FUNDAMENTAL RIGHTS SERIES

E.U. NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS
(CFR-CDF)
RÉSEAU U.E. D'EXPERTS INDÉPENDANTS EN MATIÈRE DE DROITS FONDAMENTAUX

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN CYPRUS IN 2003

January 2004

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[*] submitted to the Network by *Achilleas Demetriades*, Barrister LLM and *Leto Cariolou*, Advocate LLM.

Le **Réseau UE d'Experts indépendants en matière de droits fondamentaux** a été mis sur pied par la Commission européenne (DG Justice et affaires intérieures), à la demande du Parlement européen. Depuis 2002, il assure le suivi de la situation des droits fondamentaux dans les Etats membres et dans l'Union, sur la base de la Charte des droits fondamentaux de l'Union européenne. Chaque Etat membre fait l'objet d'un rapport établi par un expert sous sa propre responsabilité, selon un canevas commun qui facilite la comparaison des données recueillies sur les différents Etats membres. Les activités des institutions de l'Union européenne font l'objet d'un rapport distinct, établi par le coordinateur. Sur la base de l'ensemble de ces (26) rapports, les membres du Réseau identifient les principales conclusions et recommandations qui se dégagent de l'année écoulée. Ces conclusions et recommandation sont réunies dans un Rapport de synthèse, qui est remis aux institutions européennes. Le contenu du rapport n'engage en aucune manière l'institution qui en est le commanditaire.

Le Réseau UE d'Experts indépendants en matière de droits fondamentaux se compose de Elvira Baltutyte (Lituanie), Florence Benoît-Rohmer (France), Martin Buzinger (Rép. Slovaque), Achilleas Demetriades (Chypre), Olivier De Schutter (Belgique), Maja Eriksson (Suède), Teresa Freixes (Espagne), Gabor Halmai (Hongrie), Wolfgang Heyde (Allemagne), Morten Kjaerum (Danemark), Henri Labayle (France), Rick Lawson (Pays-Bas), Lauri Malksoo (Estonie), Arne Mavcic (Slovénie), Vital Moreira (Portugal), Jeremy McBride (Royaume-Uni), Bruno Nascimbene (Italie), Manfred Nowak (Autriche), Marek Antoni Nowicki (Pologne), Donncha O'Connell (Irlande), Ian Refalo (Malte), Martin Scheinin (suppléant Tuomas Ojanen) (Finlande), Linos Alexandre Sicilianos (Grèce), Dean Spielmann (Luxembourg), Pavel Sturma (Rép. Tchèque), Ineta Ziemele (Lettonie). Le Réseau est coordonné par Olivier De Schutter, assisté par Valérie Verbruggen.
Les documents du Réseau peuvent être consultés via :
http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_fr.htm

The **EU Network of Independent Experts on Fundamental Rights** has been set up by the European Commission (DG Justice and Home Affairs), upon request of the European Parliament. Since 2002, it monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. A Report is prepared on each Member State, by a Member of the Network, under his/her own responsibility. The activities of the institutions of the European Union are evaluated in a separated report, prepared for the Network by the coordinator. On the basis of these (26) Reports, the members of the Network prepare a Synthesis Report, which identifies the main areas of concern and makes certain recommendations. The conclusions and recommendations are submitted to the institutions of the Union. The content of the Report is not binding on the institutions.

The EU Network of Independent Experts on Fundamental Rights is composed of Elvira Baltutyte (Lithuania), Florence Benoît-Rohmer (France), Martin Buzinger (Slovak Republic), Achilleas Demetriades (Cyprus), Olivier De Schutter (Belgium), Maja Eriksson (Sweden), Teresa Freixes (Spain), Gabor Halmai (Hungary), Wolfgang Heyde (Germany), Morten Kjaerum (Denmark), Henri Labayle (France), Rick Lawson (The Netherlands), Lauri Malksoo (Estonia), Arne Mavcic (Slovenia), Vital Moreira (Portugal), Jeremy McBride (United Kingdom), Bruno Nascimbene (Italy), Manfred Nowak (Austria), Marek Antoni Nowicki (Poland), Donncha O'Connell (Ireland), Ian Refalo (Malta), Martin Scheinin (substitute Tuomas Ojanen) (Finland), Linos Alexandre Sicilianos (Greece), Dean Spielmann (Luxembourg), Pavel Sturma (Czech Republic), Ineta Ziemele (Latvia). The Network is coordinated by Olivier De Schutter, with the assistance of Valérie Verbruggen.
The documents of the Network may be consulted on :
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PRELIMINARY REMARKS

Part of the area of the Republic of Cyprus since the Turkish Invasion of 1974 has been under the effective control of Turkey which by virtue of the case law of the ECHR (and in particular the three *Loizidou v Turkey* judgments and the 4th Inter-State application Cyprus v Turkey) has decided that it is under Turkey's jurisdiction within the meaning of Article 1 of the Convention.

In view of the above our Report is focused on the area within the control of the Republic of Cyprus and does not extend to the northern part of Cyprus.
Despite the fact that Turkey is responsible for human rights violations in the part of Cyprus that is under its control, it was thought that it would be useful if some information and case law on this matter was set out.

Djavit v Turkey Application No 20652/92 Judgment dated 20 February 2003. The Applicant a Cypriot national of Turkish origin resided in the area of Cyprus under Turkish control and was politically active especially in developing close links between the two communities on the island. The Applicant had applied on numerous occasions to the "Turkish Republic of Northern Cyprus" for permission to cross the "Green Line" to attend certain bicommunal meetings and was rejected. He complained of violations of Articles 11 and 13 of the Convention, which the Court having already held admissible, upheld and awarded damages and costs to him.

This is a very important judgment since for the first time Turkey was held accountable for human right violations of a Turkish Cypriot residing in the "Turkish Republic of Northern Cyprus".

Demades v Turkey Application No 16219/90 Judgment dated 31 July 2003. The Applicant, a Cypriot national of Greek origin, is the owner of immovable property and had his secondary home in Kyrenia, now under the control of Turkey. He complained (on the Loizidou precedent) of a violation of Article 8 and Article 1 of Protocol 1 of the Convention which the Court, having on 24 August 1999 already declared admissible, upheld and awarded costs. Damage assessment was adjourned.

Eugenia Michaelidou Developments and Michael Tymvios v Turkey Application No 16163/90 Judgment dated 31 July 2003. The Applicants, a Cypriot company and a Cypriot national of Greek origin, are the owners of certain immovable property in Tymbou, now under the Control of Turkey. They complained, (on the Loizidou precedent) of a violation of Article 1 of Protocol No 1 of the Convention, which the Court, having on 8 June 1999 already declared admissible, upheld and awarded costs. Damage assessment was adjourned.

