

CYPRUS IS NOT DENMARK, MALTA OR THE ALAND ISLANDS*

Andreas P. Kyriacou

Associate Professor of Economics at the University of Girona (Spain)

IMAGINE for a moment two people who were taken ill and who visit the doctor. The first has a slight fever due to the common cold and a couple of aspirins will do. The other has a strong fever due to a life threatening viral infection and the doctor decides on the same treatment, albeit, with a stronger dose. Most of us would consider this approach to be dangerous and, indeed, it would probably expose the practitioner to a malpractice suit. Unfortunately a similar approach is being proposed in relation to restrictions in acquiring property and residency in the north in a reunified Republic of Cyprus. In particular it has been suggested that permanent derogations to the right to buy property and to reside in the north - derogations which are contrary to EU law - could be applied following the examples of Denmark, Malta and the Aland Islands. I would like to argue that these three countries are, in a sense, the first patient mentioned above while Cyprus represents the second. So equating already existing derogations in these countries to possible future ones in Cyprus is a mistake.

The first time I read such suggestions was in a piece in *The Economist* which stated that: "The Greek Cypriots - and indeed EU law - say that eventually everybody must be free to live and own property wherever he wants. However, there is a widespread acceptance elsewhere in Europe that there can be 'derogations', as the jargon has it, to such rules. The EU allows Denmark to prevent foreigners (read Germans) from buying Danish summer-houses, while the Swedish-speaking Aland islanders, who are Finns by nationality, can keep their islands culturally (read ethnically) Swedish" (Cyprus. Can the Circle Be Squared?, February 19, 1998). More recently, the same possibility has been aired in a report by the International Crisis Group based in Brussels: "Under EU law, any derogation from the right of Greek Cypriots to buy property or to reside in the future Turkish Cypriot Constituent State, can at most be temporary. However, there is a precedent for permanent derogations on non-permanent resident EU nationals' rights to buy property in Denmark and Malta, and ethnic rules on primary residence protect the ethnic Swedish status of the Aland Islands in Finland." (Cyprus: Bridging the Property Divide, Europe Report N° 210, December 9, 2010).

And, of course, the Annan Plan limits the right of Greek Cypriots to buy property in the north for 15 years (or for as long as GDP per capita there is below 85 per cent of that in the south). Moreover, permanent derogations are applied to the right of establishment by non-Turkish speakers to preserve the majority status of Turkish speakers in the north.

Both Denmark and Malta limit the right of non-Danish and non-Maltese EU nationals to buy a secondary residence there. While Denmark may do so to avoid Germans flooding their market for holiday homes, in the case of Malta,

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the basic rationale is the desire to protect the housing needs created by the demographic development of existing residents, given the very limited land available for future housing. Neither Denmark nor Malta restricts the rights to buy property of permanent residents and, of course, Danish and Maltese nationals face no legal limits. The proposed application of such derogations in Cyprus would be an entirely different story. They would be aimed at Cypriot nationals rather than non-Cypriot EU ones. Indeed, all EU nationals – except Greek Cypriots many of whom originally hail from the North – would be able to buy property there without restrictions. Obviously, it is one thing to restrict the ownership rights of people with no strong cultural or historical connection to a region (as in the case of Denmark and Malta) and quite another to usurp the rights of people whose identity is intimately linked to the affected territory (the case of Cyprus).

Next, let us take the Aland example. With the objective of preserving the Swedish speaking minority concentrated on these islands, the right to hold property and reside there is severely limited to non-residents. Why not protect the Turkish speaking minority in the North of Cyprus in the same way? This is not possible for several reasons. First, the ethnolinguistic composition of the Aland Islands is centuries old and not the result of decades old conflict. Another way of stating this is that, uniquely in the case of Cyprus, we have to deal with the interests of approximately 210,000 displaced persons who represented almost 37 per cent of the island's population in 1974. Of these, almost 80 per cent are Greek Cypriots and thus would be affected by permanent derogations in ownership and residency rights in the North. Second, Turkish Cypriots have over the years been demanding more than 29 per cent of the island under their administration and therefore subject to the derogations. Compare these numbers to those of the Aland Islands which collectively constitute the smallest region of Finland with only 0.49 per cent of its land area and 0.50 per cent of its population.

It is obvious that from the perspective of the EU, any accommodation of EU law is feasible, as long as it contributes towards the solution of the Cyprus problem. And, given the size of the territory involved, derogations to the right of property and the freedom of establishment in the North will have no appreciable impact on the European Single Market (as was also the case of Malta and the Aland islands). So why not allow such exemptions. But, I have tried to argue, Cyprus is not Denmark, Malta or the Aland Islands. Exemptions in the case of the latter must be placed in an entirely different context to those envisaged in the case of Cyprus. Any derogation to fundamental rights must be seen in light of their capacity to contribute towards the peaceful coexistence of the two communities in the long-term. While reasonable temporary derogations may be useful confidence-building measures, permanent derogations may lead to a strong feeling of resentment and injustice among Greek Cypriots. And resentment or injustice is not a strong foundation upon which to build a reunified Republic.