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Cyprus: A Sui Generis Relationship Under
Community Law***

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Special Territories in European Union and North Cyprus: A *Sui Generis* Relationship Under Community Law

Hacer Soykan ADAOĞLU*

ABSTRACT

On May 1st, 2004, the Republic of Cyprus became a full member of the European Union (EU) on behalf of the whole island. The Turkish Republic of Northern Cyprus (TRNC), which is not recognized as a member state, is within the European Union borders but it is outside the territory of the internal market. The EU has special legal arrangements for North Cyprus which makes it a special territory within the EU. However, there are other territories within the EU with special regimes. This paper examines the relationship between North Cyprus and the EU in comparison with the legal regimes established for other territories. The paper aims to determine the differences between North Cyprus and other territories in terms of status within the EU, legal arrangements and access to the internal market.

Keywords: Special Territories, EU Law, North Cyprus, Protocol 10 of Treaty of Accession of 2003.

Avrupa Birliği'nde Özel Bölgeler ve Kuzey Kıbrıs: Topluluk Hukuku'nda *Sui Generis* Bir İlişki

ÖZET

Kıbrıs Cumhuriyeti, 1 Mayıs 2004 tarihinde, Kıbrıs'ın bütününe temsilen Avrupa Birliği (AB) üyesi olmuştur. Bu nedenle, ayrı bir devlet olarak tanınmamakla birlikte Kuzey Kıbrıs Türk Cumhuriyeti (KKTC) AB sınırları içinde yer almakta, ancak İç Pazar alanı dışında kalmaktadır. AB, Kuzey Kıbrıs'ı, AB içinde özel bir bölge haline getiren bir takım hukuki düzenlemeler getirmiştir. Ancak, AB içinde özel hukuki rejim uygulanan başka bölgeler de vardır. Bu çalışmada, AB ve Kuzey Kıbrıs arasındaki hukuki ilişki, AB ve diğer özel bölgeler hukuki ilişkisi ile karşılaştırılarak incelenmiştir. Bu inceleme sonucunda, Kuzey Kıbrıs'ın, diğer bölgelerle olan farkı, AB içindeki statü, hukuki düzenlemeler ve iç pazara erişim olanakları göz önüne alınarak belirlenmeye çalışılmıştır.

Anahtar Kelimeler: Özel Bölgeler, AB Hukuku, Kuzey Kıbrıs, 2003 Katılım Antlaşması 10. Protokolü.

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Introduction

The European Union (EU) has special relations with special territories. The relationship is determined by the Treaties or the relevant Treaties of Accession. All these territories have either special relations or constitutional links with the member states. Two parts of the European Communities (EC) Treaty¹ deal with special relationships. The first part includes Articles 182–188 and Annex II on association with the non-European countries and territories which have special relations with Denmark, France, the Netherlands and United Kingdom. These are called overseas countries and territories (OCTs). The second part of the EC Treaty includes Article 299 and sets out the territories to which the Treaty applies. There are also other territories which are linked to the EU through the relevant member state's Treaty of Accession. These are Ceuta, Melilla and North Cyprus.²

This paper is intended to draw a picture for the EU and member state territories, and determine the position of North Cyprus in this picture. North Cyprus is within the EU but it is not internationally recognized as a separate state. The first part of the paper examines the constitutional relationship between the special territories and member states concerned, and examines relations with these territories and the EU. Specifically, the territories which are within the EU, but in which EU law is applied on special conditions will be examined. The second part of the paper is devoted to the special status of North Cyprus within the EU. Within this context, the relations between North and South of Cyprus are examined briefly and then, the accession of Cyprus to the EU is considered. The third part of the paper examines the relations between EU and North Cyprus in the light of the EU regulations and Protocol 10 of Act of Accession of 2003³ related to North Cyprus. Finally, the last part is devoted to the comparative analysis between North Cyprus and other special territories.

¹ Consolidated Version of the Treaty Establishing the European Community, <http://www.eur-lex.europa.eu/treaties/> (Accessed on 12 November 2008).

² In this paper, 'North', North Cyprus', 'northern part of the island', 'Turkish Republic of Northern Cyprus (TRNC)' are used interchangeably and they all refer to TRNC.

³ Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, OJ L 236, 23.09.2003, <http://www.eur-lex.europa.eu/treaties> (Accessed on 21 January 2009).

The EU and Member State Territories

General Framework

The EC Treaty defines the territorial limits of the Common Market.⁴ Article 299(1) of the EC Treaty provides that the EC Treaty applies to contracting parties mentioned there. According to the general rules of international law, the Treaty must be binding in relation to all territories falling under the sovereignty of the parties.⁵ However, the EC Treaty is applied in different regions and territories of member states with special conditions. There are also territories of some member states which are totally out of the scope of EU law such as the Island of Heligoland of Germany and Mount Athos of Greece. Such territories are excluded from the scope of this paper. As OCTs are not part of the EU, they will be examined as well. All of the territories concerned are either autonomous or semi-autonomous, and have a constitutional link with a member state. Historical, political and economic factors determine the relationship between the EU and the territories.

Territories Falling Under Article 299 EC Treaty

Article 299 (2, 3, 4, 5, 6) provides special rules for territories of some member states. The Treaty is applied to French overseas departments such as the (DOMs), Azores, Madeira and the Canary Islands with special arrangements. These are also known as “outermost regions”. The Treaty is also applied to European territories whose external relations a member state is responsible for. The only territory within this category is Gibraltar which is excluded from the scope of important parts of Community law. The Treaty is applied to Aaland with special conditions set out in Protocol 2 of the Treaty of Accession of Republic of Austria, Republic of Finland and the Kingdom of Sweden.⁶ The Treaty is also applied to the Channel Islands and the Isle of Man.

Outermost Regions

There are seven outermost regions: The French overseas departments (DOMS, namely; Guadeloupe, Martinique, French Guiana and Reunion), the autonomous Spanish Community of the Canary Islands, and the Portuguese autonomous regions of Azores and the Madeira. They are all geographically situated far from continental Europe and with the exception of French Guiana, they are all

⁴ Karis Muller, “Shadows of Empire in the European Union” *The European Legacy*, Vol. 6, No 4, 2001, p. 443.