In the abovementioned cases Turkey had raised the issue of the "Law on Compensation for Immovable Properties Located within the Boundaries of the Turkish Republic of Northern Cyprus" which had been enacted in the "TRNC" on 30 June 2003.

It aims to compensate Greek Cypriots for the alleged loss of ownership of their immovable properties in the Northern part of Cyprus.

The Court decided that since the matter had not been raised at the admissibility stage, it could not be raised now and dismissed the preliminary objection.

Nevertheless, the question of whether the abovementioned would constitute an effective domestic remedy that Greek Cypriot Applicants moving against Turkey would have to exhaust, remains open.

It is expected that in other pending cases the views of the parties will be submitted by the end of this year and most likely a hearing will be held to decide the point which is of fundamental importance both for Applications filed before and after 30 June 2003 and which have not been declared admissible.

Finally it may perhaps be useful to point out that on the 2nd of December 2003 Turkey finally managed to pay the award of just satisfaction made by the Court in the 3rd *Loizidou* judgement of July 1998. This is a clear departure from its previous stand that payment would be effected upon the solution to the Cyprus Problem.

This Report was prepared taking into consideration of the fact that it is the first Report submitted to the Network for Cyprus. Therefore a significant amount of the information has been included with the intention of forming an overview of the relative legal framework.

The presence of the sometimes overtly lengthy quotes is explained as an effort to enable the best possible analysis of the relevant information by the reader through the inclusion of such in verbatim.

It should be noted that the absence of a developed centralised retrieving information system, has rendered our task of collection and analysis more difficult.

Last but not least, thanks are due to the Office of the Law Commissioner and the Office of the Ombudsman for all the valuable information and support that given us in a timely manner. Appreciation is also expressed towards the UNHCR Representation in Cyprus. Gratitude and thanks are also due to the Committee on Human Rights of the House of Representatives for extending their relevant invitation and allowing our presence at their meetings.

CHAPTER I : DIGNITY

Article 1. Human dignity

National legislation, regulation and case law

Human dignity is essentially understood as a notion encompassing the fundamental ideology of human rights. It relates to the protection of honour and autonomy of being. To that extend, it is an idea governing the sentencing in criminal proceedings and the ruling on damages in civil law cases.

According to settled case-law of the Supreme Court, the Cypriot Courts are obliged to uphold the principles of human rights. Therefore the penalties imposed for acts that undermine human dignity should reflect the severity of such acts. [*Theofilou v. The Republic* (1984) 2 C.L.R. 114, *Patounas v. Attorney General* (2000)]

The principle of human dignity is also protected in defamation cases where the words and acts of a person damage the reputation of another. The extend of damage to human dignity becomes relevant in the calculation of damages that are awarded. Monetary compensation is seen as a means to alleviate the individual's human dignity. In *Alithia Publishing Co and Alecos Constandinides v Andreas Aloneftis*, Civil Appeal 10703; 29/11/2003 [*Αλήθεια Εκδοτική Εταιρεία Λτδ και Αλέκος Κωνσταντινίδης ν Ανδρέας Αλωνεύτης ν. Τάσος Παπαδόπουλος* ΠΕ 9903, 22 Ιουνίου 1999] the Court of First Instance awarded punitive damages on the basis of the effect of the unsubstantiated allegations on the dignity of the plaintiff. This decision was affirmed by the Appellate Court while the case is currently pending before the ECHR.

Practice of national authorities

The Central Prisons in Nicosia face a serious problem of overcrowding and the need to deal with the prisoners' daily concerns. According to recent press releases in May 2003 there were 417 convicted persons in the prison while the relevant facilities can only sustain a number of 230. As a result of recent re-arrangements, there are cells for 274 convicted persons while there are two empty rooms in the area of the Open-Prisons, where 20 more persons could be transferred.

An official visit of Members of the Parliamentary Committee of Human Rights to the Central Prisons in Nicosia on the 12th of November 2003 revealed once again that the living condition of the detainees is worrying. In particular it has been noted that within cells of 16 square meters up to 12 detainees are kept while convicts and accused are held together. It has been reported that some detainees have complained for interference with their right of communication since their correspondence is censored by the prison authorities while their right to have telephone communication with their relatives and friends is restricted to one phone-call a week.

The overcrowding appears to be due to the imprisonment of a number of persons unable to repay their civil debts as well as non-citizens who have entered the Republic illegally and will eventually be deported. The CoE Commissioner for Human Rights Alvaro Gil Robles was reported in June 29 of 2003 in Cyprus Mail as stating that the overcrowding at the Nicosia Central Prisons would be solved if "prisoner's who should not have been there in the first place were released". In this regard the Attorney General of Cyprus has stated before the House of Representatives on the 4th of November 2003 that he is to reconsider the matter in an effort to help improve the current situation faced in the prisons.

More information is expected on this matter after the Report of the Council of Europe's Commissioner for Human Rights Alvaro Eil Robles is released.

Article 2. Right to life

International case law and concluding observations of international organs

Cyprus has signed and ratified by Law 1(III)/2003 the 13th Protocol to the European Convention of Human Rights that abolishes the death penalty in all cases, including in respect of acts committed in time of war or of imminent threat to war.

National legislation, regulation and case law

Article 7 of the Constitution of the Republic of Cyprus provides that:

1. " Every person has the right to life and Corporal integrity.
1. No person shall be deprived of his life except in the execution of a sentence of a competent court following his convection of an offence for which his penalty is provided by law. A law may provide for such penalty only in cases of premeditated murder, high treason, piracy jure gentium and capital offences under military law.
   Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is more than absolutely necessary
   a. in defence of person or property against the infliction of a proportionate and otherwise unavoidable and irreparable evil;
   b. in order to effect an arrest or to prevent the escape of a person lawfully detained;
   c. in action taken or the purpose of quelling a riot or insurrection when and as provided by law."

By virtue of Law 10 (III)/2003, Law 12(III)/1999 ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was amended so as to abolish the Reservation of the Republic that allowed for the application of the death penalty for a most serious crime of a military nature committed during wartime.

Through the Amendment to the Military Criminal Code of Procedure [Στρατιωτική Ποινική Διαδικασία] enacted in April 2002, the death penalty was removed for the offences of treason and piracy thus abolishing the death penalty in all circumstances.

Section 10 of in *περί Προσφύγων (Τροποποιητικός) Νόμος Ν.53/03 Refugee Law (Amendment) 2003* states that in order for a country to be labeled as a "safe third country" several preconditions have to be satisfied including that it should be a country where the freedom or life of the person applying for an asylum is not endangered.

