality had not been a particularly high political priority and it was often sacrificed in order to resolve problems of specific groups of persons.²¹ Besides, in the patriarchal order of things, the role of Cypriot women as ‘symbolic

²⁰ ELAM, the far right and extreme nationalistic party, with close links to the Greek Golden Dawn, which is also present in Cyprus, has gained considerable support over the last few years. For example, in its first participation in parliamentary elections (22 May 2011) ELAM gained 1.08% of the vote.

²¹ The specific provisions referred to below in section 3.2 were inserted so as to resolve problems of persons with dual nationality of Greece and Cyprus as regards obligations of military service in both countries.

reproducers of the nation', particularly in the context of 'national liberation', as transmitters of 'the cultural stuff', required that potential association and reproduction of women with men outside the ethnic group must be strictly controlled (Anthias 1989: 151).

Fifth, since the late 1990s and early 2000, Cyprus has become a destination country for refugees and persons seeking international protection. In the aftermath of its accession to the EU in 2004, Cyprus saw rising numbers of asylum applications per capita. The division of the island and the lack of external border controls in the north of the island facilitated the increase in the number of asylum seekers. The latter was also motivated by the assumption of many, that they were entering EU territory and secondary movements to other member states would be eventually possible (UNHCR Cyprus Office, 2005). However, this issue subsided in the subsequent years, as the number of applications dropped dramatically.

2.6 The rise of trans-communal subjectivity: Challenging the ethno-communal boundaries

On 23 April 2003 there was a sudden decision by the authorities of the unrecognised TRNC to partially lift the ban on freedom of movement partially. This took most observers by surprise (Demetriou 2007), as the TRNC was abandoning the long-term vigorous opposition to Greek-Cypriot and Turkish-Cypriot contacts. The Turkish-Cypriot leadership allowed for a course of action, which the peace and rapprochement movement had been advocating for years; yet the move was certainly a surprise. The issue of 'passport control' between the check points became an issue of tension between Greek-Cypriot politicians and media and their Turkish-Cypriot counterparts²². However, this bureaucratic measure, which attempts to force on people the issue of 'recognition' has become part of the 'struggle for legitimacy and recognition' between the two political regimes, even though it is up to states and international organisations to recognise them. Cross-boundary contacts and interaction opened up new possibilities for citizenship policy, as the barbed-wire at last became penetrable.

The fluidity of the situation allows greater scope for citizens' initiatives aiming at reunification (see Demetriou 2006, 2007) and has opened up the debate on reconciliation in Cyprus (Kadir 2007; Sitas et al 2007; Latif and Sitas, 2012; Trimikliniotis 2007; 2010). The current measures cannot be a substitute for a settlement; it is an awkward state of limbo, whereby the 'citizens' are divided along ethnic lines, even though all Turkish-Cypriots are entitled to citizenship in the Republic of Cyprus and many thousands have actually acquired citizenship and passports. The contact since 2003 has created a pattern whereby a consistent number of persons cross over for work, leisure or other activities, estimated at about 20 per cent of the population.²³ The Third Report on Cyprus by the European Commission against Racism and Intolerance (ECRI) notes that a large number of Turkish-Cypriots have been issued with Cypriot passports (35,000), identity cards (60,000) and birth certificates (75,000), all of which are relevant figures as far as Cypriot citizenship is concerned (ECRI 2006: para. 78).

Interestingly, according to the Demographic Survey Report (PIO 2006: 12), the population of Cyprus was estimated at 854,300 at the end of 2005 (compared to 837,300 at the end of the previous year), of whom 766,400 lived in the territories under the control of the

²² Since Cyprus's accession to the EU in 2004, the movement of persons across the line is regulated by EU Council Regulation (EC) No 866/2004 of 29.4.2004 and Article 2 of Protocol No 10 of the Act of Accession.

²³ Research by the College of Tourism in April 2004 is indicative of this trend. Various research surveys since show that the actual percentages of crossing remain at the level of 15–20%.

Republic; by the end of 2008 there were 796,900 persons, according to the Statistical Service of Cyprus. Turkish-Cypriots were said to be 87,000 persons, Greek-Cypriots 656,000 and foreign citizens 110,000. The same report estimated, on the basis of data from Turkish Cypriot sources, that about 58,000 Turkish Cypriots had emigrated since 1974. The number of ‘illegal settlers from Turkey’ was said to be ‘most probably in the range of 150–160,000, which is estimated on information of significant²⁴ arrivals of Turks in the occupied area’ (PIO 2006: 11).²⁵ The population issue remains a hotly contested one, not only between the two communities, but also within the Turkish-Cypriot community (see Hatay 2008; Faiz 2008).

²⁴ The term ‘significant’ is not explained in the Demographic Report of 2005. See also the Statistical Service of Cyprus
<http://www.mof.gov.cy/mof/cystat/statistics.nsf/All/8FAB138A3A20E5AAC2257643002A4D70?OpenDocument&sub=1&e=>

²⁵ The study by Hatay (2006) shows significantly lower figures for settlers and higher numbers for Turkish-Cypriots.

3. The Current Citizenship regime

3.1 Main modes of acquisition and loss

Following the annexation of Cyprus by the UK,²⁶ all Ottoman citizens who were born in or normally resided in Cyprus became British subjects.²⁷ From that day the basic law regarding the granting of citizenship in Cyprus was the British Citizenship and Status of Aliens Act 1914 and later the British Citizenship Act 1948. Post-independence, Article 198 of the Constitution of the Republic of Cyprus, and Annex D of the Treaty of Establishment, which was annexed to the Constitution, regulated the initial determination of the citizenry and the granting of citizenship. Annex D was implemented with independence, as required by Article 195, which provides for the general principle of international law that all residents of the former colonial territory would automatically become citizens of the Republic (Tornaritis 1982: 35; Loizou 2001: 441).²⁸ Article 198.1(b) provided that ‘any person born in Cyprus, on or after the date of the Constitution coming into force, shall become a citizen of the Republic if on that date his father has become a citizen of the Republic or would but for his death have become such a citizen under the provisions of Annex D of the Treaty of Establishment.’

This was the case until the enactment of the main Law on Citizenship in 1967.²⁹ In 2002, a new Law on the Population Data Archives No. 141(I)/2002 unified all provisions regarding the archiving of births and deaths, registration of residents, registration of constituent voters and the registration of citizens. It also introduced special provisions for the issuing of passports and travel documents and refugee identity cards.³⁰ The new Law has so far been amended four times; however, none of these changes affected the acquisition and loss of citizenship.³¹ Together with Annex D this law currently regulates the acquisition and loss of Cypriot citizenship.

Cypriot legislators have followed the ‘mixed’ principle that combines *ius soli* and *ius sanguinis* (Tornaritis 1982: 38-39). However, *ius sanguinis* is far more important in the regulations than *ius soli*, as Cypriot descent is the primary criterion for acquisition of citizenship as will be shown below. Citizenship can be acquired automatically, by registration or by naturalisation, but at the core of citizenship regulation remains the notion that all persons of Cypriot descent are entitled to apply.

²⁶ The Cyprus (Annexation) Order-in-Council 1914, No. 1629 Statutory Rules and Orders Rev. (1948), vol. V, pp. 577-578. The order can also be found in Cyprus, (1920), Handbook No. 65 in the series, London: HMSO.

²⁷ The Cyprus (Annexation) Order-in-Council 1917, No. 1374 S.R & O. and The Cyprus (Annexation) Order-in-Council 1914, No.1629 S.R & O. Rev. (1948), vol. V, pp. 578-582.

²⁸ The provisions of Annex D are quite detailed, governing different categories of persons, and set out the basic structure of citizenship acquisition that was to follow also in the subsequent legislation on the subject (Tornaritis 1982: 33-41).

²⁹ Law No. 43/67, as amended by Laws No. 1/72, 74/83, 19(I)/96, 58(I)/96, 70(I)/96, 50(I)/97, 102(I)/98, 105(I)/98, 65(I)/99, 128(I)/99, 168(I)/2001.

³⁰ The refugee identity cards relate to internally displaced Cypriots due to the 1974 events and not to persons recognised as refugees under the 1951 Geneva Convention on the Legal Status of Refugees.

³¹ With laws No. 65(I)/2003, 76(I)/2003, 62(I)/2004 and 13(I)/2006.

Acquisition by descent

A person born in Cyprus or abroad on or after 16 August 1960 automatically acquires Cypriot citizenship provided that at the time of his or her birth either of the parents was a citizen of the Republic or, in the case that the parent(s) were deceased at the time of his or her birth, either of them was entitled to acquire citizenship had he or she not been deceased. In cases of permanent residents abroad, this provision is not applicable unless the child's birth is registered in the prescribed manner.³² This general rule is subject to two exceptions referred to in section 3.2 (below).

Acquisition via registration

The following persons are entitled to be registered as Cypriot citizens upon application to the relevant Minister:

1. Citizens of the United Kingdom and Colonies or a country of the Commonwealth,³³ who are of Cypriot descent,³⁴ provided that they:

- ordinarily reside in Cyprus and/or resided for a continuous period of twelve months in Cyprus or a shorter period that the Minister may accept under special circumstances of any specific case, immediately before the date of the submission of their application,
- or are serving in the civil or public service; are of good character; intend to remain in the Republic, or depending on the circumstances, continue serving in the civil or public service (sub-s. 110(1) Law on the Population Data Archives No. 141(I)/2002); and
- sign an official confirmation of loyalty to the Republic.