⁵ P.J.G. Kapteyn and P. VerLoren Van Themat, *Introduction to the Law of the European Communities*, Netherlands, Kluwer Law International, 1998, p. 89.

⁶ Accession of Austria, Finland and Sweden, OJ L 340, 1.1.1995, <http://www.eur-lex.europa.eu/treaties> (Accessed on 3 August 2008).

islands. French DOMs are part of France and part of the EU. The Canary Islands are autonomous Spanish Communities with autonomous internal administration. Azores and Mederia were granted legislative political and administrative power under the Portuguese Constitution of 1976. The Portuguese government is responsible for defense and foreign affairs. These territories do not apply regulations related to taxation and the Customs Union. They are not eligible to receive additional funding from the EU.⁷

The status of DOMs was not clear and Article 227(2) of the EC Treaty empowered the Council to provide conditions under which EC Treaty was to apply. However, until 1989, the Council had barely exercised its powers under this article. The status of DOMs was clarified in the *Hansen* judgment⁸ which stated that DOMs were part of the EU and thus, all provisions of the EC Treaty applied to them.

The initial legal basis for the relationship of the Canary Islands and the EU is Article 25 and Protocol 2 of the Spanish Act of Accession.⁹ According to these provisions, the Canary Islands are excluded from Common Customs Territory and Common Commercial Policy. In 1991, the Council enacted a Regulation 1911/91¹⁰ which enables the gradual incorporation of Canary Islands into the Customs Territory of the EU. The regulation enables the Canary Islands to stay outside the Common EU Value Added Tax (VAT) system. With Council Regulation 1105/2001¹¹, the Canary Islands have become part of a Common Customs Tariff (CTT) since 2002. The other two outermost regions of the EU are the Azores and Medeira. They are autonomous regions where EU law is applied and the Portuguese government is responsible for ensuring the implementation of the EU legislation.

The outermost regions are the subject of a Declaration annexed to the EC Treaty. This Declaration acknowledges their considerable backwardness and provides for the possibility of adopting specific measures to assist them as long as there is an objective need to promote their economic and social development. The outermost regions of Europe are not just an explicit objective of the Union

⁷ Rose Marie Azzopardi "Small Islands and the European Union", Paper for the *XIV Convention of the Nordic Political Science Association, Workshop on Small States in International and European Affairs*, Reykjavik, Iceland, August 2005, p.10.

⁸ Case 148/77 h. Hansen jun. & O.C. Balle GmbH & Co. v. Hauptzollamt de Flensburg, ECR (1978), 01787, <http://www.curia.europa.eu> (Accessed on 3 August 2008).

⁹ Accession of Spain and Portugal, OJ L 302, 25.11.1985, <http://www.eur-lex.europa.eu/treaties> (Accessed on 4 August 2008).

¹⁰ 1911/91 Council Regulation of 26 June 1991 on the Application of the Provisions of Community Law to the Canary Islands, OJ L 171, 16.9.1991, <http://www.eur-lex.europa.eu/en/legis/index.htm> (Accessed on 10 October 2008).

¹¹ 1105/2001 Council Regulation (EC) of 30 May 2001 Amending Regulation (EEC) No 1911/91 on the Application of Provisions of the Community Law to the Canary Islands, OJ L 151, 7.6.2001, <http://www.eur-lex.europa.eu/en/legis/index.htm> (Accessed on 5 July 2008).

but are also an integral part of a broader social cohesion objective.¹² Although these regions are full members of the EU, there is a need for special treatment in the implementation of Community policies so that the specific needs of these regions can be met.¹³ Before the 1997 Amsterdam Treaty, there were special programmes- POSEI Programmes- for the economic and social development of the outermost regions which were based on the dual principle that the outermost regions are part of the European Community but have their own specific regional features.¹⁴ The 1997 Amsterdam Treaty introduced a specific legal basis for the adoption of measures for the outermost regions. There is also Declaration No: 30 on island regions annexed to the Final Act of the Amsterdam Treaty.¹⁵ According to this Declaration; “The EU recognizes that island regions suffer from structural handicaps linked to their island status, the permanence of which impairs their economic and social development”. These programmes and Declaration show that the EU recognizes that there are regions with peculiar characteristics and for this reason, specific policies are required.¹⁶ The Commission already proposed a socio-economic development action plan for the outermost regions for the period of 2007-2013.

Aaland Islands of Finland

The Aaland Islands are situated in the Baltic Sea between Sweden and Finland. Aaland is an autonomous region under the sovereignty of Finland. Due to her autonomous status, the Aaland Islands had the possibility to set its own negotiation goals and preconditions for membership in the EU.¹⁷ In order to protect its own interests, the Aaland Islands attempted to negotiate a special fiscal status in the EU and eventually succeeded. Supported by the affirmative vote in the referendum, the Aaland Islands became part of the EU in January 1995, along with Finland.

¹² Kristian Behrens and Carl Gaigne, “Developing the Outermost Regions of Europe: Some Lessons from Economic Geography”, *Conference on the Outermost Regions of Europe*, Brussels, December 2006, p.3.

¹³ Committee of Regions Opinion, 18 November 2004 on the Communication from the Commission “A Stronger Partnership for the Outermost Regions”, COM 2004 313 Final, <http://www.eur-lex.europa.eu/en/prep.index.htm>, (Accessed on 21 July 2008).

¹⁴ Opinion of the Economic and Social Committee on the “Future Strategy for the Outermost Regions of the European Union”, 17.09.2002, OJ C 221, paragraph, 1.1, <http://www.eesc.europa.eu/documents/opinions>, (Accessed on 2 March 2008).

¹⁵ Treaty of Amsterdam, OJ L 340, 10.11.1997, <http://www.eur-lex.europa.eu/treaties>, (Accessed on 3 March 2008).