Article 3. Right to the integrity of the person

National legislation, regulation and case law

Cyprus has ratified the Convention for the protection of Human Rights and dignity of the human being with regard to the application of biology and medicine: Convention on Human Rights and Biomedicine on 20/3/02 which entered into force on 01/07/02 but it is only

recently that doctors have begun using the 'consent forms' from patients in order to be allowed to operate.

Specifically, in the criminal case of *Attorney General v. Zenon Mastrou*. Criminal Appeal No. 7373, 2/4/2003 [*Γενικός Εισαγγελέας της Δημοκρατίας v. Zenon Mastrou*, Ποινική Έφεση αρ. 7373; 2/4/2003], the accused was convicted of causing grievous bodily harm in certain circumstances in which forceful sexual acts were inflicted and both the first instance Court and the Court of appeal took into accountthe blatant violation of the right to dignity and physical integrity of the person. Despite the above the 3 year sentence imposed by the First Instance court was not increased.

By virtue of Law 48 (I)/2003 the Criminal Code, Cap. 154 was amended so as to render female genital mutilation a criminal offence. In particular the said law provided for the addition of the new Article 233A to the Criminal Code, which provides that :

> 1. "Circumcision or mutilation of the whole or part of the 'labia majora' or 'labia minora' of the vulva or clitoris; or
> 2. Assistance, inducement, advice or procurement of the execution by a third person, of any of the above practices on the body of a woman constitutes an offence."

Section 2 paragraph (2) provides that the acts described above shall not constitute an offence if executed by a doctor who finds such course of action necessary and is supported by two other concurrent professional opinions. Such action must be found necessary either for the health of the woman involved, or necessary for the process of child-birth.

Section 2 paragraph (3) provides that the consent of the woman involved shall not constitute a defence nor a mitigating factor within the context of the imposition of the relevant sentence. Interestingly enough, Section 2 paragraph (4) sates that the Courts of the Republic have jurisdiction to try the above offence, committed by a citizen or non-citizen of the Republic within or outside the territory of the Republic.

Section 2 paragraph 4 seems to empower the Courts of the Republic with "universal jurisdiction". Criminalisation of the said practice, was requested by the Parliamentary Assembly of the Council of Europe [Resolution 1247 (2001) 1] as well as by the United Nations [through a series of General Assembly Resolutions see for instance Resolution 56/128 adopted on the 19th of December 2001]. According to the Ministry of Justice and Public Order, despite the fact that in Cyprus no such practices have been reported, criminalisation of the said practice was decided on the basis of compliance with the resolutions of the above institutions, and to cover the possibility of their committal by non - Cypriot residents of the Republic.

Lastly, the Amendment of the Patent Law 2002 [*Περί Διπλωμάτων Ευρεσιτεχνίας (Τροποποιητικός) Νόμος του 2002, Ν 163(Ι)2002*] relating to the protection of biotechnological inventions, clearly prohibits the patent of the processes for cloning human beings, of the modification of the gene line genetic identity of human beings and uses of human embryos for industrial and commercial purposes.

Practice of national authorities

Concerning the illegal use of human organs, there has been only one reported case where kidneys from Lebanon were illegally imported into Cyprus [Dr Georgios Kyriakides, Director of the Paraskevaideon Surgical and Transplant Foundation, Sunday Mail 29/09/2002].

Information in the press indicated attempts of a reproductive expert doctor to possibly conduct on experiment on human cloning in Cyprus. Such act was immediately refused by the Government, which emphasised the illegality of these acts [Cyprus Mail; March 2001].

Reasons for concern

Another relevant issue to the respect of the physical and mental integrity of persons, relates to the practice adopted by the national authorities of non-separation between adults and minor detainees kept in the Central Prisons of Nicosia. This practice disrespects both the nature and the distinguishable needs of minor detainees, while jeopardises their successful reintegration back into society.

Article 4. Prohibition of torture and inhuman or degrading treatment or punishment

International case law and concluding observation of international organs

The UN Committee against Torture (CAT) in its Report on Cyprus (1993 and 1997), stated that Cyprus "has a very advanced legislative and administrative scheme for the implementation of human rights values".

The European Court of Human Rights by its judgement dated 23 May 2001 in the case of *Denizci and others v Cyprus* established that the Republic had violated Article 3 (prohibition of inhuman treatment), Article 5 § 1 (right to liberty and security) and Article 2 of Protocol No. 4 (freedom of movement) of certain Turkish Cypriots and was ordered to pay compensation.

National legislation, regulation and case law

Article 8 of the Constitution provides that no person is to be subjected to inhuman or degrading treatment or punishment.
In October 2002 the Government had tabled a bill amending the relevant *Ratification Law* of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which had criminalised the subjection to torture only, so as to criminalise also the subjection to cruel, inhuman or degrading treatment or punishment within the meaning of the Convention.
Pursuant to the amendment to the Military Criminal Code of Procedure, enacted in April 2002, the death penalty had been totally eradicated from Cypriot legislation. Cyprus has signed and ratified Protocol No 13 of the European Convention of Human Rights.
Law 31 (III)/2003 ratifies Protocol IV of the 13th of October 1995 that deals with Laser Weapons causing Blindness and Protocol II prohibiting the use of mines, traps and other mechanisms of the Convention on the Restriction of Conventional Weapons with Indiscriminate Effects of 1980.

Practice of national authorities

Acts of violence committed by the police:

The CAT in its report on Cyprus (1993 and 1997) notes in paragraph 49 that there is "casual brutality by police officers… [which] if not dealt with strictly could, in a small country with a fairly homogenous culture, take firm hold on a police practices". CAT also notes in paragraph 51 that there is "continuous need for programmes of education and vigorous legal response to such instances".

The Police Human Rights Office has been established to ensure that police officers respected human rights in the performance of their duties and specialised training programmes have been organised in the Police Academy to teach police officers special interview techniques when gathering video evidence from abused women and children. The post of Human Rights Office was established within the framework of the three-year European project the "Police and human rights".

"Between March 2001 and June 2002 forty-five complaints or reports from various sources concerning alleged offences by police officers had come to the knowledge of the Attorney General. With the exception of one case, the Attorney General had appointed independent investigators. Investigations concerning twenty-two cases had been completed while investigations into the remaining twenty-two cases were still under way." (2002 CAT Report).

Special educational programmes, seminars and lectures on human rights are offered by the Cyprus Police Academy, which include the equal treatment for all the people, locals and foreigners. During the initial and in-service training, police officers are taught and trained in using modern investigation techniques. They are also instructed to interrogate and obtain statements from suspects according to the provisions of the Judge's Rules which even though are not legally binding are followed.