2. Spouses or widow(er)s of persons who were citizens of the Republic, or spouses of persons who, had they not been deceased, would have become or would have had the right to become citizens of the Republic, provided that they:

- ordinarily reside with their spouse in Cyprus for a total period of no less than three years. There are also specific provisions allowing the minister to grant registration even if the criterion of three years residence is not fulfilled, provided that joint residence with the Cypriot spouse is no less than two years. This does not apply to persons who temporarily or permanently live abroad who have to live together with the Cypriot spouse for at least a total period of three years. Also, for the purposes of this subsection 'residence' means at least six months stay in Cyprus but in any case

³² Neither the Law nor any regulations issued under the law provide, however, for the manner the registration should take place. It should be noted that no regulations have ever been issued under Law 141(I)/2002 but the regulations issued under the previous law (The Law on Citizenship of 1967) continue to apply on the basis of transitional provisions entered into Law 141(I)/2002 which do not however regulate this matter.

³³ For Sub-sect. 110, 'a country of the Commonwealth' includes every country excluding the Republic of Cyprus, on the date of entry into force of the Law, which is a member of the British Commonwealth, and additionally includes Ireland and any other country that has been declared by an Order of the Council of Ministers as a Commonwealth country for the purposes of this section.

³⁴ For the purposes of Sub-sect 110, a person of Cypriot descent is defined as any person born in Cyprus and whose parents ordinarily resided in Cyprus at the time of his or her birth and includes every person that descends from these persons.

the total residence in Cyprus during the preceding three years prior to submission of the application must not be less than two years.

- are of good character;
- intend to remain in the Republic, or depending on the circumstances, continue serving in the civil or public service of the Republic or the educational service of the Republic or the Police force of the Republic even after registration as citizens of the Republic (Sub-section 110(2)); and sign an official confirmation of loyalty to the Republic.

This general rule is subject to an exception referred to in section 3.2 below.

3. Underage children of any citizen. In this case the application for citizenship has to be submitted by the parent or the guardian of the child.

A person who has renounced his or her citizenship of the Republic or has been deprived of it may not be registered as citizen of the Republic according to Section 110, but may still be registered with the approval of the minister (Sub-section 110(4)). Persons who have been registered under this section become citizens of the Republic from the date of their registration (Sub-section. 110(5)). This provision places Cypriot descent at the core of the right to acquire citizenship; spouses of Cypriot citizens who are resident in Cyprus can apply for registration if they fulfil the requirements but they are totally dependent on the agreement and signature of the application by their Cypriot spouses. Moreover, the right of the spouses of Cypriot nationals to register as citizens when they fulfil the requirements of the law, is severely restricted and circumvented by the authorities in the context of strict immigration controls, particularly as regards administrative practice and policies tackling marriages of convenience.³⁵ While the Supreme Court is prepared to annul decisions of the authorities rejecting applications for the acquisition of citizenship by registration from spouses of Cypriot citizens because the marriage was one of convenience, on grounds of lack of proper investigation or lack of justification of the relevant decisions and violation of the right to a hearing³⁶, it nonetheless recognises the wide margin of discretion of the state. Following this logic the Supreme Court, in deciding on citizenship applications, has ruled that this matter lies at the core of ‘state sovereignty’, limiting the possibility for the Court to interfere with the review of legality of the granting of citizenship.³⁷ This however raises the question of whether there is an effective remedy against negative decisions of the authorities.

Acquisition via naturalisation (πολιτογράφηση (politográphese))

A non-Cypriot who resides in the Republic may apply for the acquisition of citizenship via discretionary naturalisation if he or she fulfils all of the following conditions formulated in Table 3 annexed to the law (Section 111):

³⁵ See Ombudsman Report File 1701/2011.

³⁶ *Ureef Mohd Murof Jumil Ubdolh v. The Republic*, Appl. 1495/05, 7.4.2008, *Galina Kolena Konstantinou v. The Republic*, Appl. 16/2002, 5.6.2003, *Rada Motofei v. The Republic*, Appl. 289/2003, 19.3.2004, *Zlatka Cristofi v. Republic*, Appl. No 499/2002, 21/10/2003.

³⁷ *Tulin Sabahatin Veysel v. The Republic*, Appl. No 184/2008, 6.7.2010, *Ahmad Saeed*, Appl. No 120/2007, 14.5.2009,

1. He or she has resided in the Republic of Cyprus for the entire duration of twelve months immediately preceding the date of application;
2. Over and above the twelve months referred to above, during an additional period of seven years in the period immediately prior to this, the applicant must have ordinarily resided in the Republic, or have been serving in the civil or public service of the Republic, or a combination of both options, for periods amounting in total to no less than four years;
3. He or she is of good character; and
4. He or she intends to reside in the Republic.

The law also provides for acquisition of citizenship via naturalisation for students, visitors, self-employed persons, athletes and coaches, domestic workers, nurses and employees who reside in Cyprus with the sole aim of working there as well as spouses, children or other dependent persons. The prerequisites are that they must have resided in the Republic for at least seven years out of which one year in the period immediately prior to the application their stay must be ‘continuous’.³⁸ Exceptionally, citizenship may be granted to persons who have offered highly esteemed services to the Republic, irrespective of the years of residence in Cyprus.³⁹ However, the regime is based on discretionary power of the authorities and in particular the discretion of the Council of Ministers and the Minister of the Interior (see section 3.2 below).

Whilst Section 111 does not refer to *lawful residence*, *lawful residence* is somehow implied as a prerequisite, a condition the Supreme Court seems to have accepted. The authorities stipulate that the lawful residence provision contained in subsection 110(2)(d) has a general application. However, a correct reading of the text of the law *does not* require lawful residence for naturalisation purposes. Interruption of lawful residence, with periods of irregular residence, ought not to influence the application, provided that the applicant has the total period of lawful residence required by the law. However, this is not the case in practice.

The most recent legal amendment, which entered into force on 30 April 2013, specified and streamlined the provisions of the law giving discretion to the Council of Ministers to naturalise any foreign national as a Cypriot, on grounds of public interest and irrespective of years of residence in Cyprus. This amendment followed the implementation of the bail-in programme for the banking sector, which led to millions of deposits being haircut. The amending legislation introduced a new section 111A, according to which the Council of Ministers (a) in exceptional cases of provision of highly esteemed services to the Republic may allow, for reasons of public interest, the honorary naturalisation of a foreigner who does not otherwise fulfil any of the requirements specified in the other sections of the law, and (b) under conditions defined on a case by case basis, may allow the naturalisation of foreign businessmen and investors who do not otherwise fulfil the requirements of the law for naturalisation. The law also provides that before such a person is naturalised the Council of Ministers must inform the House of Representatives.

Renunciation and deprivation of citizenship

Any adult citizen of sound mind who is also a citizen of another state may renounce his or her citizenship by submitting a confirmation of renunciation, and the minister will take the

³⁸ Introduced by amendment 58(1)/1996.

³⁹ Introduced by amendment 70(1)/1996.

appropriate action for the registration of such confirmation (Section 112).

Deprivation of citizenship is possible, only for citizens who acquired citizenship via registration or naturalisation, via an Order of the Council of Ministers (Section 113) under the following circumstances:

1. when it is established that the registration or certification of citizenship was obtained by deceit, false pretences or concealment of a material fact (Sub-section. 113(2));
2. if the Council of Ministers (Sub-section 113(3)) considers that through deeds or words such a person has demonstrated a lack of loyalty to the laws of the Republic,⁴⁰ or, in a war fought by the Republic, such a person was illegally involved in an exchange with the enemy, has contacted the enemy or was in any way involved in any operation in which he or she knowingly assisted the enemy; or within five years from naturalisation, he or she is convicted in any country of a crime carrying a sentence of one year or more;
3. if the Council of Ministers (sub-section 113(4)) considers that the naturalised citizen has ordinarily resided in foreign countries for a continuous period of seven years, unless during that time the person concerned served in the public service of the Republic abroad or in an international organisation to which the Republic is a member or notified every year in a defined manner the Consulate of the Republic abroad of his/her intention to retain the citizenship of the Republic.

In any of the above circumstances, the Council of Ministers cannot deprive a person of citizenship, unless it considers that it is not in the public interest that the said person remains a citizen of the Republic (Sub-section 113(5)).

Procedural safeguards of Article 113 provide that the Council of Ministers informs the person concerned about the intention to issue an order of deprivation of citizenship in writing and, if the order is issued on the basis of deceit or fraud or on the basis of lack of loyalty to the Republic, of his/her right to request an investigation by a Committee especially appointed for this purpose from the Council of Ministers, whose chair should be a persons with judicial experience. In several cases brought before the Supreme Court in relation to deprivation of citizenship, the extent of investigation made and the type of procedures followed by the Committee, were neither obvious nor well regulated. While the Committee heard witnesses and other evidence brought forward by the applicant, it did not examine the substance of the case and merely applied a legality review, similar to that of the Supreme Court, even though the members were not judges but only appointed civil servants. The Committee subsequently found that the Council of Ministers had the discretion to revoke citizenship and that the decision to revoke was justified. Until now, the matter of the procedural safeguards and the procedures followed by the Council of Ministers and any appointed committee for investigation in situations of deprivation of citizenship was never raised as such before the Supreme Court⁴¹.

