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Migration and Freedom of Movement of Workers: EU Law, Crisis and the Cypriot States of Exception

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Abstract: This paper examines the authoritarian immigration policy of the Republic of Cyprus (RoC), which often results in the denial of the rights of migrants, TCNs, and EUNs. It examines how the mode of immigration control is connected to the *particular state of exception* in Cyprus known as ‘the doctrine of necessity’. It focuses particularly the issue of criminalizing, detention and expulsion of migrants, both TCNs and EUNs and the denial of residency rights for TCNs. The paper introduces the basic components towards an analytical frame for understanding and critiquing the current legal framework. Repressive migration control is a manifestation of an ill-construed conception of ‘sovereignty’ in a divided country, which the State seeks to justify on the grounds of ‘necessity’ and ‘exception’. In addition, the RoC is currently facing the banking/economic crisis and mass unemployment, which has provided a fertile ground for racism and xenophobia. The paper concludes with some ideas about the alternative policies ahead. Important for this paper are the current global and European debates around the ‘states of exception’, ‘emergency’, ‘necessity’, and ‘sovereignty’ in the context of the *dissensus* or fundamental disagreement over the issue migration and the racialization of subaltern migrants. The case of Cyprus is discussed, in part as an exception, but also as a particular instance of a broader global and European issue.

Keywords: migration; cheap labor; third country nationals; crisis; states of exception; necessity; authoritarianism; dissensus

Abbreviations

CNRP: Cyprus National Reform Program; CPT: Committee for the Prevention of Torture; DESY: Demokratikos Synagermos (political party); ECHR: European Convention of Human Rights; ECRI: European Commission against Racism and Intolerance; ECtHR: European Court of Human Rights; EU: European Union; EUNs: European Union Nationals; IAPT: Independent Authority for the Prevention of Torture; RoC: Republic of Cyprus; TCNs: Third Country Nationals; TFEU: Treaty for the Functioning of the European Union; TRNC: Turkish Republic of Northern Cyprus.

1. Introduction

From the early 1990s, Cyprus, from an exporter of migrants, became an immigration destination with over 20 percent of its working population made of migrants, TCNs, and EUNs. This paper examines the authoritarian immigration policy of the RoC that often results in the denial of the rights of migrants, TCNs, and EUNs. It focuses particularly the issues of criminalizing, detention and expulsion of migrants, and the denial of residency rights for TCNs as well as the criminalizing, detaining, deporting and discrimination against EUNs. It argues that this policy is essentially a manifestation of *a particular state of exception*. The basic components towards an analytical frame for understanding and critiquing the current legal framework are introduced so as to consider ways to overcome this situation. The immigration regime is operating within the Cypriot socioeconomic context, where rapid economic growth was, *inter alia*, determined by the exploitation of migrant labor. The paper will illustrate how the current economic crisis is used to justify the hardening immigration control. The current global and European debates around the ‘states of exception’, ‘emergency’, ‘necessity’, and ‘sovereignty’, in the context of the *dissensus* or fundamental disagreement over the issue migration and the racialization of subaltern migrants, are highly relevant here. The case of Cyprus is understood in part as an exception, but also as a particular instance of a broader global and European issue.

1.1. Politics, History and Geography

Today, the total number of non-Cypriot nationals living in the southern part of the country is estimated to be 150,000 to 200,000 persons, including irregular or undocumented migrants from third-world countries. This is in a country in which the total population, of Cyprus, is just over one million; the population in the southern part of the country, under the control of the RoC, is 838,897, whilst the population in the unrecognized TRNC, in the north, is a hotly debated issue—estimates vary between 300,000 to 500,000. Table 1 shows the number of migrants.

Cyprus has a complex history. It is the third-largest island in the Mediterranean, covering an area of 9,250 sq. km (3,571 sq. mi); 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 geopolitical reasons, followed by British colonial rule. Upon independence in 1960, Turkish-Cypriots constituted 18 percent of the population, whilst the smaller “religious groups”, as referred to in the Constitution—consisting of Armenians, Latins, and Maronites—constituted 3.2 percent of the population. In this sense, migration to Cyprus

must be understood within the context of the turbulent political and historical setting of the island, in which ethnic conflict between the two constitutionally recognized communities has prevailed over other issues. This paper will concentrate on the territories controlled by the Republic of Cyprus, which are located in the southern part of the island (Figure 1).

Table 1. Employed non-Cypriots.

Year	2005	2008	2010	2011	2012 *
EU Citizens	23,558	42,630	53,875	61,934	104,921
Third Country	46,225	53,693	60,550	60,349	51,804
Total *	58,783	96,433	114,425	122,283	156,725

Source: Social Insurance Service, Statistical department, Statistical Branch. * Note: The actual number of the totals shown here may vary from the aggregate of foreign nationals employed by sector due to persons having more than one occupation and thus counted multiple times. These totals take account of that but only from 2006 onwards. * Average January/April 2012 Source: Ministry of Labor, Social Service division, April 2013.

Figure 1. Map of Cyprus [1].



Cyprus is a “border society” [2] and a *border economy*, well integrated in the regional economic system, operating as a bridge and a capitalistic hub in the Eastern Mediterranean. It is an open Southern European economy to the West as a European Union (EU) member, which is connected to Northeast Africa, the Middle East, and Asia, drawing on the labor reserves, tourism, and financial services. Until the collapse of the banking system in March 2013, it was listed as one of the high-income island economies, an off shore financial center with associated tourism [3]. The second feature is the paradox of the country's *de facto* divide, as seen in the map of the country [1], which generates multiple ‘states of exception’ and contradictions in what is described as a ‘non-border’ of the EU, tearing the country apart. The so-called ‘Green Line’ as the buffer zone is but a cease-fire line since 1974, patrolled by one of the longest stationed UN peacekeeping forces. The third important feature is the centrality of migrant labor, which makes the country comparable to the other Southern European

and Mediterranean island economies [4–7]. Racialized migrant workers referred to in this paper as *subaltern migrants* [3] are to be distinguished from the *elite migrants* who are highly skilled or privileged holders of prestigious posts in businesses. On both sides of the barbed wire, precarious migrant labor is a crucial feature in the accumulation regimes and the developmental models, which are radically affecting economic development and society at large [8]. Cyprus abandoned the restrictive immigration policy followed until 1991 in an effort to meet low-skill labor shortages generated by an economic development model based on mass tourism and services [4,7]. The CNRP contends that non-Cypriots make up 21.6% of the labor force [9]. Since 2000, net migration has been positive. The period of rapid immigration increase coincided with the reduced restrictions of movement offered by the entry in the European Union in 2004, and the expansion of the economy, dominated by a growing tertiary sector. In spite of this growth, the net migration pull of the economic opportunities seemed to be on a declining trend from 2007. The economic crisis hit Cyprus in 2009 and intensified in 2011–2013 due to the connection of the major Cypriot banks to the Greek economic crisis. Cyprus had historically been a country of emigration toward richer countries; the number of Cypriots living abroad amounts to nearly half the island's population. The military invasions of Greece and Turkey in 1974 left the country divided and the society and economy devastated. There was an 18 percent fall of the GNP between 1973 and 1975, a 30 percent rise in unemployment, mass poverty, and a loss of 37 percent of the country's territory. The war in 1974, by default, created the preconditions for rapid modernization, in spite of the severe drop in the GDP and the sharp rise in unemployment and poverty. Cheap labor was initially provided by Greek-Cypriot displaced persons, who fled from the Turkish army-occupied north, and settled in the south. However, the concerted effort by the Government, political parties, and trade unions created the conditions for the economic development subsequently experienced and for the labor shortages, which resulted [4,7,8]. To meet these shortages, the Government began to issue individual visas to migrant workers for employment, which were short-term and restricted to specific sectors. The change of immigration policy in 1991 was the result of economic developments, such as the worldwide growth in tourism, resulted in economic growth, which increased the demand for labor in Cyprus. In addition, global political developments, such as the collapse of the Soviet Union, resulted in the migration of labor from ex-Soviet countries. This was coupled with the migration of large numbers of Pontiac Greeks from the Caucasus region, who received Greek nationality and were, thus, able to migrate to Cyprus with minimum formalities. In addition, the Gulf war, successive crises in the Gulf region, and unrest in Israel/Palestine contributed to the inflow of both economic as well as political refugees from the affected regions. Although the actual developments of the past decade reversed the dominant presumption that immigration would be temporary, a number of institutional devices, which had been initially designed with that presumption in mind, remained in place and made up the current institutional framework. Only in December 2010 did the Republic recognize that it is an immigration destination with the adoption of the first national action plan for integration of legally residing TCNs.