¹⁶ Mario Amaral Fortuna, et al., “Evaluation of the European Policies in Support of Ultra peripheric Regions, Azores, Madeira, Canaries, Guadalupe, Martinique, Guyane and Reunion” *Conference on the European Regional Development Issues in the new Millennium and their Impact on Economic Policy*, Zagreb, Croatia, 29 August-1 September 2001, p.2.

¹⁷ Thomas Karlsson, “A Tax Paradise in the Making? Alcohol Regulations in the Aaland Islands”, *Contemporary Drug Problems*, Vol. 26, spring 1999, p.5.

According to Article 299(5) EC, the Treaty applies to the Aaland Islands in accordance with the provisions set out in Protocol 2 of Act of Accession of 1994 which includes certain derogations. These derogations were set in place in order to protect Aaland's culture and maintain land possession of Aalanders.¹⁸ Article 1 of the Protocol 2 enables the application of restrictions on the right of natural persons not enjoying the regional citizenship of Aaland and for legal persons, to acquire and hold real estate in Aaland without the permission by the competent authorities of Aaland. The same applies to restrictions on the right of establishment and the right to provide services. According to Article 2 of the Protocol, the territory of Aaland is excluded from the territorial application of the EC provisions concerning harmonization of the laws of member states on turnover taxes, excise duties and other forms of indirect taxation.

The legislative autonomy enjoyed by Aaland means that Community legislation is implemented in Aaland by local legislation. Concerning the issues which are under Aaland's competence, Finland cannot force Aaland to adopt the necessary rules to implement Community obligations. Finland cannot also impose her own legislation in Aaland. Despite this situation, at the European Union level, it is Finland which is legally responsible for the application of Community law in Aaland.¹⁹ The border between Aaland and rest of Finland could not be compared to borders between the Member States. Therefore, the rules related with the free movement cannot be applied to goods transferred from Aaland to Finland.²⁰ The Aalanders are entitled to representation in all the EU working groups and to have access to all documents to which member states are entitled.²¹ However, Aalanders do not enjoy direct representation in the EU institutions and they are represented by Finland.

Gibraltar

Gibraltar is self governing in internal matters and the United Kingdom (UK) is responsible for the island's defense, foreign affairs and internal security. Gibraltar is part of the EU by virtue of Article 299(4) EC which provides that; "the provisions of this Treaty shall apply to the European territories for whose external relations a Member State is responsible". According to Article 28 of the UK Act of Accession, Gibraltar is excluded from the application of the rules on the Common Agricultural Policy (CAP) and VAT. Gibraltar is not part of the Common Customs Territory or Common Commercial Policy. In all other respects, Gibraltar is subject to EC law.

¹⁸ Fiona Murray, *The EU and Member State Territories The Special Relationship Under Community Law*, Great Britain, Thomson Sweet & Maxwell, 2004, p.74.

¹⁹ Niilo Jaaskinen, "The Application of Community Law in Finland: 1995-1998", *Common Market Law Review*, Vol. 36, 1999, p.436.

²⁰ Ibid, p. 436.

²¹ Murray, *The EU and Member State Territories*, p. 77.

Gibraltar has no official role in European institutions and it relies on the UK to defend its rights. Gibraltarians could live and work in any member state, but could not vote in European elections unless they emigrated there.²² This discrimination took place due to the UK's citizenship laws. In an Annex to EC Act on Direct Elections of 1976, the British government decided that participation in elections to the European Parliament would be restricted to UK nationals.²³ This Act was successfully challenged before the European Court of Human Rights which decided that there was a violation of Article 3 of Protocol No:1 to the European Convention on Human Rights in its judgment in the *Matthews* case of 18 February 1999. As a result of this decision, for the first time, Gibraltarians voted in the European Parliament election in 2004 when the territory was deemed to be part of South West England region of UK.

Territories Linked to the EU by Relevant Acts of Accession

Channel Islands and the Isle of Man

The Channel Islands and the Isle of Man are known as Crown Dependencies. They are self governing in all matters except for international relations and defense which are under the jurisdiction of the UK government. The constitutional relationship of the islands with the UK is not enshrined in a formal constitutional document. It is rather the outcome of historical processes and accepted practice. Furthermore, they have no independent status or position in international law; they are part of the territories for which the UK is internationally responsible.²⁴

The Islands relationship with the EU is set out in Protocol 3 to the UK Act of Accession and Article 299(5/d) of EC Treaty providing that the Treaty shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those Islands set out in the Protocol 3 of Act of Accession of the UK. The Islands were consulted during the formulation of Protocol 3. According to this Protocol, they are part of the EU only for purposes of customs, the free movement of goods and in relation to certain aspects of CAP. According to Article 1 of Protocol 3, the Islands are part of the Common Customs Territory (CCT) under the same conditions as the UK. Agricultural and manufactured goods are permitted to flow freely between the Islands and all member states. The conditions under which the EU rules on trade

²² Karis Muller, "Being European in Gibraltar", *European Integration*, Vol. 26, No 1, March 2004, p. 47.

²³ Ibid, p. 44.

²⁴ Richards Plender, "The Channel Islands' Position in International Law", *Jersey and Guernsey Law Review*, Vol. 3, Issue 2, 1999, p. 1.

in agricultural products are set out in Council Regulation 706/73/EEC²⁵. According to Article 1 of this Regulation, the UK and the islands are to be treated as one member state in the application of the rules in the Regulation. Although the Islands form part of the CCT of the EC, they are not full member states and are not part of the Single European Market for VAT purposes.