The situation of prisoners:

The Commissioner of Administration in her 2000 report on the detention of mentally ill prisoners and the medical care of prisoners notes that "the level of medical care that is being provided to prisoners has been preoccupying the relevant bodies for several years … very few steps have been taken until today towards the improvement of the medical care of the prisoners, including those prisoners who have psychiatric problems". Several problems are mentioned in the Commissioner's report. Primarily that "the medical care provided to the convicts is gradually degrading due to the failure of the medical officer to increase the time provided and also due to prison overpopulation.

In June 29 2003 [Cyprus mail Newspaper] the Council of Europe (CoE) Commissioner for Human Rights Alvaro Gil Robles stated, during his visit in Cyprus, that the overcrowding of the Nicosia Central Prison would be solved if "prisoners who should not have been there in the first place were released". He expressed concerns over two issues namely human trafficking and the number of illegal immigrants and persons imprisoned for civil debts.

For human trafficking he stated that the main reasons for this phenomenon were either work or prostitution and described it as "striking". For prisons he commented that "prison conditions were good with the exception of overcrowding" and described the relationship between prisoners and wardens as "excellent".

He identified his main concern in this area as the criminalisation of illegal entry or residence in the country and the jailing of debtors and noted that criminal penalties for illegal immigrants had been abolished in most European countries. He clarified that "illegal entry or stay of an immigrant in any country is not a crime but an administrative violation".

On a different note, section 38 *[Psychiatric Care Law (1997/77, 2003/49]* [του *Νόμου (1997/77, 2003/49) περί Ψυχιατρικής Νοσηλείας],* authorises the court that finds a mentally disabled person guilty, to grant an order for psychiatric care in a suitable centre. To date no such centre has been created. As a result, mentally disabled persons who commit a crime under circumstances of diminished responsibility end up in prison rather than in an appropriate medical centre. This problem has been commented upon in a series of decisions delivered by the Court e.g. *of* Panagi v Republic of Cyprus 6319/1997 and Republic of Cyprus v Agathokli Neokleous 463/98.

In July 2003 members of the Cyprus National Institution of Human Rights announced that complaint boxes regarding the treatment of prisoners would be introduced at the Central Prisons. The Law Commissioner has welcomed the installation of the five complaint boxes, as being a big step forward in introducing a new frame of mind towards prison treatment. The boxes will not be censored or scrutinised by the Police authority.

Article 5. Prohibition of slavery and forced labour

International case law and concluding observation of international organs

There has been a series of systematic reports by international organisations stating that Cyprus faces a serious problem and is a transit point for prostitution.

Cyprus has ratified the U.N. Convention on the Suppression of the Traffic in Persons and for the Exploitation of the Prostitution of Others, by Law No. 57/1983.

"The Cyprus police is working in close co-operation with Interpol, the US Federal Bureau of Investigation, other European and international law enforcement agencies and foreign police liaison officers stationed in the country for the collection and exchange of information and data on the various forms of crime, including trafficking and exploitation of human beings." Committee on the Elimination of Racial Discrimination, CERD/C/384/Add.4 Suppl. 17 May 2002, para. 109

National legislation, regulation and case law

Article 10 of the Constitution safeguards that no person shall be held in slavery or servitude. No person shall be required to perform forced or compulsory labour, except work required in the ordinary course of detention, or during military service recognised by the Law or any service exacted in case of state emergency.

The Criminal Code (Cap.154, as amended) [*Ο Ποινικός Κώδικας*] contains provisions relating to offences against morality, namely sections 144 to 177, which regulate matters and activities regarding sexual exploitation, sale, trafficking of human beings and abduction of children, men and women. It further prohibits prostitution-related activities, including procurement The Code explicitly prohibits sexual trafficking, which is defined in Article 2 as "any act that facilitates the entry into, the transit through, residence in, or exit form the Republic for the purposes of sexual exploitation". Trafficking of persons for the purpose of sexual exploitation, or instigating, assisting, allowing, participating, or contributing to such trafficking in persons is punishable by a fine or imprisonment for 10 years or both. If the victim of trafficking is a child then the sentence to imprisonment may be increased to 15 years.

The Children Law (Cap. 352, section 55) renders the causing or encouraging seduction or prostitution of a girl under the age of 16 a criminal offence.

The Law Combating the Trafficking and Sexual Exploitation of Young Persons, enacted in 2000 [*Ο Νόμος 3(Ι)/2000 περί Καταπολέμισης της Εμπορίας Προσώπων και περί Σεξουαλικής Εκμετάλλευσης Ανηλίκων]* prohibits sexual exploitation of young persons for profit, especially if the exploitation is accomplished through the use of force, violence, threat, or fraud, or through "abuse of power or other kind of pressure to such an extent so that the particular person would have no substantial or reasonable choice but to submit to pressure or ill-treatment" (Article 3(1)(a)). Section 3 of the Law prohibits the sexual exploitation and the abuse of children. It prohibits any trafficking of children for the purpose of their sexual exploitation or abuse. Contravention of this provision is a criminal offence punishable with

imprisonment not exceeding 20 years. Section 4 of the Law makes the use of children for the purpose of production of pornographic material and the possession, circulation and any form of trading in such material, an offence punishable with imprisonment not exceeding 10 years. Under Section 6, an accused is precluded from pleading as a defence ignorance of the age of the victim, consent of the victim possibly coupled with acceptance of remuneration, or that the law of the country where the offence was committed does not prohibit or criminalise the said act. This Law provides for the protection and support of victims of trafficking including providing arrangements for maintenance, temporary shelter, medical care, and psychiatric support. It also permits victims of trafficking to sue for civil damages. Furthermore, the Council of Ministers may appoint a "Guardian of victims" according to section 10(1), to advise, counsel, and guide victims of exploitation. The Council of Ministers by its decision No. 52.203 has appointed the Director of the Social Welfare Service as the Guardian.

The Obscene Publications Law [Law No. 35(I)/1963] as amended by Laws 53/76, 13/91 and 95(1)99, prohibits any publications of obscene material, as well as the selling, importing or exporting of such material. Any contravention of this is an offence punishable with two years imprisonment and/ or a fine not exceeding £1500.

The Protection of Witnesses Law of 2001 (Law 95 (I)/2001 contains specific provisions for the protection of "vulnerable witnesses", a term that includes any person under the age of 18. The Court before which any proceedings involving a minor take place, is empowered to take a number of measures for the protection of such minor involved, like ordering exclusion of the public from the courtroom and the giving of the child's testimony in circumstances which allow the child not to face the accused.