The above appears to be contrary to Article 5 of the 1997 European Convention on Citizenship, which Cyprus is yet to sign. In fact, the Second and Third ECRI Reports on Cyprus recommend that Cyprus signs and ratifies this Convention. In any case, there is a complaint before the Equality and Anti-discrimination Body arguing that the above provision is contrary to the general prohibition of discrimination as laid down in Article 1 of Protocol

⁴⁰ The Greek term used is νομιμοφροσύνη (nomimophrosíne).

⁴¹ Case No 536/2008 Nashat Moner Lofty Matry v. the Republic, Decision of 20 September 2011, Case No 1489/2008, Hussein AlíAssaf and others v. The Republic ,Decision of 6 May 2010.

12 to the European Convention on Human Rights, which has been ratified by the Republic of Cyprus.

It is apparent that the decisive element in the granting of citizenship is Cypriot descent which is combined with birth to form the various categories of rights provided. First, we can identify the following categories of persons of Cypriot descent:

1. Greek-Cypriots (and the three religious groups) born in the area controlled by the Republic of Cyprus: this category is not really an issue as citizenship is granted automatically.
2. In principle, the same ought to apply to Turkish-Cypriots born anywhere in Cyprus and to children who have at least one Cypriot parent. Turkish-Cypriots born in the northern part of the country, which is not under the control of the Government of the Republic of Cyprus are automatically entitled to citizenship provided that they submit documents of their Turkish-Cypriot parents or grandparents issued by the Republic of Cyprus or the colonial authorities (TRNC documents are not recognised). However, in practice Article 109 of the Law No. 141(I)/2002 may result in a more discretionary regime for persons one of whose parents is a Turkish national or a national of another country, even if they reside in the area under control of the Government of the Republic.
3. Persons of Cypriot origin born abroad, who have one Cypriot parent, are entitled to citizenship.
4. Persons of Cypriot origin born either in Cyprus or abroad between 16 August 1960 and 11 June 1999 and whose entitlement to Cypriot citizenship is solely based on their mother being Cypriot (or being entitled to Cypriot citizenship) are not entitled to citizenship. They may, however, apply to acquire citizenship via registration.
5. Children born in Cyprus to non-Cypriot migrants who entered and reside in Cyprus and have acquired Cypriot citizenship via naturalisation are entitled to citizenship.
6. ‘Collateral’ policies have been developed to use tax incentives and a national service ‘discount’ for men (six months if under 26 and three months if over 26 instead of the normal 25 months of national service) to attract Greek-Cypriots from abroad to live in Cyprus.
7. Those who are not of Cypriot origin can only acquire citizenship via naturalisation or registration, depending on the category. Therefore, non-Cypriots who have entered and legally reside in Cyprus are not entitled to acquire Cypriot citizenship. But they may acquire citizenship by discretionary naturalisation provided they fulfil the required qualifications.
8. Children born in Cyprus to non-Cypriots who do not hold Cypriot citizenship are not entitled to citizenship, even if they are or because of their migrant status, would remain stateless, despite the fact that Cyprus has ratified the UN Convention on the Rights of the Child providing for the right of every child to a nationality.⁴²

⁴² Cyprus has never ratified the United Nation Convention relating to the Status of Stateless Persons, mainly due to fears over rights to be gained under the Convention in case of a solution to the territorial division problem that would render some persons stateless.

3.2 Specific Rules and Status of Certain Groups

Acquisition by descent

In terms of acquisition by descent for persons born in Cyprus or abroad on or after 16 August 1960, automatic acquisition of Cypriot citizenship has two exceptions:

Firstly, the current law provides that children born to parents, any of whom unlawfully entered or resides in the Republic, do not automatically become citizens of Cyprus. They can become citizens only following a decision of the Council of Ministers.⁴³ This amendment was apparently directed against Turkish nationals who settled in the northern part of the country currently under Turkish occupation since 1974, when Greek-Cypriot policymakers deemed politically ‘necessary’ or ‘expedient’ to take action justified as combating illegal settlement in what is perceived by Greek-Cypriots as a colonisation policy by Ankara. However, this provision is obviously discriminatory against persons who have Turkish-Cypriot descent from one parent and is contrary to the Constitution and international obligations of the Republic. Whether children of Turkish-Cypriots married to Turkish nationals should be granted Cypriot citizenship remains a hot political issue, as explained below. Media reports and right-wing politicians seem to concur that the issue at stake is the granting of citizenship to children who have one Cypriot parent and another who is a settler. Nevertheless, ministry officials claim that persons falling under this category are invariably granted citizenship, albeit in a manner that does not cause strong reactions.⁴⁴ In any case, making a child’s citizenship conditional on the status of ‘legality’ or ‘illegality’ of entry or residence of one of the two parents, not only violates the rights of children, as provided for in the UN Convention for the Rights of the Child, but also constitutes discrimination against the children who are victimised by the political situation and whom the Republic has an obligation to protect and respect.

A report of the Ombudsman in August 2011⁴⁵ shed some light on Government policies and the way the Council of Ministers exercises its discretion to grant citizenship to this category of persons. Since 2006, the Council of Ministers has authorised the Minister of the Interior to consult with leaders of the political parties in order to adopt the criteria on the basis of which citizenship may be granted by the Council of Ministers under the provisions of the law mentioned above.⁴⁶ On the basis of that consultation, in February 2007, the Council of Ministers adopted the following criteria:⁴⁷

⁴³ Article 109 Population Data Archives Law No. 141(I)/2002. This clause was first introduced by Law 65(I)/1999 that came into force on 11 June 1999.

⁴⁴ This information was provided by the officer of the Population Data Archives of the Ministry of the Interior, Christiana Kettani, on 15 December 2006. She stated that the standard practice of the Council of Ministers is to approve ten to fifteen applications each time there is a meeting of the Council of Ministers. Moreover, she claimed that the people affected by the Council of Ministers’ discretion are ‘persons who have a Cypriot grandparent’, but it remained unclear how this category could fall under Article 109.

⁴⁵ Ombudsman Report File Nos 146/2007, 1906/2007, 2845/2007, 2871/2007, 2877/2007, 33/2008, 132/2008, 151/2008, 205/2008, 13/2009, 34/2009, 48/09, 99/2009, 102/2009, 124/2009, 25/2010, 28/2010, 40/2010, 54/2010, 82/2010, 151/2008, 143/2010, 147/2010, 148/2010, 155/2010, 8/2011, date 31.8.2011, http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive_gr/presentationsArchive_gr?OpenDocument

⁴⁶ It should be noted that Council of Ministers Decisions are not always published in the Official Gazette of the Government just as any other decision of the executive. The criteria on the basis of which the decisions may or may not be published are not known.

⁴⁷ Not published in the Official Gazette of the Government

Citizenship may be granted to –

1. children born on or before 20.1.1974
2. children whose one parent is not a Turkish national but a national of another country (EU citizen or a national of a different country with which the principle of reciprocity applies)
3. children whose parents were married abroad or in Cyprus any time before 20.7.1974
4. children whose Turkish Cypriot father or mother had a relationship with a Turkish national not related in any manner to the events of 1974 (due to studies or employment outside Cyprus)
5. children whose parents live in the mixed village of Pyla⁴⁸

The above conditions notwithstanding, the Attorney General also provided an opinion pointing out that the discretion of the Council of Ministers should be exercised on a case by case basis and in accordance with the special circumstances of the case whereas discretionary decisions should be properly justified and comply with the principle of equal treatment.

Even so, the above criteria remain rather subjective. They continue to exclude children who would otherwise have had the right to acquire Cypriot citizenship, but cannot because of the uncertain legal status of one of their parents (directly or indirectly due to the 1974 events). The Fourth ECRI Report (2011: 10) noted the authorities' explanations of these policies as a legitimate attempt to prevent radical changes in the demographic composition of Cyprus. It simultaneously raised the concern that this controversial political issue is at the core of the "Cyprus problem", which invariably aroused xenophobic feelings. The Report also noted its concern over the lengthy procedures that deprive children from access to identity documents in the meantime.

The lack of transparency and the wide discretion of the Council of Ministers in citizenship matters, cannot exclude the possibility of arbitrary decisions in conflict with the principle of equal treatment. Moreover, according to the above Ombudsman's report, the delays in decision making from the Council of Ministers, which may take from three months to three years and the lack of any information given to those rejected because they do not fulfil the above criteria violate the general principles of administrative law and the duty of the administration to provide an answer to the applications within reasonable time. In relation to the duty of information, they may also violate their right to an effective remedy, as applicants are never informed of the rejection of their application. The Third ECRI Report on Cyprus (2006: 8) notes that 'citizenship has been granted by this procedure to children whose Cypriot parent was a Turkish Cypriot and whose other parent was a citizen of Turkey'; however, it also states that 'decisions to grant citizenship have resulted in intolerant and xenophobic attitudes in public debate. The Fourth ECRI report continues to consider that 'the situation regarding naturalisation has not changed'.