The policies and practices governing migrant workers from the moment of entry, their working conditions, and their legal and social rights, are set out in the tri-partite agreement (Government, employers organizations, and trade unions) contain the criteria stipulating for this “temporary measure”: migrant workers are granted the same employment terms and all other rights enjoyed by Cypriot workers, derived from existing collective agreements and social security schemes [4,7,8].

In 2005, the Ministry of Labor outlined the basis for a general strategy whose primary goal is to 'curb' the 'uncontrollable influx of foreign workers', essentially, proposing a quota system for each sector and for the country as a whole, but the policy paper is rather vague and general. It set a compulsory 30 percent maximum quota for TCNs, for all businesses, and also per sector without clearly specifying the various sectors. It was assumed that, with accession, the visas for TCNs would be phased out. The system, overall, failed for the simple reason that the quotas were never adhered to; and if they are, their rigidity is dysfunctional for capitalism, which requires flexible labor [7,8].

Most domestic workers originate from South East Asia and especially the Philippines, Sri Lanka, and India. The main sectors, in which migrant workers are employed, are: agriculture, manufacturing, construction, hotels, restaurants, and trade. In the latter three sectors, the majority of migrant workers originate from Central and Eastern Europe and, particularly, the Balkans. In the former three sectors, which are low skill, low-status, and hard working environments, a significant number of Asian workers are employed. Overall, long term immigrants work and reside under a more favorable regime. Their salaries tend to be higher and many have their families with them. Depending on the length of their stay, long-term migrants have a better chance of getting acquainted with rules and procedures, and of joining trade unions.

In the early to mid-1980s, many affluent Lebanese, Kuwaitis, Palestinians, and people from other Arab countries arrived in Cyprus following the collapse of Beirut and the general unrest in the Middle East. In the early 1990s, many Eastern Europeans, both business people as well as temporary workers, started migrating to Cyprus following the collapse of the Soviet Union. These were mostly from Russia, the former Yugoslavia (primarily Serbs), Bulgaria, and Romania. Serbs and Russians were, to a large extent, welcomed by the Greek-Cypriots because of their common religion (Christian Orthodox). The 1999, war in Yugoslavia brought an additional number of Serbs to Cyprus. A small number of the Eastern Europeans in Cyprus are affluent businessmen or highly educated persons occupying managerial positions in the offshore industry, residing under a temporary residence permit. This type of permit is easily renewable so long as they operate or hold a position in a business enterprise in Cyprus. Greek passport holders include migrant workers from mainland Greece and Pontiac Greeks who have immigrated to Cyprus from the Black Sea via Greece. Through a bilateral agreement with the Greek government, Greek citizens (mostly Greek passport holders of Pontiac origin) enjoy permanent residence rights as well as the right to work in Cyprus. In the offshore business sector, the majority of non-Cypriot employees originate from Central and Eastern Europe, mainly, Russia, and the former Yugoslav Republics. With the reduction of economic output since 2009, the flows of third country nationals (TCNs) dropped; however the flows of EUNs continued for a while unabated. In September 2013, the unemployment rate reached 17%; youth unemployment climbed to 34%, the highest rate recorded since the 1974 war.

The number of irregular or undocumented migrants is estimated between 25,000 and 35,000. Irregular migration is the subject of fierce public debates in the media and amongst social partners [7,8]. The year after accession, in 2005, there were 23,558 EU citizens registered in Cyprus, exercising their right to free movement; by 2008 there were 42,630, an increase attributed to the EU accession of Romania and Bulgaria. The actual number of EU citizens could be somewhat lower as they are not legally obliged to declare their departure, and the number of those paying social insurance contributions is lower from those registered. For 2010 the number of EU nationals paying social

insurance was 53,875, for 2011 61,934 and up January/April 2012, the number was 59,605. A large number are employed in undeclared work.

1.2. Economic Crisis and Immigration Control

The current economic crisis has seriously crept into the immigration and employment debates in Cyprus and, increasingly, EUNs are negatively affected. As unemployment rises, anti-immigrant sentiments are being hyped. Moreover, public sector austerity measures to reduce the public debt and deficit have further deepened the slump. The crisis has brought more precarity, insecurity, use and abuse of undeclared work, particularly affecting EU workers. A particular issue relates to the conditions of employment of EU citizens in hotels and restaurant offering ‘all inclusive packages’, where EU workers are used for ‘social dumping’ [9,10]: they are used in hotels in order to displace other workers who are regularly employed, because trainees have no contract and are not bound by collective agreements [11]. In general, despite the more positive climate in the treatment of migrants since 2008, NGOs have raised questions about the conditions of detention and expulsion of foreigners, including EU citizens. In general the protection of the rights of EU citizens working in or visiting Cyprus, as well as the rights of their partners and family members, is problematic.

From the non-EU countries, the sending countries are Sri Lanka, Russia, the Philippines, *etc.*, and from the EU countries, Greece, U.K., Poland, Bulgaria, Romania, *etc.* TCNs largely work in private household service (domestic workers, carers, *etc.*), and other services. This has remained unchanged when compared to previous years, with the exception of the decline in TCNs employed in construction, restaurants, and the hotel sector. These sectors were among the hardest hit during the economic crisis of 2009–2011: the decline of TCNs in construction is comparable to the decline of employment in that sector of Cypriots (Greek and Turkish) and of EU citizens.

The economic crisis has affected sectors substantially employing TCN and EU nationals; many jobs losses are reported in these sectors. It was expected that the crisis in the construction and tourism industry would lead to a mass exodus from the legal job market for TCNs and EU nationals (with the implication of reduction of the total number of migrants in Cyprus); a net reduction in migration has been noticed. One reason for the fact that immigration flows have not fallen as sharply as expected, despite the high unemployment, is that well over a third of all TCN nationals are employed in private households which employ them to look after the elderly, children, and for domestic tasks. Since June 2007, the regulations on the employment of domestic workers have become stricter.

Studies conducted prior to the economic crisis dealing with the impact of immigration on unemployment, labor force participation, and part-time employment in Cyprus found that, despite the sharp increase of the number of migrant workers in Cyprus over the 23 preceding years, the presence of migrant workers has not affected total unemployment or total labor force participation in Cyprus; part-time employment seems to be marginally affected overall [7]. Almost all the studies conducted on migrant labor in Cyprus have supported that there is no relation between migrant workers and unemployment of Cypriots, but that there is some substitution (*i.e.*, displacement of Cypriots by migrant workers) in the primary sector, not towards unemployment, but towards the secondary and tertiary sectors, and a greater job creation process in the tertiary sector. Studies conclude that the presence of migrant workers in Cyprus has been beneficial for the economy as a whole and for

increasing the number of Cypriot women in the labor market [7]. However, the economic crisis, combined with the sharp rise in the number of EU citizens seeking employment in Cyprus, shows that this may be changing. More studies are required to see if the findings continue to be true today. The CNRP report ([12], p. 84), which adapts the so-called “Europe 2020 Strategy for: Smart, Sustainable and Inclusive Growth”, considers that there has been displacement of Cypriots since 2009, linking the decrease in the employment of Cypriots and the increase in the employment of EU and TCN workers during 2007–2011 to undeclared and illegal work: “Cypriots and EU nationals who have been working in Cyprus for some time are being replaced by new EU nationals” and that “possibly EU nationals also started to replace third country nationals”.

The current economic crisis and the austerity measures to address the massive banking debt and the public deficit have made the debates on migration and the anti-immigrant sentiments fiercer. Indicative of this is the sustained campaign by media and anti-immigrant politicians, who have targeting migrants, particularly asylum-seekers, as ‘scroungers’ of welfare benefits and free health care. This has intensified in the context of the austerity measures. In this light, one of the first items of the agenda of the austerity legislation by the right-wing Government of Nicos Anastasiades, elected in February 2013, was to effectively end free health care and allowances for asylum seekers, third world country and EU nationals, as well as Turkish-Cypriots.