According to Article 2 of Protocol 3, free movement of persons and services shall not be applied to Channel Islanders and Manxmen. However, their traditional rights regarding their relationship with the UK shall be kept. Islanders benefit from provisions of free movement only if they have close ties with the UK. The Islands were concerned with the possible implications of the EU provisions on free movement of persons and uncontrolled immigration to their limited land area.²⁶

According to Article 4, the authorities of the Islands shall apply the same treatment to all natural and legal persons of the Community. This provision has been examined by the European Court of Justice (ECJ) in the *Barr*²⁷ case. The Court asserts that Article 4 of Protocol 3 prohibits discrimination in relation to all those situations which are governed by Community law.²⁸

The UK regulations that implement an EU directive do not apply to the Islands even when the directive does. Where a directive does apply, the Islands will make their own provisions to implement the directive.²⁹ The Protocol establishes a minimal “umbilical (doğrusu umbilical) cord” linking the Islands to the Community.³⁰ This legal link provided by the Protocol is with the first pillar of the EU which is the EC only. In recent years, it appears that Islands’ economic interests are increasingly affected by EU law and policy, almost in areas outside the material scope of Protocol 3.³¹

²⁵ 706/73/EEC Council Regulation of 12 March 1973 Concerning the Community Arrangements Applicable to the Channel Islands and the Isle of Man for Trade in Agricultural Products, OJ L 68, 15.3.1973, <http://www.eur-lex.europa.eu/legislation/index.htm>, (Accessed on 12 April 2008).

²⁶ Murray, *The EU and Member State Territories*, p. 48.

²⁷ Case C-355/89, Department of Health and Social Security v. Christopher Stewart Barr and Montrose Holdings Ltd., ECR 1991, I-03479, <http://www.curia.europa.eu>, (Accessed on 13 March 2008).

²⁸ Plender, “The Channel Islands”, p. 7.

²⁹ UK Department of Constitutional Affairs, <http://www.dca.gov.uk>, (Accessed on 21 January 2009).

³⁰ Alastair Sutton, “Jersey’s Changing Constitutional Relationship with Europe”, *The Jersey Law Review*, Vol. 9, No 1, February 2005, p. 14.

³¹ *Ibid*, p. 17.

Ceuta and Melilla

Ceuta and Melilla are Spanish enclaves situated in the Northern coast of Morocco. In 1995, they became autonomous regions and they are responsible for health, education and infrastructure policies. Spain has competence in matters of international affairs, defense, monetary policy and other general matters. Relations of Ceuta and Melilla with the EU are set out in Article 25 of the Act of Spain and Protocol 2 attached to Act of Accession of Spain. According to this Protocol, Ceuta and Melilla are excluded from the Treaty provisions on free movement of goods, customs and Common Commercial Policy. According to Article 1 of the Protocol 2, Ceuta and Melilla are excluded from the Community's customs territory. In regards to trade with Community, Ceuta and Melilla are treated as third countries.³² According to Article 2, products originating in Ceuta and Melilla shall be exempted from Customs duties. However, there are special rules for free movement of fishery and agricultural products.

Republic of Cyprus, TRNC and the EU

General Framework

In May 2004, "The Republic of Cyprus" became a member of the EU as a de facto divided island. The whole island is considered to be part of the EU. However, the application of EU law is suspended in the northern part of the island in line with Protocol 10 of the Accession Treaty of 2003. This suspension does not affect the personal rights of Turkish Cypriots living in northern part provided that they are citizens of the Republic of Cyprus. North Cyprus is the only territory within the EU whose administration is not recognized. She is neither within nor outside the EU. The European Parliament has set up a special taskforce to deal with the consequences of this unique and complex situation.³³

Relationship between North and South

The Republic of Cyprus became independent in 1960 with a bicomunal structure formed by two communities; Turkish and Greek Cypriots. In 1963, a political crisis and intercommunal violence broke out. The Turkish Cypriots were forced by Greek Cypriots to withdraw from the government as the constitution came to an end in 1963 and Turkish Cypriots established their own

³² Murray, *The EU and Member State Territories*, p. 81.

³³ "High Level Contact Group for Relations with the Turkish Cypriot Community in the Northern Part of the Island", established by a decision of Conference of Presidents of 29 September 2005. The Group was set up to respond to the pressing need to strengthen relations with Turkish Cypriot Community in the northern part of the island. For more information; <http://www.europarl.europa.eu/cytr>, (Accessed on 20 January 2009).

administration. In 1974, a *coup d'état* aiming at uniting the island with Greece took place which resulted in Turkish armed forces landing in North Cyprus to protect Turkish Cypriots. Turkey's intervention is based on the 1960 Treaty of Guarantee. As a result, the island was divided and Greek Cypriots stayed in the South and Turkish Cypriots stayed in the North. This resulted in de facto partition of the island. Despite the efforts to unite the island, the country still remains divided. In 1983, the northern part of Cyprus established a new state "Turkish Republic of Northern Cyprus (TRNC)" which has not been recognized by any country except for Turkey. The international community recognizes the Republic of Cyprus as the only state and the Greek Cypriot government as the government representing the whole island despite the fact that this government could not exercise effective control over the North since 1974.

The EU's stance on Cyprus parallels that of the United Nations (UN). With the declarations of 16 and 17 November 1983, the European Parliament, the Commission and Foreign Ministers of member states in the framework of European Political Cooperation rejected the Turkish Cypriot Declaration of independence and expressed their continued recognition of the Greek Cypriot Government as the legitimate Government of the Republic of Cyprus.³⁴

"Green Line" separates the two areas, the North and the South, from each other. Until April 2003, movement across the Green Line was not possible as it was forbidden by Turkish administration. The ban on crossing to and from the South has been lifted on 23 April 2003 for both Turkish and Greek Cypriots. The last of the efforts to unite Cyprus started in January 2002 under the auspices of the UN and a solution plan named as the "Annan Plan" was introduced and amended several times. The Annan Plan was a UN proposal to settle the Cyprus dispute named in recognition of the UN Secretary General Kofi Annan who largely devised the proposal. The efforts resulted in a simultaneous referendum held on 24 April 2004. Both Communities were asked to ratify or reject the Annan Plan. Turkish Cypriots ratified the Plan with a majority of 64.9% and Greek Cypriots rejected it with a majority of 75.83%. The new state could not be established so the Republic of Cyprus legally became a member of the EU. A new launch of negotiations under the auspices of the UN has been going on since September 2008.

Cyprus entered the EU in inauspicious circumstances.³⁵ Cyprus took the opportunistic advantage of the non-conditionality of the referendum despite the heavy campaign for 'No' vote in the South. However, a legal problem is posed by the entry of Republic of Cyprus to the EU where the writ of the government

³⁴ Stefan Talmon, "The Cyprus Question Before the European Court of Justice", *European Journal of International Law*, Vol. 12, No 14, 2001, p. 728.