"Trafficking in persons is recognised by the law irrespective of the consent of the victim to the offence, the receipt of any financial consideration or other reward for the act, knowledge of the actual age of the victim, or the fact that the act has taken place in whole or in part in a country where the act does not constitute the offence." *A Human Rights Report on Trafficking of Persons, Especially Women and Children March 2002*

Reasons for concern

"Trafficking was recognised as a problem in Cyprus in the early 1990s when thousands of Asian women were lured to Europe by the promise of high-paying legitimate jobs and were then forced into prostitution. Many of these young girls were flown first to Cyprus, where their papers for entry into Europe were illegally arranged. From there, networks placed the young women in several European countries. Thus, Cyprus developed into not only a country of destination, but also a country of transit for women forced into prostitution elsewhere. " [A Human Rights Report on Trafficking of Persons, Especially Women and Children March 2002.]

In Cyprus most night-clubs employ foreign women as dancers. The Government allots each cabaret a quota of 3-month, renewable work permits for that purpose. At present Cyprus has about 76 cabarets, 31 night spots and 987 foreign artists, mainly from Russia, the Ukraine, Bulgaria and Belarus. A loophole in the current legislation means that the problem of prostitution and trafficking in women is also extended to the island's 860 pubs which can each employ two foreign waitresses. Records of the Immigration Department appear to indicate that at least 5% of foreign women working in Cyprus are forced into prostitution by their employers. In such cases employers are obliged by law to repatriate foreign girls at their own expenses, and in cases of written complaints they are prosecuted and appear before the Court.

As reported in the press, the Human Rights Commissioner of the Council of Europe at his visit in late June 2003 expressed his deep concern at the large number of cabaret girls working in Cyprus compared to its population.

CHAPTER II : FREEDOMS

Article 6. Right to liberty and security

National legislation, regulation and case law

Article 11 of the Constitution provides that:

"Every person has the right to liberty and security of person."

Derogation from this right is allowed in the following situations:

1. for the detention of a person after conviction by a competent court;
2. for the arrest or detention of a person for non-compliance with the lawful order of a court;
3. for the arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
4. for the detention of a minor by a lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
5. for the detention of persons for the prevention of spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
6. for the arrest or detention of a person to prevent him effecting an unauthorised entry into the territory of the Republic or of an alien against whom action is being taken with a view to deportation or extradition.

Only in the case of a flagrant offence punishable with imprisonment a person may be arrested without the authority of a reasoned judicial warrant issued according to the formalities prescribed by the law. Every person arrested shall be informed at the time of his arrest in a language which he understands of the reasons for his arrest and shall be allowed to have the services of a lawyer of his own choice. The person arrested shall, as soon as is practicable after his arrest and if not earlier released, shall be brought before a judge not later than twenty-four hours after the arrest.

The judge before whom the person arrested is brought shall promptly proceed to inquire into the grounds of the arrest in a language understandable by the person arrested and shall, as soon as possible and in any event not later than three days from such appearance, either release the person arrested on such terms as he may deem fit or where the investigation into the commission of the offence for which he has been arrested has not been completed remand him in custody. The judge may remand the accused in custody for a period not exceeding eight days at any one time provided that the total period of such remand in custody shall not exceed three months of the date of the arrest on the expiration of which every person or authority having the custody of the person arrested shall forthwith set the accused free.

Any decision of the judge under this paragraph shall be subject to appeal. Every person who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court. The Court can order his release if the detention is not lawful. Every person who has been the victim of arrest or

detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

Habeas Corpus Case Law:

In *Ignor Martinenko (Application No. 61/2002)* the Supreme Court examined the issuing of a habeas corpus order. Mr. Martinenko was of Ukranian origin and had a Greek passport. He was arrested following an arrest warrant issued by the Court, in order to extradite him for offences committed by him whilst being in Ukraine. Mr. Martinenko claimed that he was detained in remand illegally; Mr. Martinenko argued that his detention of more than 8 days amounted to an infringement of his rights. This act, Mr Martinenko claimed, violated Article 11.6 of the Constitution. It was held by the Supreme Court that article 11.6 is not applicable to cases of arrest but instead it applies to cases of arrest for questioning so as to assist the interrogation procedure. The Court relied on Article 16 of the European Convention on Extradition (as ratified by the Law N95/70). It was held that the detention period ordered by the Court was lawful and the application was rejected.

In *Essa Murad Khlaieff v. The Republic [14 October 2003]*, the Applicant had been continuously detained for four months, for the pupose of his deportation. The Applicant claimed that the provisions of Article 11 (6) of teh Constitution should be applied equally in cases of detention for deportation purposes. The Supreme Court held that detention for the purpose of deportation cannot be infinite but must be limited to a reasonable period, taking into account the specific circumstances of each case. Any prolongation of such detention beyond such period necessary, would be contrary to the spirit of Article 11 of the Constitution. It was held therefore that the Supreme Court acquires the power to challenge the legality of a prolonged detention for the purpose of deportation. Such power can only be exercised and be effective within the context of a habeas corpus application. [*for further details see paragraph (13) Article 19*]

Application for Provisional order for release of alien detained for deportation until issue of judgement on the Article 146 (1) Application:

In *Eissa Khalif v. The Republic Case 802/2003/18.9.2003*, the Supreme Court rejected the application for provisional order for the release of the Applicant from the Central Prisons until the completion of his Application under Article 146 (1) of the Constitution, questioning the legality of his arrest pending his asylum application. It was held that no flagrant illegality was established in the actions of the administrative authorities. The Applicant was arrested and detained with the purpose of his deportation, by virtue of the rejection of his asylum application. Thus, no flgrant illegality being succesfully established, no provisional order could be issued. The Supreme Court by way of obiter dicta stated that the grant of the requested provisional order would effectively mean the grant of a residence permit by the Court, which would involve the Court acting as an administrative organ, something definately outside the scope of its powers.

Imprisonment for debts:

The current relevant legislation provides that a citizen for whom an imprisonment order is made by Court upon his inability to repay his debts, may apply to the Court, using legal aid where the relevant conditions are satisfied, to arrange for the repayment of his debts by instalments according to his capabilities.

Law No. 134 (I)/1999 amending the Civil Procedure Law had introduced new ways of execution of decisions regarding civil debts and amended the Court's examination procedures of judgement debtors. Non payment of the relevant monthly instalments as set up by a Court can result in imprisonment of the debtor.

The prospect of imprisonment of a debtor due to his/hers inability to arrage for payment of the fixed monthly instalments, poses issues of compatibility of the said law with Article 11 of the International Covenant of Civil and Political Rights and Article 1 of Protocol No. 4 of the European Convention of Human Rights that lay down the prohibition of deprivation of liberty on the ground of inability to fulfil a contractual obligation. It is understood that in the States that have ratified Protocol No. 4 of the ECHR, the Courts will not be allowed to give an order for imprisonment, merely on the ground that the person in question is unable to pay a debt or to meet some other contractual obligation.