Immigration regimes are usually closely connected to the notion of “border regime” in the EU [13]. In the case of Cyprus, the immigration regime has been characterized by intolerance towards migrant workers or subaltern migrants, which is crucial for the racialization of subaltern migrants, both TCNs and EU citizens. International reports and various studies expressed concern over the use of state and institutional measures and practices in almost every aspect of social life, as the various ECRI Reports on Cyprus of the Council of Europe illustrate [14–16]. A number of decisions by the Ombudsman and the authorities under this office, *i.e.*, the Anti-discrimination Body and the Equality Authority, following numerous complaints, demonstrate that there is a trend towards hardening the policy towards subaltern migrants: much criticized practices of mass detention and expulsion of TCNs [16]. The Cyprus Anti-Racism Authority also criticized the following practices: the regular deportation of TCNs citizens [17] and an EU national with HIV [18]; the health authorities’ refusal to finance the medical treatment abroad of a child with complementary protection [19]; the failure to provide social provisions to EUN who suffered from leukemia [20]; job market access for refugees working as private security officers [21]; the failure to properly deal with racial violence in schools [22]; the failure to recognize work experience from abroad—particularly for EU citizens; the arbitrary procedures by which marriages between EU nationals and TCNs are routinely almost declared by the authorities as ‘bogus’ or ‘fake’ marriages between EU nationals and TCNs [23]; the violation of equal treatment between Cypriots and EU workers in the hotel industry [9]; the refusal of professional bodies, and of the employers, to recognize professional experience of EU workers from other EU member states. The above are only some indications of the hard line and systemic failure to treat migrant workers as equals in practice [7,8,10].

2. The Migration State of Exception, Free Movement of Workers and Cyprus

2.1. The European and Cypriot States of Exception Reloaded: The Basic Argument

This paper attempts to unravel certain aspects related to the Cypriot migration regime as a particular ‘state of exception’. For the purposes of this paper, it is only possible to discuss some aspects of a much broader in scope argument; a more comprehensive approach of the broader argument, analysis, and empirical backing is offered elsewhere [24–26]. At this point, it is essential to locate the Cypriot migration regime within a broader frame, which is both increasingly *Europeanized* and simultaneously *localized*. The Cypriot migration regime is operating essentially under the general rubric of “the state of exception”, which can be typically found in liberal capitalist states: immigration control, which grants wide discretion as executive prerogative to the immigration authorities, is perceived as a manifestation of the sovereignty of the state. When it comes to immigration and asylum, the EU legal order has by and large *supplemented* and *modified* rather than *replaced* the national legal order.

Over and above, the *Cypriot migration state of exception* has certain vital specificities derived from the particular historical antecedents that shaped the so-called ‘Cyprus problem’. This has two interconnected prongs: first, there is a ready-made tradition in the form Supreme Court jurisprudence from the 1960s, the so-called ‘the doctrine of necessity’, which provides the foundations for the courts granting wide discretion, the executive, derived from the ethnic/state conflict of a small island state, which is semi-occupied. Second, there is a strategic decision to facilitate rapid economic development, particularly after the devastation of the conflict and the 1974 war, generated a broader socio-legal foundation as part of a ‘national strategy’. This is how Greek-Cypriot policy-makers understood their mission in government; it was Greek-Cypriots, who, *de facto*, formed the Government after 1963 when the Turkish-Cypriots abandoned the consociational power-sharing posts of the Republic. Policy-makers in this small divided state saw themselves as having a ‘national mission’ to rebuild the county: in the immediate aftermath of the war in the 1974, this logic took the form ‘crisis management’; subsequently, managing the rapid economic development program for the ‘survival’ of a small country under external threat. This was followed by the ‘economic miracle’, which needed managing, until the economic meltdown in 2013. In the late 1980s, the Government responding to the labor shortages introduced a system of migrant labor. However, the system was, and continues to be, based on sharply distinguishing between two distinct classes of migrants: (a) elite migrants, who would invest, and/or bring their entrepreneurship, know-how, and networks, whose presence would be as stable and permanent as possible; (b) the vast majority of migrant workers, who would be temporary and cover the basic low skill jobs, which Cypriots were not interested in; the presence for these migrants was thought to be temporary; their employment and work short-term and precarious, hence, are also referred to as *subaltern migrants*. The legal and policy framework is premised on this distinction. With this context in mind, one can understand the marginality of the latter, the second class of migrant workers. TCNs have a worse situation than EUNs, however they are both subaltern migrants, as is shown in this paper.

The notion of “the Cypriot states of exception”, as coined by Constantinou [24], exemplifies the multitude of exceptionalisms that define the political-legal (as well as the socio-economic) order of Cyprus, where one exception seems to generate and perpetuate another. This leads us to the heart of

“the Cyprus problem”, which cuts across the country and naturally intersects with the operation of the *acquis* in a *de facto* divided country [1,24–26].

The invocation of exception is blurring the distinctions between ‘legality’ and ‘illegality’, and ‘normality’ and ‘abnormality’. It opens up “opportunities” for those in power to extend their discretion in what Poulantzas [27] referred to as *authoritarian statism*, or as Schmidt [28] underlined, long established regimes of exception allow the sovereign to decide *when* and *how* to invoke the emergency situation. In emergency situations, the normal democratic order and rights are suspended; power is exercised by the very forces that actually determine that *it is an emergency situation and how long this would last*. They may decide that this will last indefinitely.

It is however, simultaneously, necessary to dispel some of the common assumptions about the state of exception. As Neocleous shows [29,30], the ‘balancing act’ between ‘liberty’ and ‘security’, the constitutional device Courts are supposed to utilize in order to protect liberty is but a myth: “liberalism's key category is not liberty, but security”, he provocatively claims. For modern liberal states, even the Lockean ‘liberal’ alternative to the Hobbesian insecure world, is always subordinated to security. The ‘prerogative’ granted to the rulers means that “powers which are legally indeterminate at best” or “at worst, prerogative serves to place rulers beyond law”. Drawing on and quoting Locke [31], Neocleous illustrates that when the maxim ‘*Salus Populi Suprema Lex*’ (the safety of the people is the supreme law) is invoked, then the praxis of the ruler is magically legitimized: “The Prerogative is certainly so just and fundamental a Rule that he who sincerely follows it, cannot dangerously err’. In other words, prerogative ‘is, and always will be just’ so long as it is exercised in the interest of the people [29].” Thus, there is a generic tension in all ‘liberal and ‘illiberal’ states.

In the particular case of Cyprus, the distinction between the “exception” and the “norm” is even more difficult to decipher. When “norm” and “exception” are so intertwined and interdependent, the “grey zones” of the edges or what is assumed to be the edge become the core. If Agamben [32] is right that the current global reality is characterized by a generalized state of exception, then we ought to examine the intersection between norm and exception in the specific EU context: “the question of borders becomes all the more urgent”. We are referring here to the “edges” of the law and politics, where there is an “ambiguous, uncertain, borderline fringe, at the intersection between the legal and the political” [32]. The analytical insight into the ambiguity and uncertainty of “the no-man’s land between the public law and political fact”, and between the judicial order and life must move beyond the philosophical and the abstract understanding. It must move to the specific legal and political context if it is to have a bearing on the socio-legal and political reality that is currently reshaping the EU.

In order to question the logic of the ‘state of exception’ it is necessary to unpack the politics behind Schmidt’s politics. As Sanchez Estop notes, we are dealing with a displacement of politics, which becomes “out of place”, or to put it in Rancière’s terms ‘politics’ (“la politique”) is replaced by the ‘police’ (a mix of policies as administrative measures or policing) [33]. The alternative to the logic of exception would be to read the politics of law “in the conjuncture”, as over-determined by other spheres of social life which lie outside the law. Taking Althusser as a vantage point, Sanchez Estop notes that “the actual existence of law as a social reality is always overdetermined by other spheres and, in the last instance, by the production relations or what amounts to the same, by exploitation and class struggle” ([33], p. 73). In this light, we ought to scrutinize the conjuncture of the state, politics, society, economy, and migration of divided Cyprus [6–8,10,25].