³⁵ Neill Nugent, "Cyprus and the European Union: The Significance of its Smallness both as an Applicant and a Member", *European Integration*, Vol. 28, No 1, March 2006, p. 61.

cannot be enforced over a third of its territory.³⁶ In order to overcome this problem, application of EU law is suspended in the North. This situation deepened the de facto partition of the island.

Relationship between Republic of Cyprus and the EU

The EU and The Republic of Cyprus signed an Association Agreement in December 1972 which was completed by a Protocol concluded in 1987. The EU ignored Turkish Cypriot reactions which were raised even at that time and negotiated the Association Agreement with the Cyprus government as being the only body to commit the State internationally.³⁷ In the negotiations, it was accepted that any benefits from the Association would be enjoyed by Cyprus as a whole.³⁸ In addition to its economic terms, the Association Agreement had serious political implications. Among other things, the provisions of the Agreement refers to the Republic of Cyprus as a whole and not only to the area at present under the control of the government³⁹ of the Republic of Cyprus which is solely set up by Greek Cypriots.

In 1990, the government of the Republic of Cyprus applied for EU membership in the name of the whole island and in 1993, the Commission concluded that the application was made in the name of the whole island.⁴⁰ The European Council in Luxembourg of 1997 confirmed that accession negotiations would begin in spring 1998.⁴¹ The Turkish Cypriots were invited to be included in the Cypriot delegation. However, Turkish Cypriots did not accept this proposal as they do not recognize the government of Republic of Cyprus as the legitimate government of Turkish Cypriots. The accession negotiations started in March 1998 and were completed in December 2002. The Northern part of the island was not represented or consulted during these negotiations. In April 2003, the Accession Treaty was signed in Athens paving the way for Cyprus to become a member state effective from May 2004. It is interesting that, solving the Cyprus problem was not a condition for the EU membership of Cyprus. However,

³⁶ Christopher Brewin, "European Union Perspectives on Cyprus Accession", *Middle Eastern Studies*, Vol. 26, No 1, January 2000, p. 32.

³⁷ Kypros Chrysostomides, *The Republic of Cyprus a Study in International Law*, Netherlands, Martinus Nijhoff, Publishers, 2000, p. 444.

³⁸ Ibid, p.445.

³⁹ Andreas Theophanous, "Cyprus, the European Union and the Search for a new Constitution", *Journal of Southern Europe and the Balkans*, Vol. 2, No 2, 2000, p.222.

⁴⁰ The Commission Opinion on the Application by the Republic of Cyprus for Membership – Extracts, doc/93/5, 30 June 1993, paragraph: 8, <http://www.europa.eu/enlargement/archives> (Accessed on 20 January 2009).

⁴¹ European Council Presidency Conclusions, Luxembourg, 12 December 1997, <http://www.europa.eu/enlargement/archives> (Accessed on 13 June 2008).

peaceful settlement of the Cyprus problem has been a criterion for Turkey's membership to the EU.⁴²

Relations with North Cyprus and the EU

The economic situation in the North is weak. Since 1994, trade has been heavily dependent on the market of Turkey. Although concluded by a government made up solely of Greek Cypriots, it is generally agreed that the Association Agreement applies to the whole island. Until 1994, North Cyprus benefited from the system of tariff preferences in agricultural and industrial products. Several member states continued to accept movement and phytosanitary certificates issued by Turkish Cypriot officials with the stamp of the "Cyprus Customs Authorities". With the Anastasiou⁴³ decision of the ECJ, North Cyprus lost the direct trade advantages with the EU. The ECJ found that, as a matter of Community law, the only body competent to issue the required certificates was the government of the Republic of Cyprus. The judgment also acknowledges the inability of the Government of the Republic to exercise its powers in the area north of the UN Buffer Zone and it precludes the possibility of granting recognition under Community law to the acts of any de facto authorities in that area.

The recent policy of the EU, with regard to the Turkish Cypriot Community, was set out by the General Affairs Council on 26 April 2004 just before Cyprus joined the EU and right after the referendum on the Annan Plan:

The Turkish Cypriot Community have expressed their clear desire for a future within the European Union. The Council is determined to put to an end to the isolation of the Turkish Cypriot community and to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot Community. The Council invited the Commission to bring forward comprehensive proposals to this end with particular emphasis on the economic integration of the island and on improving contact between the two communities and with the EU.⁴⁴

On 29 April 2004, the Council approved the so called Green Line Regulation⁴⁵ which is aimed to manage the Green Line that separates the

⁴² Ali Resul Usul, "Avrupa Birliği'nin Demokrasi/Siyasi Şartlılığında Çekme-İtme Dengesi ve Bu Dengenin Bozulması" [The Push-Pull Balance in the EU's Democratic Conditionality and its Deterioration], *Uluslararası İlişkiler*, Vol 5, No 17, Spring 2008, p. 116.

⁴³ Case C-432/92 the Queen v. Minister of Agriculture, Fisheries and Food, ex parte S.P. Anastasiou (Pissouri) Ltd. And Others, ECR 1994, I-03087, <http://www.curia.europa.eu> (Accessed on 1 March 2008).

⁴⁴ General Affairs Council of 26 April 2004, Luxembourg, 8566/04, <http://www.europarl.europa.eu/cytr> (Accessed on 20 January 2009).

⁴⁵ 866/2004/EC Council Regulation of 29 April 2004 on a Regime under Article 2 of Protocol No 10 of the Act of Accession, OJ L 161, 30.4.2004, <http://www.eur-lex.europa.eu/legislation/index.htm> (Accessed on 12 August 2007).

government controlled areas from the rest of the island. On 7 July 2004, the Commission proposed a package of aid and trade measures to encourage the economic development of the Turkish Cypriot Community. Two proposals were introduced: “The Regulation on Establishing a Legal Instrument for Encouraging the Economic Development of the Turkish Cypriot Community (Financial Aid Regulation)” and “the Regulation on Special Conditions for Trade with those Areas of the Republic of Cyprus in which the Government of Republic of Cyprus does not Exercise Effective Control (Direct Trade Regulation)”⁴⁶. Direct Trade Regulation has remained with the Council for consideration since 2004. However, the Council has approved the Financial Aid Regulation⁴⁷ on 27 February 2006. The legal basis for those regulations is the Protocol 10 of Act of Accession of Republic of Cyprus and these documents are the legal links between the EU and North Cyprus.