It must be noted that the Ombudsman Report referred to above regarding the handling of applications for the acquisition of Cypriot nationality by Turkish Cypriots whose one parent is a Turkish Cypriot and the other is a foreigner who entered or resides in Cyprus illegally, was made in the Ombudsman's capacity as the Anti-discrimination Authority. Apart from the Fourth ECRI Report, the Anti-discrimination Authority report relied on the Law on General Principles of Administrative Law 1991, which codified the general principles

⁴⁸ Pyla is the only mixed village (T/C and G/C) in Cyprus after the events of 1974.

governing the actions of public administration. In article 10, this law provides that administrative bodies must perform their task within a reasonable time, so that their decision is timely in relation to the factual or legal situation to which it relates. The decision also makes reference to article 28 of the Constitution which sets out a general anti-discrimination principle, providing for equality of treatment and protection before the law, the administration and justice on all grounds; and to Article 29 of the Constitution which provides that every person has the right to address requests to any competent public authority and to have them attended to and decided expeditiously, whilst an immediate notice of any such decision taken must be duly reasoned and given to the person making the request within a period not exceeding 30 days⁴⁹. The Anti-discrimination Authority stated that it comprehends the particularities in the handling of the granting of citizenship to Turkish Cypriots whose one parent is a foreigner, as these are directly linked to the political problem of the division of Cyprus and in particular the demographic change that is attempted by Turkey. It also expressed its agreement with the establishment of criteria by the Council of Ministers for the granting of citizenship, which essentially seek to ensure, as far as possible, that acquisition of Cypriot citizenship is restricted to children born to families created before or independently of the events of 1974. However, the report expressed its concern over the delay in the processing of applications meeting the criteria, which can have a serious impact on the lives of affected persons, as it restricts access to a wide range of services and benefits and especially the educational and vocational prospects of young persons and students. The report added that the current practice of archiving failed applications into “lists” without informing the applicants of the rejection of their application is problematic and needs to be reviewed so as to comply with administrative law. It urged the authorities to introduce regulations (a) for the speedy processing of those applications which do meet the criteria and (b) for the written notification to failed applicants of the reasons why their applications are rejected. Such regulation, the report adds, will establish a fairer practice towards affected citizens and will at the same time provide Cyprus with stronger grounds for refuting accusations of maladministration and discrimination on the ground of nationality.

Unfortunately, the report makes no reference to the Convention of the Rights of the Child and to the principle that the rights of the child are paramount. It indirectly also rejects ECRI’s position that that the children pay the price of an unresolved political conflict. The Anti-discrimination Authority also failed to examine the claim of discrimination on grounds of ethnic origin advanced by the complainants and restricted itself to vague references to nationality discrimination, while avoiding any confirmation of allegations of discrimination (on any ground). The essence of the complaints submitted was that the procedure followed in the case of *Turkish Cypriots* whose one parent was a foreigner was different from the procedure followed in the case of *Greek Cypriots* whose one parent was a foreigner since the criteria established by the Council of Ministers have not been used in the case of Greek Cypriots whose one parent is a foreigner. The report indirectly disagrees with the findings of the ECRI report (which alleges discrimination and recommends the adoption of a more objective and uniform practice provided by the 1997 European Convention on Nationality). Instead, the Anti-discrimination Authority appears prepared to adopt the position of the

⁴⁹ Nevertheless, Article 35 of the Law on General Principles of Administrative Law 199, codifying the case law of the Supreme Court on Article 29 of the Constitution, provides that administrative authorities should give written information about the course of a case within 30 days. Article 36 of the Law on General Principles of Administrative Law, however, clearly stipulates that if the administration does not provide a duly reasoned decision within a period of 3 months from the day of the request under Article 29 of the Constitution, then there is a right to challenge the omission of the administration to reply under Article 146 of the Constitution with a recourse to the Supreme Court or to consider that the decision is negative and the application rejected and therefore challenge the omission as a negative decision of the authorities.

Cypriot government that the criteria used in the case of Turkish Cypriots are necessary in order to address Turkey's policy of settlement and change of the demographic character of Northern Cyprus, ignoring the fact that Protocol 12 of the ECHR (which is ratified by Cyprus but not referred to in this report) provides for such an exception to the principle of non-discrimination on the ground of race/ethnic origin or nationality. The argument of the Anti-discrimination Authority that the government should introduce regulation for speeding up the processing of applications and for informing failed applicants *in order to* protect itself against allegations of maladministration and discrimination is effectively reinforcing a problematic culture prevalent among Cypriot authorities, who are more concerned about their image abroad than about implementing fundamental rights at home. The reference of the Anti-discrimination Authority to allegations of maladministration and discrimination is presumably a reference to ECRI's criticism, which is clearly not endorsed by the Equality Body. Also, the whole argument of addressing Turkey's policies of colonising Northern Cyprus collapses in the case of Turkish Cypriots whose one parent is a foreigner from a country other than Turkey. The Equality Body has not examined these cases, even though the report expressly claims to cover those cases as well (all cases where "one parent is a Turkish Cypriot and the other is a foreigner who entered or resides in Cyprus illegally"). Finally, the Anti-discrimination Authority does not appear prepared to question the procedures followed by the immigration department in checking the compliance of applications with the criteria. The immigration department has been repeatedly criticised in the past (inter alia by the equality body itself) for discriminatory and arbitrary practices.

Secondly, Section 109(3) of law 141(I)/2002 expressly prescribes that the above provisions for acquisition of citizenship do not come into force in cases where a person is born in Cyprus or abroad between 16 August 1960 and 11 June 1999, if his or her claim is based solely on his or her mother's citizenship, or the fact that she was entitled to citizenship of the Republic. However, the law stipulates that the person (or if the person is a minor, his or her father or mother) may submit an application to the minister to be registered as a citizen of Cyprus. The Equality Body of Cyprus examined a complaint claiming discrimination on the grounds of sex/gender and citizenship (and indirectly ethnic or racial origin) for descendants of women of Cypriot origin born between 16 August 1960 and 11 June 1999.⁵⁰ The Equality Body (the Ombudsman in its capacity as the Equality and Anti-discrimination Body) considered that the said provision was indeed discriminatory; however, in a rather obscure decision, it refused to take any further action, due to the 'transitory nature of the provision, to counter the situation and the expectations that had formed up to 1999 on the basis of the regime of acquiring citizenship'.⁵¹ In any case, they are entitled to obtain citizenship via registration. Another mode of acquisition (Section 109(3)) is provided for persons born on or after 16 August 1960 and who are of Cypriot origin, i.e. descendants of a person who:

1. became a British citizen on the basis of the Cyprus (Annexation) Order-in-Council between 1914 and 1943; or
2. was born in Cyprus between 5 November 1914 and 16 August 1960 during which time his or her parents were ordinarily resident in Cyprus.

These persons are entitled to be registered as citizens provided that they are adults

⁵⁰ It was alleged that discrimination is ongoing as the specific provision has resulted in the perpetual and future discrimination of this category of persons and their descendants since the principle of anti-discrimination is not only momentarily applied, but it is also forward looking. It is likely that this provision is in violation of the laws against discrimination and, in particular, Law No.142(I)/2004, which transposes the anti-discrimination *acquis* and more importantly Protocol 12. See File No. 62/2005 of the Ombudsman's Report.

⁵¹ See the Ombudsman's Report File No. 62/2005.

and of sound mind,⁵² apply to the Minister⁵³ via the designated means and provide an official confirmation of loyalty to the Republic, according to the format provided in the Second Table annexed to the law.⁵⁴

Acquisition by registration

The above-mentioned exception related to the legal stay or entry as a requirement for acquisition by descent applies also to spouses of Cypriot nationals applying for registration as citizens on the basis of section 110 (2) of Law 141(I)/2002. According to this section, spouses of Cypriot nationals who enter or reside illegally in the Republic are not entitled to registration. In this case, the Council of Ministers has no discretionary power to grant citizenship, rendering the relevant provisions even stricter.

These provisions are related to those on Turkish-Cypriot descent, and were directed mainly against the spouses of Turkish Cypriots entering or residing illegally in the areas that are not under the control of the Government of the Republic of Cyprus. Their objective has been to address the issue of settlers. In practice, they affected all foreigners/migrants married to Cypriot nationals living anywhere on the island.

The authorities implement the above provisions restrictively as they consider that migrants/spouses of Cypriot nationals reside “illegally” in the country, if their residence permits have gaps between their renewals, even if such delays are caused by the country’s administration. Since delays on the issuance and renewals of residence permits of migrants may take several months, the majority of applications of spouses of Cypriot nationals for registration, are routinely rejected on those grounds.⁵⁵

The Supreme Court considered this practice as legitimate as it interpreted the provisions of the law restrictively and found the practices of the administration in compliance with the letter of the law.⁵⁶ However, in a more recent decision, the Court did not follow the case law of the full house of the Supreme Court and declared the rejection of the application on those grounds as illegal. The Court considered that the subsequent renewals of the residence permits of migrants regularised their residence in the Republic and therefore the administration is barred from declaring their residence as illegal. It also concluded that other factors should be taken into account, such as the good character of the applicant and the integration of the applicant in the Republic.⁵⁷

The way the authorities have been implementing those provisions does not leave much room for naturalisation via registration to migrant spouses of Cypriot nationals. It

⁵² The Greek text refers to ‘πλήρης ικανότητα’ (‘pléres ikanóteta’), which literally translated means ‘full ability’, but it must be construed as meaning of ‘sound mind’, which was the old British formulation.