The collapse of the bicomunal regime in 1963–1964 generated, *de facto*, the RoC state of exception: this was then accepted *de jure* by the Cypriot Supreme Court, which recognized and defined it as “the doctrine of necessity,” in the landmark case of *Mustafa Ibrahim* [34]. The doctrine of necessity was promulgated by the *Ibrahim* case where the Supreme Court decided that the Constitution, even though never explicitly mentioned, *includes* “the doctrine of necessity in exceptional circumstances, allowing an implied exception to particular provisions of the Constitution to ensure the very existence of the State”. For the doctrine to apply, the Court set out the following prerequisites:

- “An imperative and inevitable necessity of exceptional circumstances;
- No other remedy can apply;
- The measure taken must be proportionate to the necessity; and
- The measure must be of a temporary character limited to the duration of the exceptional circumstances”

It is not surprising that Cypriot courts, made up exclusively by Greek-Cypriots after 1966, have hitherto failed to place effective limitations in the exercise of the doctrine and this has inevitably placed considerable discretion in the hands of both the administration and the judiciary. In a small state riddled by ethnic conflict, it can be thought that this is to be expected. However, there is hardly any justification for its width, or for that matter, for its continued operation in this current form, particularly after accession to the EU, even for the doctrine's defenders. When discretion is so wide, the issue of the culture and practice of independence of the Judiciary becomes all the more crucial for the purposes of constitutional order, administrative justice, and human rights protection. Almost 50 years after the doctrine was first invoked and applied, the state of limbo that Cyprus has allowed this temporary measure to be perpetuated. The most important judicial interventions that placed some limits to the doctrine was the ECtHR decision of in *Aziz* which has ruled that ‘doctrine of necessity’ must be exercised in a manner that does not act as a legal justification for the suspension of the constitutional rights and violates the nucleus of rights or the principle of equality [35]. After all, as De Smith insisted in a book published the year the doctrine was promulgated, “constitutionalism becomes a living reality to the extent that [...] rules curb arbitrariness of discretion and are in fact observed by the wielders of political power and to the extent that within the forbidden zones upon which authority may not trespass there is significant room for the enjoyment of individual liberty” [36].

Those studies, which essentially justify the use of ‘the doctrine of necessity’ in the Cypriot legal order, are typically legalistic in character, safely assuming the jurisprudential basis of the doctrine and simply looking at its interpretations and applications. Such works take the Roman maxim ‘*salus populi suprema lex*’ for granted, without being concerned with “whose safety is secured and at what price” [24]. The ‘Cypriot states of exception’ takes different forms; in fact the Greek-Cypriot “doctrine of necessity” is but one: others include the very existence of the unrecognized “TRNC” which has invoked necessity to justify its unilateral declaration of independence in 1983, the British “sovereign bases”, the “Green line” (*i.e.*, the UN controlled buffer zone set up as ceasefire line after 1974). What needs to be underscored is that the various Cypriot states of exception are undergoing a process of long-term erosion and de-legitimization, in spite of the efforts to re-legitimize them, as Constantinou maintains, perhaps somehow over-stating this [24]. We may begin to talk about an “organic crisis of the Cypriot state of exception”, but as Gramsci would have it “the old is dying but the new is yet to be

born” [24,25]. Moreover, the logic of exceptionalism is to justify authoritarian “solutions” and thrives even in crisis conditions; recipients of the authoritarian state practices are often the weakest and the most vulnerable.

This paper does not claim that the ‘doctrine of necessity’, as described above, is directly invoked in immigration cases in Cyprus; in fact it has not been invoked explicitly, as there is no constitutional gap in handling migration issues. However, it is abundantly clear from reading the tens of immigration-related judgments that the abnormality of the situation generated by ‘the Cyprus problem’, particularly as it regards the general treatment, residence, and citizenship rights granted to ethnic groups other than Greek-Cypriots is inevitably informing the court decisions. After all, in the constitutional order of things, a ‘political fact’ of the magnitude of ‘the Cyprus problem’ predetermines the legal and constitutional affairs [25,37]. The wide use and entrenchment of the doctrine of necessity as a legal and juridical tradition invoking the abnormal and exceptional situation of the country cannot but form the necessary backdrop to the granting such wide margin of discretion to the immigration authorities; it is ‘naturally’ seen as a manifestation of the practice of a certain notion of ‘sovereignty’.

2.2. European Legal Orders and Migration States of Exception

When it comes to the control of migration and populations, *i.e.*, controlling who enters the borders and who belongs to the nation, States of the liberal capitalist type tend to consider this control as a vital expression of sovereignty; authorities are thus in general granted wide discretion as an essential ingredient of their prerogative powers. Migration control is the policy field where *authoritarian statism* thrives; it can be seen as a state of exception par excellence in perpetuity. This is largely, but not exclusively or exhaustively, regulated by legislation and EU Directives, particularly in the case of detention, expulsion, deportation, and entry bans of foreign citizens, including EU nationals. For EU citizens however, the free movement of workers is safeguarded, as provided by the EU *acquis* (as per Art. 45 of the TFEU). Only in exceptional situations, restrictions are allowed on the right of free movement and residence on grounds of public policy, public security, or public health. Expulsion of EU citizens and their family members is permitted only “on grounds of public policy or public security is a measure that can seriously harm persons who, having availed themselves of the rights and freedoms conferred on them by the Treaty, have become genuinely integrated into the host Member State” [38]. The scope for such measures is “limited in accordance with the principle of proportionality to take account of the degree of integration of the persons concerned, the length of their residence in the host Member State, their age, state of health, family, and economic situation and the links with their country of origin”. For the expulsion of EU citizens, the situations must be exceptional—a subject we return to later on to examine how this is applied in the context of Cyprus. For TCNs, the EU *acquis* codified in the *Return Directive 008/115/EC* on common standards and procedures in Member States for returning illegally staying third-country national introduces rather low standards [39], merely referred to as “common standards”, rather than *minimum safeguards*. Moreover, when it comes to migration and citizenship, Courts typically grant the executive residual powers well beyond those provided by the regulations in the form of the wide margin of discretion afforded. It is no surprise that the *acquis* regulating the migration of TCNs is particularly weak, despite pledges to develop a common immigration and asylum policy.

Unfortunately, the Strasbourg Court, which is bound by the ECHR rather than the EU legal order, is often also trapped in the very same logic. The ECtHR case of *Saudi V. UK* [40] is said to “exemplify the limits and blind spots of the contemporary European system of the protection of human rights to those who are “out of place” in the global territorial waters” [41]. The notion of ‘community’ is what is increasingly “globalized” but simultaneously ever more fragmented world is “a blind spot in constitutionalism”, ultimately failing in its universal human rights and the rule of law goals: “By failing to question the way in which territoriality implicates the interests of the individual, modern constitutionalism silences and obscures claims for justice by those who are affected by State power whenever its exercise is based upon territorial sovereignty” [41]. Moreover, ECtHR case law on the detention of immigrants is “exemplifying the blind spots of a constitutionalism, despite paying lip service to the universality of human rights [and] has serious difficulties accommodating claims for individual justice that cannot be fitted neatly within the traditional Westphalian frame” [41]. Paradoxically, the relation between ‘illegal migration’ and globalization has enhanced the role of immigration law and immigration regimes: Under globalizing forces, migration law has been transformed into the last bastion of sovereignty which explains the worldwide crackdown on extra-legal and irregular migration and informs the shape of this crackdown that is taking place [42,43]. As States pursue what they refer to as combating ‘illegal migration’, the phenomenon becomes more significant legally, politically, ethically, and numerically: migration law is in this sense crucial to understanding globalization in what is a paradigm shift in the rule of law [42,43]. Having recognized this, it must be stressed that we are dealing with a dynamic situation, which is prone to pressure from below and above. There is certainly scope for challenge, resistance, and struggles, which may well shift the frontiers of the law in the direction of enhancing the rights of migrants and non-citizens *vis-à-vis* national states; it may however, go in a different directions. There are limits but we are far from exhausting them. Indeed, the recent case of *M.A. V the Republic of Cyprus* [44], the ECtHR goes well beyond the EU *acquis* to force a nation-state to properly provide an effective remedy with automatic suspensive effect to challenge the applicant’s deportation, as discussed further down.