Protocol 10 of Act of Accession of Republic of Cyprus

Since a final settlement could not be reached by 16 April 2003, the Republic of Cyprus signed the Treaty of Accession on behalf of the whole island. A specific Protocol, Protocol 10, is attached to the Treaty of Accession which forms the legal base of the EU - North Cyprus relations. Unlike other territories such as Aaland, Channel Islands and Isle of Man, Turkish Cypriots were not consulted or given the chance to negotiate the terms of Protocol 10. In fact, the legal documents of the EU never mentions “TRNC”, “North” or “North Cyprus”, but refers as *the areas of Republic of Cyprus in which the Republic of Cyprus cannot exercise effective control*, simply called ‘areas’. As the EU does not recognize TRNC or Turkish Cypriot authorities, it is not possible to apply the *acquis* in the northern part of the island. Article 1 of the Protocol provides for the suspension of the application of the *acquis* in the ‘areas’. According to the preamble, this suspension is going to be lifted in the event of a settlement. However in the *Orams* judgment⁴⁸, the ECJ decided that, the suspension of the application of *acquis* in the northern area does not preclude the recognition and enforcement of a judgment which is given by a Cypriot court sitting in the government

⁴⁶ COM (2004) 466 (1) Proposal for a Council Regulation on Special Conditions for Trade with those Areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not Exercise Effective Control, <http://www.eur-lex.europa.eu/en/prep.index.htm> (Accessed on 12 August 2007).

⁴⁷ 389/2006/EC Council Regulation of 27 February 2006 Establishing an Instrument of Financial Support for Encouraging the Economic Development of the Turkish Cypriot Community and Amending Council Regulation (EC) No 2667/2000 on the European Agency for Reconstruction, OJ L 65, 7.3.2006, OJ L 270M, 29.9.2006, <http://www.eur-lex.europa.eu/legislation/index.htm> (Accessed on 11 March 2007).

⁴⁸ Case C-420/07, *Meletis Apostolites v. David Chales Orams and Linda Elizabeth Orams*, (2009), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007J0420:EN:HT> (Accessed on 28 April 2009).

controlled area, concerning land situated in the northern area. Actually this decision contradicts the fact that Republic of Cyprus cannot exercise effective control over North, as it enables Republic of Cyprus to exercise judicial power over the issues concerning land, other civil and commercial matters in the North.

Despite the suspension of the *acquis*, Article 3 of this Protocol enables economic relations between the EU and North: “Nothing in this Protocol shall preclude measures with a view promoting the economic development of the areas”. The Financial Aid Regulation is the only regulation accepted by the Council to this end. As the North is not part of the customs and fiscal territory of the EU, Turkish Cypriots cannot benefit from free movement of goods, services and capital.

Green Line Regulation

The legal basis of Green Line Regulation is Article 2 of Protocol 10. The paragraph (4) of the preamble provides that the line does not constitute the external border of the EU, and special rules concerning the crossing of goods, services and persons need to be established. Therefore, the main aim of the Green Line Regulation is to regulate the intra-island trade and combat illegal immigration. The Regulation does not provide any cooperation or any sort of contact between the administration in the North and the EU, and between North and South of Cyprus.

Article 2 of the Regulation provides that the Republic of Cyprus shall carry out checks on all persons crossing the line with the aim to combat illegal immigration of third country nationals, and detect and prevent any threat to public security and public policy. The EU nationals can cross the Green Line by representing their identity cards and third country nationals are allowed to cross the Green Line with a residence permit issued by Republic of Cyprus or with a valid travel document or a valid visa for the Republic of Cyprus. Green Line Regulation also allows free movement of goods either wholly obtained in the North or have undergone their last substantial economically justified processing or working in an undertaking equipped for that purpose in the North across the green line.

The Commission is given the task to prepare an annual report on the implementation of Green Line Regulation. According to the latest Report⁴⁹ dated 27.8.2008; 633,163 Greek Cypriots and 1,162,783 Turkish Cypriots crossed the

⁴⁹ Communication from the Commission, Annual Report on the Implementation of Council Regulation (EC) 866/2004 of 29 April 2004 and the Situation Resulting from its Application, http://ec.europa.eu/enlargement/turkish_cypriot_community/index_en.htm (Accessed on 21 January 2009).

Green Line during the reporting period. The number of third country nationals crossing the line illegally remains an area of serious concern. During the period of 1 May 2007- 30 April 2008 5,844 illegal immigrants are reported by the Greek Cypriot police.

The amount of trade from the North to the South during 1 May 2007-30 April 2008 was about 4,473,408 EURO, and from South to North was 1,015,340 EURO. The main products traded are vegetables and wooden products. The trade across the Green Line is solely for the purpose of intra-island trade. Only on three cases, goods crossed the Line and were subsequently subject to an intra-community transaction with another Member State. There are a lot of legal and economic problems for Turkish Cypriot producers and traders to send goods via South to the EU. Therefore, the overall scale of Green Line trade remains limited. This is also caused by restrictions in Green Line Regulation itself. It does not allow products brought into the northern part from other EU countries or from Turkey to cross the Green Line. There are other obstacles created by the Republic of Cyprus authorities. Turkish Cypriot commercial vehicles and in particular, lorries still cannot move freely through the island. The Republic of Cyprus does not accept the roadworthiness certificates of commercial vehicles or professional driving licenses issued by TRNC. Turkish Cypriot traders report difficulties in stocking supermarkets and advertising their products and services in South Cyprus press.⁵⁰

Financial Aid Regulation

As the Turkish Cypriot Community is not eligible to use the EU funds, a special regime is required for economic development. The Council approved the Financial Aid Regulation on 27 February 2006. The objective and beneficiaries of financial aid was provided in Article 1:

Assistance shall benefit inter alia, local bodies, cooperatives and representatives of civil society, in particular organizations of the social partners, business support organizations, bodies carrying out functions in the general interest in the areas, local or traditional communities, associations, foundations, non-profit organizations, and natural and legal persons.