⁵³ The relevant minister is the Minister of the Interior.

⁵⁴ A number of Tables are annexed to the Law. The First Table specifies the fees for the issue of passports; the Second Table includes the format of making a formal oath of allegiance to the Republic of Cyprus; the Third Table describes the conditions for naturalisation.

⁵⁵ Despite the declared political will of the current government to amend the law so as to provide for the discretion of the Council of Ministers to grant citizenship also in these cases, the law has never been amended up to date.

⁵⁶ *Yousife Mohamad v. Republic* (2010) 3 A.A.Δ. 18 and *Z.M. v. Republic*, Revisional Appeal No 193/07, decision of 21.1.2011.

⁵⁷ *Emma Angelides v. Republic*, Application 1408/10, decision of 31.10.12. It is worth noting that in that case the Court followed the reasoning of the CJEU on legal residence in *Ergat v. Stadt Ulm*, C-329/97, *Kadiman*, C-351/95 and *Ertanir* C-98/96, 30.9.1997

equally fails to take into account special circumstances of particular groups, such as refugees, who more often than not enter the country illegally.

3.3 Institutional arrangements

Acquisition via naturalisation (πολιτογράφηση - politographese)

This report has already referred to the fact that the regime of acquisition is based on the discretionary power of the authorities. Moreover, given that there has been a policy that migrant worker permits cannot be extended beyond four years, the chance of acquiring citizenship for these groups is rather slim, unless they are married to a Cypriot or are granted leave to stay on other exceptional grounds. Cypriot authorities are very reluctant to grant citizenship to migrants and refugees.

In light of the strict immigration and asylum policies of Cyprus, which as a rule do not allow for permanent and /or long term residence of third country migrants and the integration of refugees in the country, and on the basis of the practice followed, it may be concluded that the only persons who could potentially acquire the necessary qualifications to apply for naturalisation include:

1. European Union citizens
2. recognised refugees or persons with subsidiary protection
3. asylum seekers whose applications are pending for a period of more than seven years
4. third country nationals working in the international business companies sector who are granted renewable residence permits.
5. third country nationals with permanent immigration permits on the basis of their financial situation and the investments made in Cyprus.
6. third country migrant workers who fall into some exceptional categories provided as a matter of policy,⁵⁸ and whose residence and employment permits may be renewed beyond the four year time limit.
7. any third country national who offers highly esteemed services in the Republic, which translates very often to the naturalisation of football players, coaches or other athletes.
8. any third country national who fulfils the special financial and investment criteria decided by the Council of Ministers, and who may be naturalised irrespective of the

⁵⁸ In accordance with the Strategy for the Employment of Foreign Labour Force of 2008, decided by the Ministerial Committee of Employment of third country nationals after consulting with the social partners, domestic workers taking care of the elderly and sick persons or children with special needs may be employed for a period of more than four years in Cyprus and for as long as the employer is in need for those services, for humanitarian reasons. (available at [http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/C31FC6B5DBBFAFD0C2256DB100436800/\\$file/%CE%A3%CF%84%CF%81%CE%B1%CF%84%CE%B7%CE%B3%CE%B9%CE%BA%CE%AE%20%CE%B3%CE%B9%CE%B1%20%CF%84%CE%B7%CE%BD%20%CE%91%CF%80%CE%B1%CF%83%CF%87%CF%8C%CE%BB%CE%B7%CF%83%CE%B7%20%CE%9E%CE%AD%CE%BD%CE%BF%CF%85%20%CE%95%CF%81%CE%B3%CE%B1%CF%84%CE%B9%CE%BA%CE%BF%CF%8D%20%CE%94%CF%85%CE%BD%CE%B1%CE%BC%CE%B9%CE%BA%CE%BF%CF%8D.pdf](http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/All/C31FC6B5DBBFAFD0C2256DB100436800/$file/%CE%A3%CF%84%CF%81%CE%B1%CF%84%CE%B7%CE%B3%CE%B9%CE%BA%CE%AE%20%CE%B3%CE%B9%CE%B1%20%CF%84%CE%B7%CE%BD%20%CE%91%CF%80%CE%B1%CF%83%CF%87%CF%8C%CE%BB%CE%B7%CF%83%CE%B7%20%CE%9E%CE%AD%CE%BD%CE%BF%CF%85%20%CE%95%CF%81%CE%B3%CE%B1%CF%84%CE%B9%CE%BA%CE%BF%CF%8D%20%CE%94%CF%85%CE%BD%CE%B1%CE%BC%CE%B9%CE%BA%CE%BF%CF%8D.pdf))

fulfilment of other naturalisation criteria.⁵⁹

Apart from persons in the categories 4, 5, 7 and 8, persons in all other categories find it difficult to apply or be approved due to bureaucratic obstacles and administrative practices reflecting the restrictive naturalisation policies of the country. The situation of asylum seekers and refugees provides some good examples. Asylum seekers stranded in the asylum procedures for more than seven years, even though they are legally residing in Cyprus, as their right of residence derives directly from the Refugee Law, are not granted any residence permits. In the absence of a valid residence permit, they are unable to apply for naturalisation. In spite of the provisions in the 1951 Geneva Convention on the obligation of signatory states to facilitate the naturalisation of refugees as a durable solution, refugees may only apply for naturalisation after seven rather than five years of legal residence, which is the rule, even though they are not mentioned among the categories of persons to whom the seven year residence exception applies. The majority of their applications are rejected.

The vast majority of naturalisation applications are rejected on the basis of the wide discretion of the Minister, which is also recognised by case law of the Supreme Court.⁶⁰ If the applicant fulfils the residency and other requirements, applications are commonly rejected on grounds of lack of knowledge of the Greek language,⁶¹ lack of integration, lack of any public interest in the naturalisation of the migrant or the intended short term stay in Cyprus, implying that this did not give rise to any legitimate expectation that the applicant would be eventually naturalised.⁶² Finally, the application for citizenship may be rejected on the sole ground that the Council of Ministers or the Minister of Interior may see ‘no particular reason why citizenship should be granted’, in the context of the exercise of wide discretion and state sovereignty.

Wide discretion and state sovereignty however, are used in a positive manner when naturalisation concerns in categories 4, 5, 7 and 8 above. In that respect, the most recent amendment of the citizenship law in April 2013 is of particular interest, since it provides a clear and precise legal basis for what has been announced as government policy by the newly elected government in the aftermath of the collapse of the banking sector and the financial crisis which led to a severe haircut of all deposits over 100,000 Euro in the two biggest banks of the country. Immediately after the Troika⁶³ imposed a banking sector ‘bail-in’ programme, and in an effort to otherwise satisfy foreign investors and businessmen who lost millions of deposits as well as to provide motives to depositors and investors not to transfer their remaining deposits elsewhere, the President announced⁶⁴ that those who lost 3 million euros and above could immediately apply for citizenship. At the same time, the Council of Ministers announced new and more favourable criteria, with substantially reduced financial requirements, for the naturalisation of foreign nationals in the future. This policy was the subject of criticism by in German parliamentarians, who called for common standards for naturalisation in all EU member states.⁶⁵ The innovative aspect of these amendments is that

⁵⁹ Council of Ministers Decision dated 15. 4. 2013, Criteria and Conditions for Naturalisation of Foreign Investors / Entrepreneurs by Exemption

⁶⁰ *Nabil Mohamed Adel Fattah Amer v. Republic*, Revisional Appeal No. 74/08, 26/1/11, Ashal Naveed Peter v. The Republic, Application 486/2009, 6.6.2011

⁶¹ Although the Turkish language is also an official language of the Republic, Turkish speaking migrants are also rejected on grounds of no knowledge of the Greek language.

⁶² The type of justification and wording is used to reject naturalisation applications particularly after the Motilla case on long term residence mentioned further down. It has to be noted however that the concept of legitimate expectation as such in naturalisation cases, has never been used.

⁶³ The European Commission, European Central Bank and International Monetary Fund

⁶⁴ <http://www.protothema.gr/politics/article/?aid=271647>

⁶⁵ <http://www.dw.de/citizenship-for-sale/a-16756198>

the investor's naturalisation is no longer linked to public interest. Hence it can be granted irrespective of the residence and all other requirements, such as the good character.

Even though the Supreme Court limits its jurisdiction only to a legality review of the decisions on nationality and therefore does not examine the merits, it nonetheless has annulled as illegal certain decisions on naturalisation mainly because of lack of proper investigation on behalf of the authorities, because of lack of justification or because decisions were flawed in facts.⁶⁶

After the transposition of Council Directive 2003/109/EC on long term residence status for third country nationals, one of the most frequent justifications for the rejection of naturalisation applications is that since the applicant would not be entitled to the EU long term residence status (even if she did not apply and was not rejected), then she would not be entitled to naturalisation either. This approach has not been tested before the Court as yet.