In the global context, matters become more complicated and negative for migrant rights as public order is increasing ‘securitized’, particularly after the so-called ‘war on terror’ since 2001. Caution must be exercised so as not to fall in the trap of assuming that the problem suddenly appeared recently, particularly after September 11, 2001, dubbed as “the terrorism-immigration nexus” [45]. There is certainly an all-encompassing vigor about security and antiterrorism, however, as various scholars illustrate, securitization is common, and in fact, *central to liberalism* [45,46]. This is connected to the changing function and meaning of borders, which is interconnects questions of security to migration control. The ‘securitization of migration’ is an issue of concern in European and international literature over the last years. Invoking of the ‘dangers’ posed by migrants, especially by certain categories deemed as ‘dangerous migrants’, which cultivate fears and insecurity amongst the host population, is hardly novel. The alleged connection between terrorism and migration, including the use of ‘racial profiling’ as a police method to ‘predict behavior’ of ‘potential terrorists’, is a controversial issue for civil libertarians [45]. Such debates have been taking place in the EU and USA over the last years, which saw blows to civil liberties using anti-terrorism as an excuse to pass such measures. However, it is superficial to assume that the changes occurred merely or primarily due to the program of the particular heads of state. The changes are deeper and of longer term nature. In the current climate,

there seems to be an increasingly frequent use of the alleged connection between ‘migration’ and ‘security’: “illiberal practices” are used by so-called liberal regimes, particularly but not exclusively after 9/11 [47]. The so-called ‘war on terror’ is the “a state of exception”, invoked as a justification to suspend civil liberties and human rights by liberal states. Migrants and asylum seekers bear most of the brunt of these tough measures. In Cyprus these measures add further discretion to the immigration authorities to act with impunity.

2.3. *The Cyprus Immigration Regime: Criminalization, Detention and Expulsion*

In the context of Cyprus, the wide discretion afforded to the immigration authorities has a long history. Even before the change of policy in 1991, which made Cyprus a destination of many thousands of migrants, Cypriot Courts do not want to interfere with the Immigration authorities’ wide margin of discretion. In one early landmark legal precedent cited in over 185 subsequent judgments, the judge [48] confirmed the practice on the ground, stressing that “the right of the State to regulate the length of stay of an alien is an attribute of sovereignty.” The judge noted: “In *Amanda Marga Ltd. V Republic* (1985) 3 C.L.R. 2583 it was explained that the right of a country to refuse entry to aliens is, in accordance with International Law an incident of the sovereignty of the country; a sovereign right that cannot be abridged except by a binding treaty or convention. The right of the State to regulate the length of stay of an alien in the country is, likewise, an attribute of the sovereignty and territorial integrity of the country”. Whilst it must be recognized that Cypriot courts are not alone in adopting such a line, Cypriot courts often fail to duly consider vital aspects of EU law and case law, fundamental rights and the ECtHR.

After all, according to article 6(1)(d) of the *Aliens and Immigration Law*, a colonial authoritarian relic, happily used, adapted and expanded by Governments since independence, “any person convicted of murder or criminal offence for which a prison sentence of any duration has been imposed and who, due to the circumstances is considered by the chief immigration officer to be an unwanted immigrant” is subject to return and detention until return. This provision is rigorously applied by the authorities, who declare all TCNs convicted of an offence, no matter how minor, as unwanted immigrants and issue deportation orders against them, a practice increasingly spilling over into the treatment of EU nationals. TCNs convicted of an offence, no matter how minor, are denied the protection offered by the Return Directive, a practice of questionable legality grounded upon an interpretation of Directive Article 2(2)(b) that seeks to exclude all persons convicted of an offence, even an immigration offence, from the ambit of the Directive. Often, the national Courts accept this line of argument: in the case of *Antoan Hazaka* [49] from Syria, the authorities claimed, and the judge accepted that the applicant was not entitled to protection under the Directive because the applicant was subject to a return order as a result of a criminal law sanction. Similarly, in the case of *Laal Badh Shah* [50] the Court refused to release the applicant from detention on the ground that there was no reasonable prospect for his removal, as foreseen by the Return Directive, because he was subject to a return decision due to a criminal sanction and thus not entitled to protection under the Directive; as will be expanded further in this paper.

To illustrate how the Cypriot migration state of exception is applied we outline, albeit synoptically, how immigration authorities treat migrants, as regards their right to abode, their detention, expulsion,

and entry bans. This provides the empirical basis to examine how the Cypriot migration state of exception operates in practice. Despite the free movement acquis, this is applied to TCNs and EUNs who are *subaltern migrants*, *i.e.*, *migrant workers* as opposed to the *elite migrants*.

2.3.1. The Treatment of Subaltern TCNs: Criminalization, Denial of Rights and Long-Term Residence

From the implementation of the relevant legislation and the policy declared we can observe a twin logic sharply distinguishing between the two classes of migrants. On the one hand, we have the denial of rights and blocking the path towards being integrated for the vast majority of TCNs, who belong to the second class of migrant workers, the subaltern classes of migrants. This takes the form of *punitive measures* of criminalizing, detaining, expelling, and banning the entry of TCNs and simply *blocking their access to obtaining long-term residence*, even after competing five years stay in the country. On the other hand, we have the process of easing the access to foreign nationals, who would invest (with one million Euro investment they are granted citizenship) and those who are highly skilled. This is a policy also facilitated by the EU acquis via the various relevant directives, such as the ‘Blue Card Directive’, the Interoperate Directive, the Researchers directive, *etc.*

Even where the EU acquis is favorable for the integration of migrants, for instance in the case of those who have resided for over five years, the immigration authorities are not willing to grant the long-term status to the vast majority of subaltern TCNs. The long-term-residency permit would free them from the restrictions in their employment and dependence on their employer and will pave the way to achieve also citizenship eventually. What is also extremely problematic is the approach taken by the Supreme Court of Cyprus as regards the exclusion of the vast majority of third country migrants from benefiting from the EU directive on long-term residence. In 2007, Directive 2003/109/EC was transposed by amending the existing *Aliens and Immigration Law Cap. 105*. The scope of the amending law covers third country nationals staying lawfully in the areas controlled by the Republic for at least five uninterrupted years. Excluded from the scope of the law are the foreign students, persons on a vocational training course, persons residing in the Republic under the Refugee Law, persons staying in the Republic for reasons of a temporary nature, and foreign diplomats. In addition, persons who have been granted the status of a long-term migrant in another EU member state may nevertheless be refused immigration permit if they constitute a threat to public health or to “public security and public order”. In 2008, a Supreme Court decision confirmed the practice followed by the immigration authority up until then regarding the scope of the law transposing Directive 2003/109/EC, which effectively deprives the vast majority of long-term migrants of the right to acquire the residency status provided by the said Directive. In the case concerned [51], the applicant was a female migrant who arrived in Cyprus in 2000 and was, since, lawfully working as a domestic worker. The applicant applied to the Interior Minister for the status of the long term migrant, as provided by the Directive, but the Interior Minister rejected the applicant’s application to acquire the right of long term residency, on the ground that the applicant’s successive residence permits were limited as to their duration. 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 visas did indeed fall within the exception of article 18Z(2) of the Cypriot Law *i.e.*, *Directive article 3(2)(e)*.

After pressure from EU Commission, the Parliament amended the law as proposed by the Government deleting the words “as to its duration”. Nonetheless, the Immigration authorities continue to deny long-term residency to TCNs, as if nothing has changed. This is indicative of the immigration authorities’ attitude towards migrant rights, whether these derive from the Constitution, the EU acquis or other international instruments. There have been several cases of returnees re-arrested before they exited the Court building on the basis of a fresh deportation decision. In July 2013, an order of contempt of Court was sought against the chief immigration officer and the Minister of Interior, for having essentially disregarded an order of the Court cancelling the deportation of an EU national by issuing and executing a fresh deportation order as soon as the first one was annulled. The decision has affected thousands of migrant workers who are, as a matter of policy, issued with fixed term residence visas; therefore in effect although the legislative framework changed significantly, the policy framework remained the same as prior to the transposition of the Directive. However, the CJEU has recently ruled on the matter: The case *State Secretary van Justitie V Mangat Singh* [52] has laid a major blow to the way the Cypriot Supreme Court has interpreted the matter. The Court decided that there is no reason to deny a long-term residence to a person when his/her permit can be indefinitely renewed. The CJEU ruled that the formal limitations on a residence permit cannot be relevant only to the temporary nature of the permit but to the reason this permit was issued, such as temporary working conditions, seasonal cross border job *etc.*

A number of recent studies show the routine violation of migrant rights, contravening the relevant EU acquis and international instruments such as the ECHR [53–55]. For the purposes of brevity, this paper only provides the key violations of the EU acquis, the ECHR and other international and constitutional principles, which were recorded by the ECtHR, as well as studies and reports.