Ther procedure laid down in Law No. 134 (I)/1999 provides the judgement debtor with the right of examination by a Court of his/hers fiinancial capability and settlement by a Court Order of the amount of the monthly instalments for the repayement of the debt. The said Law also provides for the procedure of obtaining from a Court annulment, suspension, or amendement of the order for payment by monthly instalments, when the relevant circumstances regarding the capability for repayment of the debtor have been altered.

The Court order for imprisonment is issued only in the case of delay in payment of more than 3 monthly instalments and when the debtor is unable to reasonably justify the said delay.

In practice, until recently, suspension of the imprisoment order was provided for by the President of the Republic, in light of the concurrent opinion of the Attorney General of the Republic. The abandoning of the said pratice may give rise to an acknowledged problem of possible incompatibility with the human rights obligations of the Republic.

In this context Law No. 58 (I)/2003 was enacted, amending the Civil Procedure Law Chapter 6. It purports to provide the debtor with an additional oppotunity in case of non ability for payment of the fixed instalments to have a Court review of the possible existing reasons justifying non execution or suspension of the imprisonment order. Law No. 58 (I)/2003 provides that: Article 91 of Chapter 6 is to be amended so as to include the following:

> « A Court order or an arrest warrant can at any time after it has been issued, be suspended, amended or annulled, upon an application to this effect by a debtor if it is proven that his financial situation has changed since the date of issue of the latest Court order for monthly instalments or arrest warrant, resulting in his inability to pay the amount prescribed by the order or warrant, or if any other reasonable cause justifying suspension, amendment or annulment is proven. »

Section 2 (3) of the same article provides that pending decision on such an application, the debtor may ex parte apply for the temporary suspension of the previous order or warrant.
The Court may upon filing of the relevant application, amend the issued order, if satisfied that the financial situation of the applicant has significantly changed since the date of its latest examination, resulting in the applicant's inability to pay the instalments predetermined by the Court in its relevant order.

By virtue of Law 58 (I)/2003 and the Legal Aid Law No. 165 (I)/2002 it is possible for the debtor to facilitate such an application with legal aid.

Also it is now possible for the Court to decide that other orders including imprisonment orders concerning the same debtor be joined in the said application, so that they can all accordingly be suspended or amended.

The above amendment does not abolish the sentence for imprisonment for inability to repay debts. It merely establishes a safety valve so that the debtor can apply for re-examination of his case and revision or suspension of the imposition of the imprisonment sentence.

The new amendement is expected to be challenged for its compatibility with Article 11 of the ICCPR and Article 1 of Protocol No. 4 of the ECHR, since it does not substantially alter the possibility of imposition of imprisonment for inability to repay civil debts.

In accordance with the Prison Regulations 121/97 imprisoned persons for civil debts, regardless of their actual sentence, are to be held in the Open Prison if no opposing safety or discipline related concerns exist.

Practice of national authorities

Related to the aforementioned rights guaranteed by the Constitution, are the Police Regulations [Αστυνομικές Διατάξεις] which regulate the powers of the Police during arrest and investigation, underlined by their duty to respect the fundamental human rights of the suspects, especially the right of liberty and security.

Special arrangements can be provided for by the Chief of the Police for the protection of dangerous detainees held at the Central Prisons in Nicosia.

Upon the examination of a detained in remand, no visits are allowed by unauthorised persons. According to Section 6, paragraph 1 of Police regulation No.3 the rights of detainees on remand include that every detainee on remand must be provided with reasonable facilities for communication with a relative (or friend in cases where there are no relatives) or with a lawyer, regarding urgent family affairs that are related to the detention or the settling of the detainees defence.

Aliens who are arrested or detained on remand, are to be allowed to communicate immediately with the relevant embassy or consulate representative of the alien's country, regarding the detention with a telegraph or a telephone, or to be visited by a representative of the relevant Embassy or consulate, discuss in private and arrange legal representation.

If a detainee wishes to be examined by a doctor all reasonable steps must be taken in order to make sure that a government doctor visits the detainee. If the detainee wishes to be examined by a private doctor, permission is granted.

According to publications [Simerini Newspaper, page 1, 11/7/2003] the President of the National Human Rights Organisation stated that the State is in violation of its human rights obligations, by detaining convicts that should have been released long ago.

According to the Aliens Law, Cap. 105, no foreigners are detained in the Republic except where deportation and detention orders are issued against them. In such cases they are detained wither in police detention centres or in the Central Prisons in Police Custody in Block 10. There are no specific detention centres for detaining foreigners without legal status. Such persons, are declared « wanted » by the Police and when located and arrested for illegal stay into the Republic, deportation and detention orders are issued against them. Foreigners detained for deportation are held in the Central Prisons under Police Custody in Block 10.

Reasons for concern

The Council of Europe Commissioner for Human Rights Alvaro Gil Robles upon his visit to Cyprus in June 2003 emphasised that the illegal entry of an alien is an administrative violation and recommended that there should be a legislative amendment to the existing law.

The Commissioner has emphasised the need to have a reception centre as well as a detention centre. The Commissioner also noted that the asylum seekers whose applications have been

rejected, should not be kept at the Central Prisons since they are not criminals [Sunday Mail Newspaper, 29/06/2003].

It must be noted that at present, foreigners kept for deportation are kept in police custody; persons detained for the purpose of extradition are kept in custody in the Central Prison, following an order to this effect by a Court.

Recent newspaper publications [Phileleutheros Newspaper page 32, 19/12/2003] state that the new procedure that has been applied with the amendment of the relevant legislation concerning debtors, has failed since imprisonment of debtors continue. There is emphasis on the fact that the President of the Republic has expressed his concern about the continuing existence of the imprisonment sentence for debts. On the 18th of December 2003 there were 29 persons in prison due to their inability to repay their debts, which results in intensifying the effect of overcrowding in the Central Prisons as well as in the exposure of the Republic internationally, since such imprisonments necessarily involve violation of international human rights obligations undertaken by Cyprus.

It has been reported [Politis Newspaper, page 36, 19/12/2003] that the Minister of Justice and Public Order has stated that the relevant amendment has been successful since had it not been made the persons imprisoned due to their inability to repay their debts would be 130 instead of 30 that are currently being held, while he admitted that there are definitely grounds for improvement. The Deputy Attorney General has stated his dissent with the current practice of the relevant authorities, while the Law Commissioner has indicated that the recent amendment was restricted by time shortage and that it needs further improvements since it has not been satisfactorily effective. It is expected that Mr. Alvaro Robles has suggested that further amendment of the relevant legislation is necessary. More information on this will be available after the release of the said Report that remains currently unavailable.