The law purporting to transpose Directive 2003/109/EC was passed in February 2007, but it is questionable whether the relevant provisions as well as their implementation in practice allow for access of the majority of long term third country nationals to the long term residence status. The decision of the Supreme Court in the case of *Motilla*⁶⁷ has stalled the process as it excludes the vast majority of third country migrants residing in Cyprus.⁶⁸ The applicant was a female migrant who arrived in Cyprus in 2000 and was since lawfully working as a domestic worker on the basis of short term residence permits with the indication final-not renewable on them, which however were renewed every year with the same indication. On 25 Jan 2006, i.e. as soon as the deadline for the transposition of Directive 2003/109/EC expired, she applied to the Interior Minister for the status of a long term migrant, on the basis of the Directive. After rejecting her application, on grounds of her situation falling outside the scope of the Directive because her residence permit was formally limited she challenged the decision to the Supreme Court. The Supreme Court, by a majority decision of nine judges against four, rejected the appeal and confirmed the Interior Minister's decision, on the ground that the fixed term duration of the applicant's residence permits did indeed fall within the exceptions of article 18Z(2) of the Cypriot Law (Article 3(2)(e) of the Directive). The decision noted that the transposition of the Directive and the addition of the phrase '*as to its duration*' did not detract from the effectiveness of the Directive and that the fixed term nature of the residence permits granted to the applicant did not create a reasonable expectation 'that the person has put down roots in the country', as provided by Recital 6 to

⁶⁶ Robert Antoun Kreidi v. Republic, Application 3/96, 27.2.98, Deepa Thanappuli Hewage v. Republic, Application 869/2002, 31.03.2004, Ayotunde A. Edu, Application 1492/06, 20.10.2008 Nabil Mohamed Adel Fattah Amer v. Republic, Revisional Appeal 74/2008, 26.1.2011.

⁶⁷ *Cresencia Cabotaje Motilla v. Republic of Cyprus through the Interior Minister and the Chief Immigration Officer*, Supreme Court Case No. 673/2006 (21 Jan 2008). Although the said Directive was not transposed into Cypriot law until 14 Feb 2007 (Law 8(I)/2007), the Court accepted that the application should have been examined on the basis of the direct effect of the Directive, based on the ECJ decision on the case of *Pubblico Ministero v. Tullio Ratti*, and the law which subsequently transposed it.

⁶⁸ The Ministry's rejection of the application was based on article 18Z(2) of the Aliens and Immigration Law Cap 105, as amended by Law 8(I)/2007 purporting to transpose Directive 2003/109/EC, which excludes from the scope of the law inter alia 'persons whose residence permit has been officially restricted as regards its duration'. The aforesaid provision was intended to transpose Directive article 3(2)(e); however whilst the Directive states 'persons whose residence permit has been formally limited', the Cypriot law states 'persons whose residence permit has been formally limited *as to its duration*'. KISA-Action for Equality, Support, Antiracism complained to the European Commission. The law was subsequently amended so as to delete the temporal element from the formally limited residence permits via art.2 of 143(I)/2009. However, the authorities and the numerous Supreme Court decision since continue to interpret the law in the same manner and as such *Motilla* is still considered to be valid law. Matters are likely to be overturned following the decision of the CJEU of Singh C-502/10 in October 2012.

the Directive, irrespective of her years of residence in Cyprus. After considering that the Directive allows a wide margin of discretion to the member states to define their immigration policies on the basis of the exceptions from its scope, the Supreme Court concluded that the Directive allows the state legitimately to consider its capacity to assimilate third country nationals in the country and to take also into account the small geographical size of Cyprus and its limited population, criteria that are not mentioned in the Directive.⁶⁹

In their dissenting opinion, four judges stated that the addition of the phrase ‘as to its duration’ fundamentally transform the essence of the exception provided for in Article 3(2)(e) of the Directive, since it is clear that the intention of the Directive is to exclude persons residing in the EU temporarily or on a permit which has been limited for a specific purpose, a fact evident by the examples given in the Directive article itself.⁷⁰ The judges did not refer the matter to the CJEU for a preliminary ruling. The decision has affected thousands of migrant workers who receive fixed term residence permits and who by virtue of this decision are excluded from the scope of the law transposing the Directive⁷¹. Therefore, this also affects their subsequent naturalisation prospects.

The law transposing Directive 2003/109/EC did not initially include integration requirements, as they were eventually dropped by the parliament following criticism by NGOs and strong trade union opposition. However, it was subsequently amended so as to provide for language and Cypriot history and civilisation exams for all third country nationals applying for status, apart from those employed in the international business companies sector. By contrast, the current integration conditions apply to the recognition of long term residence status. They do not apply as a condition of naturalisation.

In general, the naturalisation procedure has been criticised for its discretionary nature by international reports and NGOs. The Second ECRI Report on Cyprus criticised the fact that the conditions for naturalisation ‘leave a wide margin of discretion to the Naturalisation Department as concerns decisions to grant citizenship’; moreover the same Report claims that ‘there have been complaints that these decisions are sometimes discriminatory’ (ECRI 2001: 9). This practice was also criticised in the Third ECRI Report on Cyprus (2006: 8), in which it was also noted that ‘decisions are still excessively discretionary and restrictive’ but that ‘this is reflected not only in the use made of public order considerations, but also in the application of residency and language requirements’. Several decisions by the Ombudsman have criticised a number of practices of the Migration Department regarding the process of granting citizenship. The most problematic aspect is the restrictive approach of the Director of the Migration Department as regards the acquisition of citizenship via registration and

⁶⁹ This decision was widely reported in the media, since it essentially ‘freezes’ the opportunities of the vast majority of the persons entitled to acquire the long term residency, who are on a fixed duration visa. The decision was heavily criticised by human rights NGOs (press release of KISA dated 22 Jan 2008); a protest which was spontaneously held against this decision on 27 Jan 2008 led to violence by the police, to the arrest of a migrant rights supporter and to the rushing into hospital of a female migrant because of shock (KISA press conference 28 Jan 2008).

⁷⁰ The dissenting opinion further states that the term ‘formally limited’ used in Article 3(2)(e) of the Directive refers to the temporary nature of a stay not related to its duration but rather to the nature of the status or the profession of the person concerned, adding that it is not up to each member state to interpret this provision in a way that alters the spirit of the Directive, in order to suit its particular immigration policy. The dissenting judges found that the fact that certain migrants are on a fixed term visa is insignificant and does not alter the fact that they have a reasonable expectation of continued residence, since the Directive requires merely lawful residence and not even the issue of a residence permit, clarifying that it is the length of the stay that creates the reasonable expectation.

⁷¹ The decision however does not seem to be in line with the recent decision of the CJEU on the Singh Case. It is therefore expected to be revisited.

naturalisation. Moreover, the decisions also highlight considerable delays in the processing of the applications and prejudice based on the religion of the applicant. Also, the ‘Cyprus problem’ is often quoted as a ‘national priority’ and has commonly been invoked by Greek-Cypriot authorities as the reason for their reluctance to open up citizenship rules. However, this does not withstand close scrutiny as numerous amendments were made to facilitate various population policies that benefit what is perceived as ‘the Greek-Cypriot interest’.

What is also of serious concern is the lack of an effective remedy to challenge negative decisions on naturalisation. A successful recourse would only annul the decision of the Minister and oblige the authorities to re-examine the case always on the basis of the findings of the Court. This does not inhibit the Minister to reach the same negative decision on other grounds that were not part of the litigation procedure, provided that the *res judicata* is respected. This judicial review system often leads to a cycle of decisions by the Minister and subsequently Court decisions that never reach a concrete outcome as to the right of the applicants to naturalisation.⁷² A more serious concern is that there is not any mechanism for the enforcement of the decisions of the Supreme Court under Article 146 of the Constitution. Although the executive is in theory under the obligation to respect Court decisions, there is no enforcement mechanism, if the administration simply refuses to re-examine after the annulment of its decision by the Court. The only remedy available in cases such as this is to file a lawsuit for damages against the Government for failure to comply with the decision of the Court under Article 146.4 of the Constitution and although one could eventually compensate for such failure, this procedure will not lead to a final decision on naturalisation as such⁷³.

Overall, the implementation of the rules on naturalisation, along with the wide margin of discretion provided for by the legislation, is an issue of concern regarding the fairness of these policies. There is little encouragement and information for persons entitled to be naturalised and there are bureaucratic obstructions that make the application for naturalisation unattractive and cumbersome. One can explain this policy as a mixture of the colonial legacy and the keenness of the authorities to hold on to their ‘sovereignty’ concerning entry, sojourn, residence and citizenship, particularly as the protracted Cyprus conflict is often invoked as a pretext. The consequence is a restrictive regime that requires reform if it is to observe international law standards on the subject.

⁷² Indicative of the above problems are three cases relating to the same family *Deepa Thanappuli Hewage v. Republic*, Case No 869/2002, Decision of 31.3.2004, *Deepa Thanappuli Hewage v. Republic*, Case No 26/2008, Decision of 18.10.2010, *Nimal Jayaweera v. Republic*, Decision No 27/2008, Decision of 23.2.2010 who have been residing in Cyprus since 1993 and 1995 respectively (wife and husband) applied for naturalisation, were rejected, appealed at the Supreme Court and succeeded in their applications. The administration reexamined and rejected them again and appealed to the Supreme Court and succeeded for the second time but their situation is still pending without any specific outcome as the Minister refuses to reexamine after the second recourse.

⁷³ Indicative of this problem is also the situation of the applicants in the case of *Ayotunde A. Edu and Josefina L. Edu v. Republic*, Case No 1492/2006, decision of 29.10.2008 who, despite their successful application at the Supreme Court, are still waiting for the reexamination of their naturalisation application which the authorities refuse to proceed.