First, there is a *consistent and systematic process of criminalization of TCNs*, though the abuse of art. 2.2. of the Return directive, using the catchall category of article 6 of the Aliens and immigration law via article 6(1)(d) of the Aliens and Immigration Law, as explained above. Authorities use the Return Directive to renew the TCNs detention and at the same time sought to remove the TCN from the ambit of the Directive so as to avoid offering her the protection foreseen in the Directive. The fact that the applicant had been charged with an immigration related offence and served a prison sentence for it, which automatically rendered her an ‘unwanted immigrant’ and, thus, subject to detention and deportation was not commented upon by the judge. The position that illegal stay may be prosecuted as a crime and that such crime may remove the TCN from the ambit and thus the protection offered by the Directive, essentially amounts both to a violation of the acquis and of the principle derived from Luxemburg court case of *El Dridi* [56] as well as an abuse of Return Directive provision 2(2) in order to deny returnees the protection intended for them under the Directive.

Second, large numbers of migrants are detained and deported; the vast majority of migrants deported are over-stayers. There are no statistics as to how many cases like the above have been decided; the Courts do not maintain statistical records based on the type of the case and the immigration authorities do not publicize any statistics based on the reasons for return. According to the Bureau of Analysis and Statistics of the Immigration department (17/5/2013) in 2010 3,265 Deportations of migrants and 51,652 checks of migrants, in 2011, 3,941 and 60,597, respectively, and for 2012, 3,529 and 58,867. However, the number of TCNs apprehended with forged travel documents is on the rise, suggesting the existence of criminal networks operating underground that are supplying

them with these documents. When TCNs try to leave Cyprus using those documents, they are apprehended, charged, convicted of a prison sentence (usually two months) and automatically declared unwanted immigrants; these cases, the number of which is rising, are considered as falling outside the scope of the Directive and, thus, not entitled to the protection offered by the Directive. Entry bans of indefinite duration are issued in all cases of returns, without exceptions.

Third, there is a practice of *long detention of migrants and asylum-seekers*. Only after the six months do authorities begin to consider how to deal with each detainee. The 18 months, which is unacceptably long by any standards, as a tariff for any criminal offence, does not act a total maximum in very specific and difficult circumstances, it becomes the routine practice. In the case of Iranians and Syrians detention is far longer. In one case, *Majid Eazadi* [57], a migrant from Iran, was released after more than four years in detention pending return. His return to Iran was deemed impossible because the Iranian embassy refused to issue travel documents to him. Since the Directive was transposed, usually 18 months, but there have been numerous cases of people detained for longer. Finding a country that will accept them is often delaying matters especially in the case of Iranian and Syrian nationals who will not be deported to their countries of origin, and are often not in possession of travel documents.

Fourth, there is a *lack of an effective remedy as regards deportation and detention*. The ECtHR conviction against Cyprus on July 23, 2013, for the lack of an effective remedy against deportation and detention may soon change the picture of how the authorities use detention and deportation and how these are challenged through the Courts. The ECtHR issued the decision against Cyprus, *M.A. V Cyprus* [44] for the lack of an effective remedy against the deportation and detention of a Syrian national of Kurdish origin (the applicant). The case concerned the applicant's detention and his intended deportation to Syria after a police operation on June 11, 2010, removing him and other Syrian Kurds from an encampment outside government buildings in Nicosia in protest against the Cypriot Government's asylum policy. The authorities had decided to remove the protestors, citing unsanitary conditions around the encampment, the illegal use of electricity from a nearby government building and complaints from members of the public. About 250 police officers conducted a removal operation at dawn, leading 149 protestors to mini buses and taking them to police headquarters to check their status. Twenty-two protestors were deported on the same day and 44 others, like the applicant (whose asylum application was still pending at the time) were charged with unlawful stay and transferred to detention centers in Cyprus. Deportation orders were issued against the detainees on the same day (June 11). The applicant and 43 other Syrian Kurds asked the ECHR to apply interim measures under Rule 39 to prevent their imminent deportation to Syria. The applicant was not deported to Syria only because of an interim measure issued by the ECHR under Rule 39 of its Rules of Court to the Cypriot Government indicating that he should not be removed until further notice. The ECtHR found unanimously that there had been: a violation of Article 13 (right to an effective remedy) of the Convention taken together with Articles 2 (right to life) and 3 (prohibition of inhuman and degrading treatment) due to the lack of an effective remedy with automatic suspensive effect to challenge the applicant's deportation; a violation of Articles 5 (1) and 5 (4) (right to liberty and security) of the Convention due to the unlawfulness of the applicant's entire period of detention with a view to his deportation without an effective remedy at his disposal to challenge the lawfulness of his detention. The ECtHR held that Cyprus was to pay the applicant 10,000 Euros (EUR) in respect of non-pecuniary damage.

Fifth, the *conditions of detention are problematic and there is a failure in proving basic welfare*. As for the detention conditions, these are recorded as problematic by the CPT [53], Amnesty [54], and the Independent Authority for the Prevention of Torture (IAPT) [55]. In its capacity as independent authority for the prevention of torture, officers from the Ombudsman's office visited Menoyia three times since it started operating in February 2013 and compiled a report with their findings [55].

Sixth, *the migrant criminalization is reproduced and perpetuated via their social exclusion from the labor market*: If and when they are released from detention, there is a process of re-criminalization, via their social exclusion from the labor market: once released from prison, their chances of getting a regular employment permit is minimum; they are allowed to work in very restrictive types of jobs, but even if they do find a job, employers, who just know that they are 'illegal' and just released from prison are unlikely to apply for work permits, preferring to employ them as undeclared labor.

The overall picture emerging is that little has changed in the policy and practices following transposition of the Return Directive in 2011, many aspects of which are not implemented.

2.3.2. Free Movement of EU Workers Undermined for Subaltern EUNs

The treatment of EU nationals is the other illustration of the peculiar migration state of exception: the immigration regime has not done away with subjecting EUNs to rules which undermine the proclaimed right to free movement for workers. Particularly in deportation cases, the authorities are directly invoking security and public order justifications. It must be noted that EU citizens are also divided along similar class lines, for the vast majority of EUNs, who fall in the category of subaltern migrants; they also face the danger of detention, deportation and entry ban, albeit not at the same levels. A number of violations of rights of EU citizens have been reported, the most serious of which relates to their detention, expulsion, and entry bans. Whilst some restrictions to be placed on the right of free movement and residence on grounds of public policy, public security, or public health, in the RoC they are routinely detained and expelled [10,37,58].

Cyprus has deported a total of 1795 Union citizens since 2004: 208 in 2011, 288 in 2012, and 114 only for the first five months of 2013. Since 2004, the deported were 697 Romanians, 338 Bulgarians, 222 Polish, 175 Greeks, and 140 British. The numbers are only a fraction of the numbers of TCNs deported, who are over 10,000 persons only for 2010–2012; however, the point is that EU citizenship has not prevented the Cypriot immigration authorities from deporting EU nationals [58]. Even at the time of making the final revisions for this paper, a case was being examined by the Courts where a Bulgarian mother of three-year old child, *Zoya Mitova Margaritova* [59], was detained for the purposes of deportation on the charge that she had conducted a false marriage with a Pakistani national: whilst in detention, the three-year old child was entrusted with the father, the authorities claim is falsely married to, and cohabits with, Zoya since 2009. The Court rejected the claim for an interim order to stop her deportation and release her from detention; eventually the father and the child had a DNA test and proved that he was the father. Not only was the mother was detained on a groundless claim for two and half months, depriving her access to her child, but ten days before the hearing the father was then arrested to be deported [57].

The numbers of deportation for security grounds are excessively high given that the grounds for expelling Union citizens are narrowly defined by the EU *acquis* and the size of Cyprus. The grounds

for expulsion are often alleged fake marriage, which is highly questionable whether this ground is legally justified as “imperative threat to public security”, as required by the standard set by the Directive. The official position is that over last few years, there has been an upward trend of “Marriages of Convenience” from 2003 to 2011: nine sham marriages in 2003, and 132 in 2011.