Another issue that raises concerns about the compatibility of the applicable system within Cyprus, with its international human rights obligations, is the lack of a parole board examining the individual cases of life detainees with the prospect of their release, after the expiration of the "tariff" period of their sentence. According to Article 53 (4) of the Constitution, the President of the Republic shall, on the unanimous recommendation of the Attorney General and the Deputy Attorney General of the Republic, remit, suspend, or commute any sentence passed by a court in the Republic. It seems that any attempt towards the establishment of a parole board, would necessitate an amendment of the Constitution of the Republic, which is considered unlikely according to the current stand of the Government and the Attorney-General of the Republic, who consider any amendment of the Constitution as unnecessary.

Currently, 'life sentence' effectively implies the imprisonment of the detainee for the rest of his life. At the momment 12 prisoners for life are held in the Central Prisons of Nicosia. While under the current applicable legislative scheme, they are going to be kept imprisoned for life, at the time of the imposition of the sentence on some of them, life sentence constituted in effect imprisonment for 25 years only. It is reported that there is at least one prisoner for life that the date of his expected release under the previous legislation has approached, while due to the change in the applicable scheme, he cannot be released. This issue poses serious concerns about the compatibility of this practice adopted under the current legislative scheme, with both the Constitution of the Republic and the European Convention of Human Rights, and remains to be challenged before national courts.

The Ministry of Justice and Public Order, within the context of its competence for the formation of the reformation policy, is currently examining and re-evaluating the legal framework surrounding the life sentence. A thorough examination has been undertaken of the corresponding approach of other Member States of the Council of Europe.

Article 7. Respect for private and family life

National legislation, regulation and case law

Article 15 of the Constitution provides that every person has to the right for his private and family life to be respected. Derogation from this right can only be called for the interest of national security, constitutional order, for public health and security and for the protection of the human rights and freedoms guaranteed under the Constitution.

The new Marriage Law, Law 104 (I)/2003, has repealed the existing two laws regulating Civil Marriages between Cypriots and Foreigners. According to this law, everyone is now able to conduct a civil marriage regardless of nationality and religion. It is worth noting that also Turlkish Cypriots are now able to conduct civil marriage with Greek Cypriots or other foreigners.

Law 120 (I)/2003 facilitates the implementation of the Marriage Law as regards Turkish Cypriots.

Surveillance of telephone conversations:

> " The Minister of Justice and Public Order has announced (22 June 2003) that soon he will present in the House of Representatives a bill regarding the issue of permitting telephone tapping… He claims that telephone tapping is now necessary and that they should be done under certain preconditions in cases of persons with a criminal record. He also argues that surveillance of telephone conversations is an EU directive which already operates in several other European countries without it being considered as violating human rights. However, Mr. Theodorou admits that in order to allow the surveillance of telephone conversations, a constitutional amendment needs to be made as well as an amendment of the 1996 legislation… The Minister is in favour of a constitutional amendment, saying that our Constitution outbids in relation to the European Convention on human rights and on the issue of private and free communication." Charavgi Newspaper 22 June 2003. Χαραυγή, 22 Ιουνίου 2003
>
> "A bill will be prepared to allow the surveillance of telephone conversations for the protection of public interest. The people who will be under surveillance are people who are related to organised crime, trafficking of drugs and terrorist organisations."
> *Χαραυγή, 22 Ιουνίου 2003, Charavgi Newspaper, 22 June 2003*
>
> "Regarding the surveillance of telephone conversations, a ratifying law of the Treaty of Palermo will be submitted in the House of Representatives, with which the Police will be allowed, after the granting of an order, to 'listen' to telephone conversations or the repression of terrorism, of illegal trafficking of drugs and organised crime."
> *ΦΙΛΕΛΕΥΘΕΡΟΣ, 14 Ιουνίου 2003, Fileleftheros Newspaper 14 June 2003*

Deportation:

Case of Ahmed Ibrahim Kedoum v Republic Judgment of 21.1.03
Through his recourse to the Supreme Court Mr. Kedoum challenged the orders for his detention and extradition that were issued by the Migration Officer in 2002 after his renewed staying permit had expired. His wife and children (one of whom was born in Cyprus) were also in Cyprus and had residence permits as visitors. Mr. Kedoum argued that the issue of the said orders by the Migration Officer were contrary to the European Convention on Human Rights and Article 15 of the Constitution, safeguarding the right for the protection of family life. He argued that the issue of the said orders in effect separated his family residing in Cyprus. It was stated that:

"The court does not intervene to exercise control on the subjective evaluation of the facts by the Administration. It only intervenes to ascertain whether the Administration acted based on a mistake of law or facts or exceeded the limits of its discretion."

The Supreme Court held that there was no violation of the right to respect of family life.

It is interesting to note that the Supreme Court observed that Mr. Kedoum's child born in Cyprus has not acquired the Cypriot citizenship. It noted that birth within the territory of the Republic does not establish in itself a right to acquire the Cypriot citizenship. A necessary prerequisite to any such acquisition is one of the parents having the Cypriot citizenship. [Law 141 (I)/2002, Article 109 (1)].

Case of Kalomira Ioannou v Republic Judgment of 28.3.2003
In 2000 Mrs. Ioannou got married to Hamind Kiani, a Muslim of Iranian origin, the marriage took place in Damask. Mr. Kiani had arrived in Cyprus in 1998 and was given a temporary residence permit for a few months. During his time in Cyprus he met Mrs. Ioannou with whom he was involved. When his permit expired he did not renew it and since that time he continued living and working in Cyprus, illegally. He was arrested and finally expelled in March 2000. Mrs. Ioanou's claim in this case was against the decision of the Migration Officer not to grant an order permitting the entry of her husband in Cyprus. The Court held that:

> "The discretion of the state to deport aliens is wide. As long as this discretion is exercised fairly, the Courts do not intervene and cannot question the decision taken… Furthermore, the marriage ceremony does not constitute sufficient evidence to substantiate the argument of interference with Mrs. Ioanou right to family life".

In view of the above the recourse was rejected.

Homosexuality:

Case No. 782/2002 of Stavros Maragos v. The Republic Judgement of 24/2/03
Mr. Maragos submitted two separate applications for certain government posts. He was informed that it was not possible to get either of the two posts he applied for due to the fact that he had not fulfilled his military obligations, and that he had not been legally exempted from them, both of which are necessary preconditions in order to be employed in the public service.

In the application to the Supreme Court to amend his legal grounds for recourse, Mr. Maragos tried to suggest that Sections 4, 7 and 8 of the National Service Laws are unconstitutional because they violate Articles 6, 8, 15, 18 and 28 of the Constitution. It was claimed that the sections mentioned above from the National Service Laws promote inequality between social groups. Mr. Maragos claimed that because he had disclosed his sexual preferences he was subjected to degrading treatment thus his rights secured by Articles 3, 8 and 9 of the European Convention on Human Rights were violated.