4. Current debates

4.1 Europeanisation

There is little doubt that the language of ‘Europe’ has become dominant in Cyprus as there is an orientation of political discourse and rhetoric towards Europe as a reference point.⁷⁴ The question is whether the process of Europeanisation has touched upon citizenship. One issue is European citizenship itself, which affects the divided Cypriot citizenship. A number of key issues relate to the right of EU citizens to free movement in the EU; for instance, the fact that Cyprus has not yet regulated same-sex marriages and extra-marital relationships has resulted in various forms of discrimination against lesbian, gay, bisexual and transsexual Union citizens, thus constituting effective obstacles to free movement. Another problem is the regulation of the ‘Green line’ that divides the country (see Trimikliniotis 2009b).

European citizenship has different aspects relevant to the potential for transformation of the citizenship issue in Cyprus. First it may provide an all-encompassing identity that has the potential to overcome the ethnic divide between Greek-Cypriots and Turkish-Cypriots. It is argued that shared cultural experience between Greek-Cypriots and Turkish-Cypriots, often suppressed by nationalists in the past in order to focus on ethnic differences, could become a new focus as there are common aspects of identity that can unite the two communities. According to this optimistic view, EU membership may emphasise the shared culture and help in finding a solution to the Cyprus problem. Moreover, EU citizenship may have a positive impact on human rights, as the EU is expected to act as a guarantor of rights, particularly after the entry into force of the Charter of Fundamental Rights, such as the freedom of movement and residence freedom of establishment, as well as right to property, including ownership of land, enshrined in article 17 of EU Charter of Fundamental Rights and in line with the principles developed in the ‘*acquis communautaire*’, at least as regards matters within the scope of EU competences.

‘Citizenship’ would underpin rights (communal/individual) thus assisting in creating a better climate of trust and security via the operation of intergovernmental and transnational organisations of different nature and operation, such as the Court of Justice of the European Union, the Council of Europe and the European Court of Human Rights, as well as the EU itself, which is of course by far the most advanced transnational organisation.⁷⁵ The Conventions of the Council of Europe and other international instruments for ‘minority rights’ (Thornberry 1994), although technically outside the *acquis*, could arguably be a useful mechanism from which Turkish-Cypriots stand to gain;⁷⁶ however, Turkish-Cypriots are not a

⁷⁴ One scholar termed this as ‘the Europeanisation of political thinking’ (Theophylactou 1995: 121), whilst another scholar interpreted this as the embracing of a ‘Eurocentric ideology’ by the Greek-Cypriot political elite (Argyrou 1996: 43).

⁷⁵ It is sometimes assumed that possible ‘weaknesses’ in the settlement would gradually be somehow eliminated by the operation of the *acquis* and via access to the European Court of Justice and the European Court of Human Rights.

⁷⁶ Minority rights for ‘old’ ethnic minorities have a significantly long tradition of protection under various treaties and authorities, even from the last century, though these were very restricted and at the whim of the great powers (Hannum 1996: 5074). However, Article 8 of the European Convention on Human Rights guarantees the right to private and family life (which has been interpreted as to include ethnic identity) and Article 9 guarantees ‘the right to freedom of thought, conscience and religion’. More specifically, Article 27 of the Covenant on Civil and Political Rights refers to the rights of ‘ethnic, religious or cultural minorities’ to ‘enjoy their own culture, to profess and practice their own religion, or use their own language’, but these are set to be extended in other areas of freedom (Hannum 1996: 62–63). However, the European ‘regime’ on ethnic

‘minority’ but a ‘community’ in a consociational regime (see Yakinthou 2009). Moreover, matters are, in practice, far more complicated. In the immediate aftermath of the rejection of the UN plan in April 2004 and until the beginning of 2008, the Europeanisation issues did not operate as a constructive force: the issue of EU accession had become yet another point of contestation between Greek-Cypriots and Turkish-Cypriots over the question of what kind of future ‘European solution’ there will be for the Cyprus problem. Inevitably, the questions of citizenship have been more or less put on hold as they are subordinate to the solution of the Cyprus problem. It has been returning, however, as a key issue for the resolution of the Cyprus problem in the negotiations between the two community leaders every time when these have taken place.

4.2 Reunification, partition and settlers: Citizenship turns into a hot political issue

This is perhaps the greatest challenge in the adventures of citizenship in Cyprus. We have already referred to some of the issues as regards the period 1974–2004 and the challenges of migration. However, the central question arises out of the latest efforts to resolve the Cyprus problem, which resulted in the UN plan known as ‘the Annan Plan’.

The issue of who is entitled to citizenship is a hot political issue. In the northern territories the policy of Turkey is to ‘replace’ Turkish-Cypriots who emigrate with Turkish settlers from the mainland or to distort the demographic balance of the Cyprus population by giving TRNC citizenship to a large number of settlers.⁷⁷ In the area under the control of the Republic of Cyprus it is estimated that there are between 15,000 to 20,000 Pontic Greeks from the former Soviet Union, a few of whom were granted citizenship, after residing for a period of seven years in Cyprus.⁷⁸ The demographic study conducted by the Ministry of the Interior in 2000 found that there were 10,000–12,000 Greek Pontics residing in Cyprus at the time. However, there have been changes since; in any case, Pontiak organisations claim to represent 40,000–45,000 Greek Pontics residing in Cyprus, but this figure may be exaggerated. It is difficult to ascertain the exact numbers of Greek Pontics; it is believed that a number of them have left Cyprus because of unemployment in the context of the economic crisis.

The rejected 2004 Annan plan contained specific provisions regarding the number of settlers who would be granted citizenship. This has proven to be a particularly sore point for the Greek-Cypriots, who eventually rejected the plan. In fact, it is widely believed that one of the reasons the Greek-Cypriots voted ‘no’ to the plan was the fear over the ‘large numbers’ of settlers who would eventually be allowed to remain.⁷⁹ Nevertheless, Greek-Cypriots saw these provisions as problematic in that they were alleged to allow for a ‘perpetual inflow of

minority groups’ protection is problematic, as there is a distinct lack of enforcement mechanisms. These rights are heavily dependent upon the nation-states for implementation; in any case the mechanisms for implementation are very weak if not irrelevant (Hannum 1996).

⁷⁷ The veteran Turkish-Cypriot leader has often been quoted saying: ‘A Turk leaves, another Turk comes’.

⁷⁸ It appears that in the days of the collapse of the USSR, Greek-Cypriot policy-makers toyed with the idea of bringing to Cyprus Pontic Greek- rather than other migrants, due to their ethnic origin, in part to unofficially and quietly ‘redress’ the Turkish settler policy. Officially this was never admitted by right-wingers, and nationalists regularly referred to the Pontics as the alternative to ‘an Afro-Asian’ new minority (see Trimikliniotis 1999).

⁷⁹ Obviously there was scaremongering and exaggeration by the Greek-Cypriot ‘No campaign’ about the figures and misinformation about the actual provisions. Palley (2005) has a chapter devoted to the subject and puts forward the case for the Greek-Cypriot side and the reasons for the Greek-Cypriot rejection as regards this issue.

settlers', in spite of the 5 per cent cap for any future migration from Turkey and Greece.⁸⁰ In the 'main articles' of the Foundation Agreement of the Annan plan (Article 3) there is reference to 'a single Cypriot citizenship' regulated under federal law as well as the 'internal constituent state citizenship status' to be enjoyed by 'all Cypriot citizens'; moreover, the plan lays out a set of complicated rules about preserving 'identity' (see Appendix 1). The acquisition of citizenship is regulated by an agreed constitutional law which essentially deals with the issue of settlers from Turkey. Moreover the plan envisages a federal law on 'aliens and immigration' (Foundation Agreement, Attachment 5, Law 1) as well as federal law for international protection and the implementation of the Geneva Convention Relating to the Status of Refugees and the 1967 Protocol on the Status of Refugees (Foundation Agreement, Attachment 5, Law 2) which, in the event of a settlement, would replace the current laws on immigration and refugees.

The plan was rejected by the Greek-Cypriots, but remains relevant to current and possible future negotiations as the most comprehensive plan ever to be negotiated, and is therefore a valuable source of ideas on the formation of a bi-zonal, bi-communal federation (see Trimikliniotis 2009a and 2010). In the absence of a solution, prior to the referendum and soon after, a number of public debates erupted that centred on the question of citizenship policy. The question of moving towards an effective right to citizenship by providing passports for the Republic of Cyprus has been relevant particularly since accession. For the Greek-Cypriot post-referendum political arena, an issue that became a hot political issue was the question of granting the right of citizenship to children of Turkish-Cypriots who married Turkish settlers. Right-wing media attacked the cabinet decision to grant citizenship rights to 703 people one of whose parents was a Turkish settler.⁸¹ The government was forced to go on the defensive with the Minister of the Interior claiming that 'the legislation does not allow the granting of citizenship, either to settlers or an alien from another country, who has entered the Republic illegally.'⁸² The media as well as some members of the coalition government stated that because 'invasion, colonisation and changing the demographic character of a country' is a 'war crime',⁸³ granting citizenship to the offspring of colonisers is never justified. In fact, there are allegations that there is an unofficial moratorium on the subject to freeze the applications of children of settlers married to Cypriots; this is a practice that has been criticised by human rights organisations.⁸⁴ Despite the more recent report of the Ombudsman on this matter shedding some light on the policies followed and the categories excluded from citizenship, the current situation in Cyprus leaves the citizenship policy regarding this category of persons in a state of limbo. The same applies for the spouses of Turkish-Cypriots who are also excluded on grounds of illegal entry and residence which eventually affected access to citizenship of the spouse of every Cypriot. In practice, pending a resolution of the problem, the Cyprus problem is likely to predominate and colour the citizenship policy. The greatest challenge for Cypriot policymakers is to adopt a citizenship policy that enhances the possibility for reunification and thus does not consolidate and indirectly officially endorse

⁸⁰ The provisions were depicted by Greek-Cypriot anti-Annan critics as rewarding the policy of colonisation. However, this is a highly complex issue which requires a detailed analysis and a resolution that bears in mind the principles of justice and international law, as well as the humanitarian, the individual rights and the personal dimensions of the problem.