The national courts appear reluctant to properly check on the immigration authorities, at least this can be deduced from the case law gone before the Supreme Court. Relevant here is the recent ECtHR case, *M.A. V Cyprus* [44], which held that there was violation of Article 5 § 4 of the Convention (effective remedy to challenge lawfulness of detention) as domestic remedies must be certain and speedy. NGOs and human rights lawyers have raised questions about the conditions of detention and expulsion of foreigners, including EU citizens. In fact, they complain that since March 2013, the authorities have further intensified and make increasing use of deportation and placement on stop list of migrants, including Union citizens. There are serious problems with the conformity with the *Return Directive* [39] both in terms of transposition and implementation, despite the fact that the latest amendments to the legislation were implemented over the last couple of months. A major issue concern is that the current practice is not line with the above Directive and the landmark case of *El Dridi* [53]: the authorities routinely continue to criminalize migrants by detaining and imprisoning them for immigration related offences together common penal convicts.

Moreover, two recent deportations of migrant women, a third country national who was a recognized victim of trafficking and an Union citizen, a woman from Romania in violation of a Supreme Court order has become major controversies in the public debate. Currently, the Minister of Interior and the Civil Registry and Migration Department are facing proceedings before the Supreme Court for contempt and violation of a court order to for the deportation of the Romanian woman, who resided in Cyprus from 2006, who had been arrested for deportation because she was suspected of having committed a ‘marriage of convenience’. The Supreme Court, however, prevented her deportation by decree. The Civil Registry and Migration Department, with the agreement of the Minister of Interior, issued a warrant for her arrest, in violation of the Supreme Court order, and subsequently deported her.

Concerns have been raised as to the implementation of the rights of EU citizens working or visiting Cyprus, their partners and family members. Questions relating to equal treatment and human rights violations of Lesbian/Gay, Bisexual, and Transsexual persons in the exercise of free movement, arising from the failure to regulate same-sex marriages and registered relations in Cyprus. In addition, there are issues regarding the right of Union citizens to marry persons who are asylum-seekers.

Despite assurances by the Ministry of Labor officials and employers that in general the system operates smoothly with few problems or complaints of discrimination, the questions about worker rights and equal treatment of EU citizens and their partners and families are raised by trade unionists who argue that the delays in registration result in discrimination and disruption in labor relations, non-compliance with collective agreements and labor standards, as well as various daily problems.

A particular issue relates to the conditions of employment of union citizens who are trainees in the hotel industry and allegedly face nationality discrimination, particularly hotels and restaurant offering ‘all inclusive package’ which are used for social dumping, displacing other workers who are regularly employed in hotels, as trainees have no contract and are not bound by collective agreements. The matter is still being examined by the Cyprus Equality Authority [10,11] .

Since taking office in March 2013, the newly elected conservative Government announced a change the policy and has already suspended for a period of two years in regards to the free movement for Croat workers, following the EU accession of Croatia. Government restrictive immigration policies, which also affect EU citizens, are depicted as measures to reduce unemployment of Greek-Cypriot workers. Politicians, officials, representatives of the Employers Association, and trade unionists supported more stringent controls on the employment of migrants, including EU citizens, and are almost unanimously calling for 'priority for employing Cypriots'. The Government package announced stressed that the country would cease to be a "migrants' paradise" and announced that it has a 'gentlemen's agreement' with social partners about imposing a quota on 'foreign workers' at 70–30 ratio, *i.e.*, 70% Cypriots and 30% foreigners. It is unclear how such a 'gentlemen's agreement' would operate in practice, *i.e.*, whether this will be a "target" of 70–30 ratio to hire over the next two years and how the implementation of the 70% of the staff to be Cypriots and the rest will from other nationalities, as announced. This may well be nationality discrimination forbidden the free movement of workers acquis. The policy of requiring Greek language in vocational in job descriptions especially in the hotel and tourism sector has been offered as such a policy. This has already been implemented in the form of Greek language requirement as qualification for holding certain posts in the private sector for the jobs in the Hotel/Catering industry for eight vocations relating to the sector at the different required levels. Officials from the Ministry of Labor and the Ministry of Interior consider that there is no binding policy as such for the private sector to impose restrictions on Union citizen workers, as the prototypes/models for jobs in hotels/catering. Trade unions nonetheless consider the Government measures as inadequate and one trade union, proposes the immediate revocation of the work permits for third country nationals and the suspension of free movement of workers from EU member states. However, human rights and migrant support organizations speak of widely practiced policies of discrimination and exclusion of migrants, including EU nationals [10,58].

3. Looking to the Future: Crisis, Politics and the Migration Dissensus

Over the last year, there has been a process of toughening of immigration control and a crackdown on the benefits claimed by asylum-seekers. Certainly, the change of Government in February 2013 combined with the 'shock therapy' of the deposit haircut imposed by the Eurogroup in March 2013 and the austerity measures agreed with the Troika for bail out money have resulted in a harder line on migration. Moreover, the economic problems have been exploited to the full by the various anti-immigrant groups: the climate over migration is painted in negative terms by the media and public discourses. However, we need to look back to understand the processes and transformations of the immigration regime [13].

When the left-wing Government came to power it adopted a positive rhetoric, pledging for a more humane immigration framework. It, hence, proceeded to adopt the first national integration plan in 2010, thus recognizing for the first time that Cyprus is an immigration destination. However they failed to halt the hardening of anti-migrant policies and opinions, as their more positive policy efforts were eventually compromised by the economic crisis, the hardening of public opinion, and the new racist politics, as well as the governance gaps which caused the government to lose its Parliamentary majority, combined with contradictory policies to appease the increasingly xenophobic media and

body politic (e.g., criminalizing the renting of properties to irregular migrants, and crack down on the alleged ‘benefit fraud’ of asylum-seekers, who became smear victims in media campaigns) [28,29]. The last few years, there are two dimensions that have accelerated and deepened the process to the extent that we can refer to a *qualitatively new era*: The combination of (a) the victory of the conservative party DESY, in the February 2013 election, whose program pledged to follow ‘hard line’ anti-immigration policies as a matter of ‘law and order’, and (b) the austerity measures adopted following the economic and banking crisis in March 2013 generating a new migration state of exception. The austerity package consists of different measures, some not fully implemented yet. In this light we have the decision to postpone for two years the free movement for Croats, who have just joined the EU due to rising unemployment [57]; the introduction of a system of coupons for all migrants as opposed to cash payments benefits; the increasing pressure on employers to insist on using of Greek in various sectors of the economy as an essential element for various jobs to exclude non-Greek speaking migrants [58]; and the overt recommendation of the government to employers to hire Cypriots rather than foreigners.

Migrants, refugees and asylum-seekers may well be the first victims of a broader ideological and economic project: we can certainly speak of a process of shifting away from cash benefits towards coupons, as an expression of a an elitist and paternalistic logic which treats the vulnerable groups who are recipients of benefits as immature persons in need of supervision is now extended to low income Cypriots in medical treatment in public hospitals [60]. In crisis-ridden Greece, which has been treated by Greek-Cypriot nationalism as the ‘mother country’, 89 types of benefits are now handed out in kind, marking the end of universal benefits. The RoC seems to heading in that direction with the new austerity-ridden budget imposed with the blessing of the Troika, currently pending before Parliament.

The challenge for Cyprus is how to untangle and combat in practice the various authoritarian and discriminatory practices [61]: some are derived from the historical and national context but others are integrated within the European context. This requires that we attend to the critical debates about the role of the EU, related regional and global debates. Besides, despite UN efforts refer to the importance of ‘dialogue of cultures’, the so-called ‘clash of civilizations’ [62] has become more ingrained in the ‘global political agenda’ and is affecting public discourses in Cyprus. Moreover, the processes of securitization of national identity, whereby ethnic diasporas are construed as a threat to national identity [63] have fed into the debates in most European countries. There has undoubtedly been *Europeanization* (i.e., connected to the EU integration project) and *localization* within particular national contexts. A concrete example of these are the debates relating to the question of integration of migrants in the EU via the development of policies to integrate migrants, national action plans for integration, and other integration ‘instruments’ and tool kits’. The logic of the ‘clash of civilizations’ has been influential in the perception and representation of those migrant and ethnic groups who are considered to belong to the ‘other’ side, the enemy camp, using ethnic, religious, and cultural markers to differentiate and exclude them. Many measures are depicted as benign as they positively aim at *integrating* migrants, diasporic and other ethnic communities by “making room” in the receiving country for migrants to fit in, to accommodate, and adapt [64,65]. However, they are often not so. The current integration policy framework has “diverse roles” in the EU context with various actors pushing for different agendas and the tension between the security/identity agenda pursued *versus* the rights-based approach [66]. The problematic aspects are the restrictive and exclusionary elements

contained in the very notions of ‘integration’ [64–67]: the integration packages as understood and implemented today often contain exclusionary, xenophobic, Eurocentric, and ethnocentric elements, which are pandering to and reflecting the current anti-immigrant public opinion driven by forces who want to exploit the latest economic crisis [65–67].