The granting of such assistance shall not imply recognition of any public authority in the areas other than the Government of Republic of Cyprus.

The main objectives of the Regulation are; developing infrastructure, promoting economic and social development, and bringing the Turkish Cypriot Community closer to the EU. Article 10 of the Regulation provides that; “Each year the Commission shall send to the European Parliament and the Council a

⁵⁰ Ibid, p. 7.

report on the implementation of Community assistance under this instrument.” The first report was prepared by the Commission for the period of 27 February 2006-28 February 2007. According to this report, there are certain issues which affect the successful implementation of the regulation such as tight contracting deadlines and squeezing of the program duration and property issues.⁵¹ The financial aid program is important in a sense that it is an instrument enabling the EU to have relations with the Turkish Cypriot Community.

Direct Trade Regulation

Since 1994 the *Anastasiou* judgment of the ECJ, movement certificates issued by TRNC authorities have not been accepted. The de facto division of the island has thus prevented direct exports of goods produced or obtained in the northern part to benefit from the customs preferential treatment under the Association Agreement. Although Ceuta and Melilla are not part of the Customs Territory, the goods originating in these regions enter the EU without custom duties. A similar arrangement could have been done for TRNC.

In July 2004, the Commission proposed ‘comprehensive measures to end the isolation of Turkish Cypriot Community’. Within this package, a regulation is proposed to facilitate direct trade from the North. The proposal offers a preferential regime for products originating in North Cyprus entering the Customs Territory of the EU. It is proposed that the preferential regime should take the form of a tariff quota system which would be established to encourage economic development while avoiding the creation of artificial trade patterns or facilitating fraud. The Commission proposed that the Regulation should be adopted by qualified majority voting in the Council.

In the preamble of the proposal, it is provided that the measures of the proposal are in a response to a specific situation in Cyprus and they will not constitute a precedent for the Community’s trade policy. Although it has been 5 years since the introduction of the proposal, the Council has not adopted the regulation yet. In December 2006, Council reached a political agreement on the issuing of Conclusions on economic development in North Cyprus. The Conclusions were to be adopted in January 2007 and it is still pending at the Council. There are a lot of professional lobbies in Brussels and since the Single European Act (1986), the influence of such lobbies on decision and policy

⁵¹ According to paragraph 9 of the preamble of the regulation, in the implementation of actions financed under this regulation, the rights of natural and legal persons, including the rights to possessions and property, should be respected. It is stated in the report that 78% of privately owned land in the northern part of Cyprus belongs to Greek Cypriots. It is likely that many investments for infrastructure would be able to proceed only if these owners give their consent.

making of the EU has been considerably increased.⁵² The TRNC government should use these lobbies in order to accelerate the process.

Comparison of Special Territories and North Cyprus

Table 1 shows the comparative analysis of special territories and North Cyprus focusing on the internal administration, application of EU law, enforceability in local courts, EU citizenship, and participation to EU elections, customs territory, financial aid and special trade regime. The table shows that North Cyprus differs in many ways from other special territories. The main reason of these differences is the fact that administration of TRNC is not recognized. From the point of current international law, TRNC is not an autonomous region, is not recognized as an independent state and is not under the effective control of the Republic of Cyprus. Although Turkish Cypriots are citizens of the EU, they cannot benefit fully from the rights arising out of EU citizenship. They cannot participate in the EU elections and they are not represented at the EU institutions. North Cyprus is the only region where the application of EU law is suspended. In all others, EU law is applied with certain derogations or special conditions. As EU law is suspended, it cannot be enforced by local courts. As a result, the rights given under EU law to the EU citizens cannot be enjoyed by both Turkish Cypriots and other EU citizens residing in TRNC.

The EU has special trade regimes for the territories which are outside the customs territory in order to promote their economic and social development. The EU also introduced special programmes for most of these territories to achieve this end. However, there is no trade between the EU and North Cyprus. Direct Trade Regulation, which is pending in the Council, enables the EU to have trade relations with North Cyprus without necessarily recognizing the internal administration. Financial Aid Regulation is not sufficient to promote economic development of Turkish Cypriot Community as it is applied to specific sectors, has limited duration, and there are problems with the implementation.

Another factor which makes the North different from other territories is the effect of EU-Turkey relations on the political situation on the island. North Cyprus has historical, cultural and legal ties with Turkey. The legal framework of the EU-Turkey relationship has important effects on the North as well. Since 1963, Turkey ceased to recognize the Republic of Cyprus. The European Council decided on 17 December 2004 to open accession negotiations with Turkey but it linked the process with the Cyprus problem. On 29 July 2005, Turkey signed an Additional Protocol to the EC-Turkey Customs Union Agreement extending this Agreement to ten new member states of the Union. However, a “Declaration on

⁵² Ahmet Arabacı, “Avrupa Birliği’nde Çıkar Temsilinin Gelişimi” [Evolution of Interest Representation in the European Union], *Uluslararası İlişkiler*, Vol 5, No 17, Spring 2008, p. 95.