⁸¹ See G. Psyllides, 'Citizenship for settler children: Christou hits back', *Cyprus Mail*, 1 July 2004.

⁸² Interior Minister Andreas Christou quoted in Politis, 7 June 2004.

⁸³ See *Cyprus Mail*, 1 July 2004. Palley (2005) deals with the legal and political issues of the settlers. Also see Hannay (2005).

⁸⁴ In a press release dated 2 July 2004 the human rights NGO 'KISA' (Action for Equality, Support and Antiracism) expressed concern over the intolerant and racist attitudes developing around the issue of granting citizenship to these children.

partition.

The anomaly of the Cyprus problem has had a massive impact on the number of citizenship acquisitions. The largest figure involves Turkish-Cypriots. Most of these persons acquired citizenship after 23 April 2003 when the checkpoints were opened. Although Turkish-Cypriots had a right to Cypriot citizenship before that date, they could not make use of this right due to the war and the *de facto* partition since 1974. Between 1995 and 3 March 2009, 101,778 Turkish-Cypriots acquired birth certificates from the Republic of Cyprus; 83,372 acquired identity cards and 54,595 passports. Moreover, the number of applications for citizenship has more than doubled since Cyprus acceded to the EU and there is a backlog of some hundreds of applications pending.

The second largest group of people granted Cypriot citizenship were those who were Cypriot by descent or by origin (2,250 for category 4 and 23,932 for category 5, above). This figure reflects the favourable conditions for return migration to Cyprus, which has enjoyed a steady improvement in living standards and relative stability despite the conflict and the continuing division. Moreover, it illustrates the importance of ties with Cyprus and ethnic connections amongst the Cypriot diaspora communities abroad. Finally, it may reflect the relative success of various population policies aimed at encouraging expatriates to return to Cyprus. However, it is difficult to verify how far these incentives influenced the decision to migrate to Cyprus. It has to be noted that this category includes an unknown number of Turkish-Cypriots.

The third largest category comprises those who acquire citizenship by marriage, a total of 12,824 persons. Research shows that the large majority of these are foreign women married to Cypriot men (ratio 7:1) and that there is a preference for certain nationalities (Fulias-Souroulla 2008).

The next largest group are naturalised persons (category 1). The number of naturalisations is rather small considering that there are 170,000 non-Cypriots residing in Cyprus,⁸⁵ which includes however over 100,000 EU citizens.⁸⁶ The number of non-Cypriot naturalised migrants is even smaller, since an unknown share of those naturalised are persons of Cypriot origin born in the Commonwealth prior to 1960 and who could only acquire Cypriot citizenship by naturalisation, as well as those who were deprived of Cypriot citizenship or renounced it in order to acquire the citizenship of another state. In any case, about half of those who acquire citizenship by naturalisation are Greek Pontians residing in Cyprus: it is estimated that about 400 Greek Pontians were granted Cypriot citizenship in 2004 and about 500 in 2005.⁸⁷

⁸⁵ According to the latest Population Census of 2011, there are 170,383 non Cypriots residing in Cyprus, Statistical Service, 21/6/2012

⁸⁶ Ibid

⁸⁷ This figure was provided by the Population Data Archives, Ministry of the Interior, which was asked to comment on the categories, figures and the underlying policies (15 December 2006). There are no more recent statistics available.

5. Conclusions

The mechanics of acquisition, renunciation and deprivation of citizenship in the Republic of Cyprus revolves around Cypriot descent: persons of Cypriot origin are basically entitled to citizenship, whilst persons of non-Cypriot descent may be allowed—to apply to acquire citizenship via registration if they are spouses of Cypriot nationals and naturalisation mechanisms, if they have resided in Cyprus for five or seven years according to the category. The statement of one of the very few Cypriot legal scholars dealing with the subject, Criton Tornaritis (1982: 39), that Cyprus has adopted a ‘mixed principle combining *ius soli* and *ius sanguinis*’ is not very helpful as Cypriot descent forms the core. Although we cannot locate a *declared* policy on citizenship as such in the Republic of Cyprus, what we do find instead, is a practice that derives from the long-standing Cyprus conflict as well as international developments such as accession to the EU, economic development and migration, and to some extent changing attitudes, particularly as regards the question of gender. Other factors are also of relevance, such as population and immigration control, economic and welfare issues, social policy, etc. As for the unrecognised Turkish Republic of Northern Cyprus, the issue of citizenship is totally subsumed in its own ‘struggle for recognition’ and it is a mirror image of the country it broke away from and yet can never escape from, the Republic of Cyprus, with the added complications of an unrecognised ‘state of exception’.

In the context of Cyprus, citizenship policy is inevitably subordinated to the unique historical conjunctures that perpetuate the island’s protracted ethno-national conflict. In fact, the question of citizenship goes to the heart of the existence of the country’s very own ‘nation-state dialectic’ (see Trimikliniotis 2010): the challenge for a citizenship that transcends the ethno-national conflict and the ethno-communal divide is perhaps the greatest challenge of all for this country’s European aspirations for a re-united and peaceful future. This requires resolution of the Cyprus problem. The last round of negotiations between the two community leaders between 2008 and 2012 failed to reach a resolution, despite the fact the basic framework is agreed upon to be on the basis of a bi-zonal, bi-communal federation with a single sovereignty, territory and citizenship. Such a solution would have radically transformed the citizenship issues as we have known them. The last chance to realise this was in March 2010: there was remarkable progress on the Governance issue, one of the crucial chapters of the Cyprus problem. This was the first time ever that the leaders of the two communities agreed on the parameters of sharing power in the bi-communal bi-zoned federation with a system of weighted cross-voting and rotating presidency for Greek-Cypriots and Turkish-Cypriots. However, the two leaders failed to seal this progress with an agreement. Matters came to an effective halt with the election of the hard line right-wing leader of the Turkish-Cypriots, who came to power one month later. During the last UN summit in New York,⁸⁸ where all aspects of the problem were discussed, the UN Secretary General reported that ‘limited progress was achieved’.⁸⁹ There had been convergence on the economy, EU relations, and governance, save for certain thorny issues. However, on some chapters (for example, property, territorial adjustments, and security) little, if any, convergence has been achieved. Negotiations were stalled in the second half of 2012, when the Republic of Cyprus assumed the Presidency of the EU, effectively freezing the UN-sponsored talks. Mr Christofias did not run for re-election in the February 2013 Presidential elections, as according to his statements, there has been no substantive progress in the efforts to finding a solution that would justify continuing further in office. President Anastasiades

⁸⁸ Greentree Summit (II) was held at Long Island at January 23 and 24, 2012.

⁸⁹ UN SG Report on Cyprus January 25 2012.

was elected in the 2013 elections with the support of three political parties. He immediately had to address the deep financial crisis in Cyprus, the result mainly to the exposure of Cypriot banks to the Greek debt crisis, the downgrading of the Cypriot economy by international rating agencies and the consequential inability to borrow from financial markets to cover state expenses. Cyprus was thus forced to resort for financial support to the European Stability Mechanism (ESM) and comply with the demands of its creditors for a bail-in and restructuring of its banking sector, (which shrunk overnight), and agree to a package of austerity measures for reducing state expenses. In the context of this unprecedented financial crisis, the measures imposed by the Memorandum of Understanding (MoU) between the European Commission, the International Monetary Fund and Cyprus, are perceived by political parties and the society at large as a direct attack on the sovereignty of Cyprus and as the precursor of a more serious interference with the Cyprus problem and the natural gas reserves recently discovered off the southern coast of Cyprus and thus contrary to the interests of the Greek Cypriot community.⁹⁰ On the other hand, Turkey expressed its interest to reach an agreement to the Cyprus problem as soon as possible and also explicitly proclaimed the rights of the TC community over the same gas reserves. Moreover, there is political instability in the North as Turkish Cypriots are now heading for early elections following a motion to censure the current Government. In the light of all the above, the situation in Cyprus becomes more and more volatile and it is difficult to speculate about the outcome of any negotiations which at present are expected to resume in the autumn of 2013.

⁹⁰ For more on the situation in Cyprus see Trimikliniotis and Bozkurt (eds.)(2012); particularly the introductory chapter Trimikliniotis & Bozkurt (2012). On the gas reserves and the Cyprus problem see Trimikliniotis (2012).

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