In this sense the current Europe an *dissensus*, as Rancière would have it [68,69], in what is construed as a *fundamental disagreement*, is the connection between national identity and migration and the incorporation of the ethnic/national ‘Other’ within the boundaries of the ‘*nation*’. What is branded in a number of EU countries as a ‘crisis of multiculturalism’, which is in reality a crisis of citizenship in Europe. The above issues have filtered through Greek-Cypriot discourses. Similar racially intolerant discourse have also been prominent in Greek-Cypriot debates over migration and migrant integration in Cyprus is engendering old, and breeding new, forms of racial, ethnic, religious intolerance, and hatred: those on the anti-immigrant right, particularly small but virulent neo-Nazis and far right groups express an intense feeling of being threatened by the immigration and the need to re-affirm the ‘national heritage’ of the country, as they see it, via drastic anti-immigrant action. In the context of what is seen as a ‘national emergency’ of a siege mentality ‘the enemy is already in the city’, this means coercion and violence. Any ‘drastic’ acts are depicted as either ‘self-defense’ or ‘legitimate reaction/retaliation’ for the state’s alleged failure to take resolute action to ‘secure’ the nation’s survival. There is a new polarization in the public discourse over questions relating to migrants (integration, irregular migration, border control and, to some degree, racism, discrimination, and xenophobia), as there is a racialization by new groups consisting of persons who live a multicultural life and claim ‘the right to the city’ as a matter of fact: they defend their way of living and a public sphere which is very much their everydayness [70–73].

The logic of racializing and exploiting subaltern migrants must be located within the context of a system of a multiple ‘Cypriot states of exception’, generated by the country’s peculiar history and long-drawn conflict that has left the country de facto divided. Over the last decade, we can definitely record a new vigor and polarization around the question of migration, multiculturalism, and identity in Cyprus and increasingly, the research examines the gendered dimensions are dealt with. There is new impetus in various ‘popularized’ and ‘quasi-academic’ versions of authoritarian politics taking on the form of securitization: various former army generals [74] and former chiefs of the police invoking reasons ‘economic necessity’ type of arguments are mushrooming lately—many imported from Greece and other EU countries and others ‘home-grown’. The question of migration and integration crisis is often colored as a “crisis of multiculturalism” which leads us to Stuart Hall’s “multicultural question” (*i.e.*, different groups living together in assimilation or degradation) as “the underlying question of globalization” [75]. As Neocleous and Rigakos aptly comment, security is a “*dangerous* illusion” precisely “because it has come to act as a blockage on politics: the more we succumb to the discourse of security, the less we can say about exploitation and alienation; the more we talk about security, the less we talk about the material foundations of emancipation; the more we become complicit in the exercise of police powers [30].”

The current banking and economic crisis seems to be generating ‘new’ states of exception based on reasons ‘economic emergency’ [76]; prime recipients are of course subaltern migrants, who are seen as disposable and without the right to abode. Yet, other vulnerable groups are not far behind, not to

mention the squeeze felt by the middle classes are feeling [77]. However, this is only the beginning. We need to consider the antecedents and the consequences of this process.

Last, but not least, not all is negative. It must be noted that a body of opinion opposing the racialization, criminalization and exclusion of migrants has emerged and is making it felt in Cyprus. Despite, the systemic underreporting negative media depiction of migrants and their struggles [4,14–16,69,72], migrant struggles, social movements and initiatives, NGOs, and political and legal scholars and activists are producing results: there is a significant body of rights-based discourses and sites of resistance, which are challenging the logic of migrant exclusion and exceptionalism [71–73]. In many ways, the case *MA V Cyprus*, as well as numerous other cases challenging the authorities' repressive practices, are indicative of this. However, the matter is far from being settled.

4. Conclusions

This paper attempted to unpack the repressive migration state of exception of the RoC. The Cypriot context illustrated how the debates around the 'states of exception', 'emergency', 'necessity', and 'sovereignty' have been at the center of policies relating to controlling, excluding, detaining, and expelling *migrant workers*, both EUNs and TCNs. The paper referred to the *subaltern*, as opposed to *elite* migrants. This is not exclusive to Cyprus; in fact this paper has shown that we are dealing with broader Europe and global trends.

There are however particularities: Cyprus is more multicultural than ever before as more than 20% of the population being migrants; the past economic growth in Cyprus was by and large a result of migrant labor. Yet, the current financial crisis coupled with the Government and political changes are hardening further policies by excluding, marginalizing and denying the rights of subaltern migrants. The paper focused on aspects of the Cypriot immigration practice that undermine migrant rights. For subaltern TCNs, this takes the form of denial of long-term residency as well as criminalizing, detaining, and deporting TCNs. For subaltern EUNs, the practices of criminalization, detention, and deportation are also widespread; so are other discriminatory practices.

The paper has criticized the perspectives which depict Cyprus *exclusively as an exception to the norm*, whilst simultaneously is critical towards the exact opposite trap, which is the typical assumption that *Cyprus is but an instance of geopolitical interests where all is played at a global / regional map, where Cypriots have no role or significance*. One has to examine how the logic of exceptionalism is manifested by producing and reproducing real policies and practices; how it is institutionalized in the context of immigration. Hence, this paper examined the Cypriot migration model as a system based on the logic of exceptionalism, whereby the 'crisis' is easily articulated in terms of urgency for exceptional measures for tougher immigration control, necessitating departure from the 'norms'. The basic argument is that once the legal, juridical, and political system has generated and has provided the legal justification/legitimization, subsequent novel 'states of exception' or 'states of emergency' emerge for additional measure, opening new cycles of suspending rights. Thus, the economic crisis resulting from the collapse of the banking system, currently depicting the Cypriot economy as being on 'a life support machine' must be understood in terms of its antecedents in the historic context of Cyprus and the examples from other countries facing such economic/financial problems. Moreover,

such state practices are setting the scene and are used to justify the generating or accentuating existing authoritarian and arbitrary state actions on vulnerable populations such as such subaltern migrants.

There is, however, no ‘automatic’ process in crises that necessarily leads to the denial of migrant or other vulnerable group rights; *the policy choices are at the end of the day political and ideological and defined by the political and social struggles in the particular conjuncture*. There is in this sense *not a consensus but a dissensus*, or fundamental disagreement over the issue, as there is a strong dissenting body of opinion and various acts of resistance to racialization of subaltern migrants. This is why there are mobilizations and cases are taken up that question the state of exception but that is a subject matter for another paper.

If we are to overcome the current logic of exceptionalism, which misguidedly serves as a justification for repressing migration and migrants, a radical rethinking of migration issues, the migration model and migrant labor is required. From this emerges the necessity to *fundamentally question and transcend the very logic of exceptionalism as normal sovereign acts*. The dissensus is generated because there has emerged a serious challenge to the various states of exception, a body of thought that proposes a wholly different approach to how migrants are be perceived and how they are structurally located in Cypriot and more broadly European society. In particular, the proposition that the immigration model ought to shift from the short-term temporary model to a policy of granting long-term status to migrants who have a vested interest in adapting and producing in society is no longer a distant dream but is becoming more of a necessity, if we are to avoid the menace of racism and intolerance. At policy level, the approach to immigration policy requires that we radically break away from the ideology of ‘control’ and, in particular, border control, and move towards a more proactive and positive approach towards immigrants and immigration is strongly articulated by those resisting the states of exceptions. The basis of the model of reception of migrant workers is already there; society is de facto multicultural. However, a new multi-cultural deal is needed at the level of law and policy framework and praxis, which would create the necessary conditions for dialogue, equality, belonging, and respect for differences. Racism and exclusion must be combated decisively; but this requires comprehensive measures for institutional reform, as well as a re-working of the political and ideological discourses that define the ‘nation’, citizenship, and ‘belonging’. Moreover, with the Eurozone and the EU project in crisis, this becomes a broader democratic challenge for all European societies, transcending borders: the challenge is to rethink the broader context of bringing about social equality, participation, solidarity, and understanding to enhance the best resources of society and its people, particularly its migrants, from other EU member states and beyond.

Conflicts of Interest

The author declares no conflict of interest.

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