Cyprus” was made by Turkey declaring that signature of this Protocol does not involve the recognition of the Republic of Cyprus.⁵³ Since then, the EU has been pressuring Turkey to open her ports to Greek Cypriot ships and aircraft. Turkey is using the transportation restrictions vis-à-vis the Republic of Cyprus as a bargaining tool in the negotiations to end isolations in the Turkish Cypriot Community and the adoption of Direct Trade Regulation by the Council.⁵⁴ Opening of ports could lead to the recognition of the Republic of Cyprus by Turkey and this recognition might lead to “the de-recognizing” of TRNC.⁵⁵ The whole issue shows that, political and economic relations between the EU and North Cyprus cannot be established within legal a framework solely, but political means should be found as well. Although member states express their will to end the isolations in the Turkish Cypriot Community, they have not taken any considerable steps to this end. Furthermore, the attempts of the Republic of Cyprus to prevent the adoption of Direct Trade Regulation could not be overcome by the member states.⁵⁶

The judgments of the ECJ related to North Cyprus also have a negative effect on the political and economic position of the Turkish Cypriots. On the one hand, the with the *Anastasiou* judgment, Turkish Cypriots lost direct trade advantages with the EU. On the other hand, with the *Orams* decision the property issue between the North and the South, which was deemed to be a political problem, was regarded as a conflict between individuals. With this decision, the ECJ denied the fact that there are two different property regimes and laws in the two sides of the island. Despite the fact that the Greek Government cannot exercise effective control over the North and thus the application of the *acquis* is suspended in the North, the *Orams* case enabled Greek courts to try civil and commercial cases arising out in the territory of the North. The political effect of the *Orams* case is evaluated by President Talat of TRNC as follows: “The recent developments in this process have indicated that the EU membership of Greek Cypriots is being exploited against Turkish Cypriot people. EU does not have a positive role in the settlement of the Cyprus problem”⁵⁷.

In all other special territories, EU law contributes to the economic, social and political development of the region. However, EU law does not have such effects on North Cyprus yet. Although the EU repeatedly expressed that “the Council is determined to put to an end to the isolation of the Turkish Cypriot Community”, it is the only ‘community’, with a population of more than 200,000

⁵³ Rıdvan Karluk, *Avrupa Birliği ve Türkiye*, İstanbul, Beta Basım A.Ş., 2007, p. 716.

⁵⁴ Stephan Talmon, “The European Union- Turkey Controversy over Cyprus or a Tale of Two Treaty Declarations”, *Chinese Journal of International Law*, Vol 5, No 3, 2006, p. 615.

⁵⁵ Ibid, p. 616.

⁵⁶ Karluk, *Avrupa Birliği*, p. 721.

⁵⁷ Speech by President Talat on the *Orams* Case, 28.04.2009, <http://www.kktcb.eu> (Accessed on 22 May 2009).

citizens, left isolated in the EU despite the fact that it is geographically closer to the EU than most of the other regions. The EU can play a positive role on conflict resolution only if it applies “inclusive relations approach”.⁵⁸ Therefore, the EU can contribute to the solution of the Cyprus problem by including Turkish Cypriots in the system of the EU and facilitating cooperation between the North and the South.

Conclusion

North Cyprus is the only territory within the EU whose administration is not internationally recognized. The government of The Republic of Cyprus is recognized as the legal government of the whole island but it could not exercise effective control over the North since 1974. There is a dilemma in North Cyprus: Internationally recognized government cannot exercise effective control, while the government which exercises effective control is not internationally recognized. This dilemma puts North Cyprus in a very unique situation within the EU. This unique situation requires unique solutions. “Tailor made” EU norms can be established for North Cyprus as well. The EU should be able to have economic relations with North Cyprus without necessarily recognizing the government of North Cyprus. State practice shows that mutual reliance and informal cooperation can be possible with unrecognized authorities. In principle, the EU and its member states can establish a political regime and decide to cooperate with the authorities of The Turkish Cypriot Community without recognizing the state.⁵⁹ The EU may also have relations through internationally recognized non-governmental organizations in the North or The Commission may itself administer direct trade or financial assistance. Article 2 of Protocol 10 enables the EU to take measures for the economic development of North Cyprus. Direct Trade Regulation will be a very effective opportunity for the economic development of North Cyprus and closer links can be established between Turkish Cypriots and the EU. As seen from the examples of other territories, the EU legal system is capable of enacting such measures for the special needs of different regions with special characteristics.

The present status of North Cyprus creates an important obstacle for Turkish Cypriots as citizens of the EU. Turkish Cypriots are not represented in the EU institutions and working groups. The representatives of The Republic of Cyprus are not elected by Turkish Cypriots and they are not able to reflect the sensitivities and problems of Turkish Cypriots in the EU institutions. Similar to Aalanders, Turkish Cypriots should at least be entitled to representation in the EU working groups and to have access to all documents to which Member States are entitled.

⁵⁸ Bahar Rumelili, “Avrupa Birliği ve Bölgesel İhtilafların Çözümü” [European Union and the Resolution of Regional Conflicts], *Uluslararası İlişkiler*, Vol 4, No 16, Winter 2007-2008, p. 54.

⁵⁹ Talmon, “The Cyprus Question”, p. 749.

The Green Line Regulation provides that the EU's borders do not end in the Green Line meaning that North Cyprus is within the EU boundaries. Therefore, the EU should create appropriate measures, political and legal, to enable Turkish Cypriots to have access to the internal market, and benefit from educational, social and cultural facilities of the EU similar to other EU citizens.

Table 1: Summary of Relationship between Special Territories/North Cyprus and the EU

Territory	Internal Administration	Application of EU Law?	Enforceable in Local Courts?	EU Citizenship?	EU Elections?	EU Customs Territory?	Financial Aid?	Special Trade Regime?
French DOMs	Recognized	With Exceptions	Yes	Yes	Yes	Yes	POSEI	POSEI
Canary Islands	Recognized	With Exceptions	Yes	Yes	Yes	Yes	POSEICAN	No
Azores & Madeira	Recognized	With Exceptions	Yes	Yes	Yes	Yes	POSEIMA	No
Aaland Islands	Recognized	With Exceptions	Yes	Yes	Yes	Yes	Regular EU Funds	No
Gibraltar	Recognized	With Exceptions	Yes	Yes	Yes	No	Regular EU Funds	No
Channel Islands & Isle of Man	Recognized	Minimal	Yes	Partial	No	Yes	No	Council Regulation 706/73/EEC
Ceuta & Melilla	Recognized	With Exceptions	Yes	Yes	Yes	No	No	Custom Exception
North Cyprus	Not Recognized	Suspended	No	Yes	No	No	Financial Aid Regulation	Pending

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