Mr. Maragos' application was rejected on the procedural grounds that the application raised was not related to the issue in question, which was the rejection of appointment to the post on the grounds of non fulfillment of the 2 year military service.

Practice of national authorities

In July 2003 in the Ombudsman's Report No 367/2003 in regards to the Ministry of Defence and the Police [*Έκθεση Επιτρόπου Διοικήσεως αναφορικά με το παράπονο με αρ. Α/Π 367/2003 κατά του Υπουργείου Άμυνας και της Αστυνομίας*] the Defense Ministry was requested to change the content of the discharge papers of the Applicant who was homosexual

and was denied a driving license based on a military assessment that he had psychological problems.

Although homosexuals are equally obliged to do military service in Cyprus, they have been tacitly allowed to seek an exemption, though not on the grounds of their homosexuality. Instead, it has been a standard practice in the army to grant exemptions on various psychiatric grounds, such as personality disorder or neurosis. However, such references can deny people classed in this way other basic rights such as a driving license and affects their capability for employment. The Ombudsman Report denounced this practice and asked for a change that would not discriminate against homosexuals.

Article 8. Protection of personal data

International case law and concluding observation of international organs

The Republic has ratified the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data of 1981. This Convention was signed on 25 July 1986 but only ratified on November 23rd 2001, the same day as the Processing of Personal Data Law of 2001.

The Republic has also signed and ratified by Law 30 (III)/2003 the Additional Protocol of Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data of 1981.

The Republic of Cyprus has signed two agreements on the Readmission of Persons with Unauthorised stay, the first one with the Government of the Italian Republic and the second one with the Government of the Lebanese Republic. Both of these agreements contain a specific clause protecting the communication between the two states of personal data.

Article 8 of the said agreement between Cyprus and Italy that has been ratified by Law 9(III)/2003 reads:

> "1. In so far as personal data have to be communicated in order to implement this agreement, such information may only concern the following:
>
> a) the particulars of the person to be transferred and, where necessary, of the members of the person's family (surname, forename, any previous names, nicknames or pseudonyms, aliases, date and place of birth, sex current and previous nationality);
> b) passport, identity card and other identity and travel documents and laissez-passer (number, period of validity, date of issue, issuing authority, place of issue, etc.);
> c) other details needed to identify the persons to be transferred;
> d) stopping places and itineries;
> e) residence permits or visas issued by one of the Contracting parties.
> f) in the cases covered by article 7, the place where the asylum application was submitted and the date of submission of any previous asylum application , the date of submission of the present asylum application, the present stage of the procedure and the content of any decision taken.
>
> 2. Personal data required in order to implement this Agreement, and communicated by the Contracting Parties, shall be processed and protected in compliance with national legislation on data protection.
>
> Personal data communicated may be processed only by the competent Authorities for the implementation of the Agreement. Personal data may be retransmitted to other

> Authorities only upon previous written authorisation by the Contracting Party which communicated them."

It is understood that Article 8 has to be read and interpreted within the context of the Council of Europe Convention on the Protection of Individuals with Regard to Automatic Processing of Personal Data of 1981 that is binding on both of the Contracting Parties.

In the EU 'Comprehensive monitoring report on Cyprus's preparations for membership' 2003, on page 18 the following was stated :

> « Concerning the protection of personal data and the free movement of such data, Cyprus has reached a high level of alignment. By accession, a number of provisions of the Data Protection Act need to be fine-tuned to achieve full alignment with the relevant directive including additional elements to strengthen the independence of the supervisory authority. This authority would benefit from further strengthening with additional resources, especially more staff and training, to bring it in the position to be fully operational, particularly as regards on-site inspections. »

National legislation, regulation and case law

Article 17 of the Constitution provides that "(1) every person has the right to respect for, and to the secrecy of, his correspondence and other communication if such other communication is made through means not prohibited by law" and "(2) there shall be no interference with the exercise of this right except in accordance with the law and only in cases of convicted and unconvinced prisoners, business correspondence and the communications of bankrupts during the administration of bankruptcy"

The processing of personal data is regulated by the Processing of Personal Data (Protection of the Person) Law of 2001 [*Ο Περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία του Ατόμου) Νόμος του 2001, Ν138(Ι)2001*]. The law entered into force on November 23rd 2001.

Law 138 (I)/2001 sets out the conditions which data controllers have to ensure for the legal processing of personal data and defines what kinds of processing of personal data is allowed. It also states the general principle that the collection and processing of sensitive data is prohibited but at the same time, the Law enumerates a long list of exceptions to this rule. With regard to the notification requirements concerning the operation of a record or the start of processing under the Law, it defines precisely what the data controller has an obligation to notify to the Commissioner.

The Law also provides for the right of confidentiality and security of processing. Furthermore, it states the rights of data subjects such as the right of information, the right of access to personal data, which concern them personally, the right to temporary judicial protection and the right to damages.

Furthermore, the Law provides for the appointment and the rights and obligations of the Commissioner for the Protection of Personal Data. It establishes his Office and sets out the competence, operation and decision making powers of the Commissioner. In light of the provisions of Law 138 (I)/2001, a Commissioner was appointed as of the 1st of March 2002 .
Under the general heading of sanctions, the Law provides for the administrative sanctions, which the Commissioner may impose on the data controllers for the violation of their obligations under the Law and defines the types of offences, which may be committed.

Finally, the Law provides for the issue of Regulations by the Council of Ministers for the better application of the Law, the commencement of exercise of the Commissioner's

functions which has been set for May 1st, 2001 and the entering into force of the specific subsections relating to EU Member States.

Processing of personal data in general is allowed when the person involved gives his/hers consent to such a process. However, processing of personal data is allowed even without consent of those involved, when such processing is necessary for the fullfillement of an obligation imposed by law, when it is necessary for the satisfaction of a contract clause to which the subject of the data processing is a party, when it is necessary for the protection of vital interests of the subjct of such data, when it is necessary for the attainment of public interest or within the course of actions by a public authority and when it is necessary for the satisfaction of a legal interest of the processor if that surpasses the rights of the subject of the relevant data.

There are special provisions dealing with the processing of sensitive personal data. As a general principle, processing of sensitive data is not permitted. However, provided that the right to protection of private and family life is not violated, processing of sensitive data which is carried out exclusively for journalistic purposes or within the framework of artistic expression fall within the exceptions.

The Law specifies the right of confidentiality and the duty to ensure security of processing. Additionally, the right of information, the right of access to personal data, the right to temporary judicial protection and the right to compensation are adhered to data subjects.

In the course of discharging his duties the Commissioner has to follow his conscience and the law and is under the obligation to abide by the rules on confidentiality, which covers periods after departure from the Office. Under Section 26 of the Law, persons who do not notify the Commissioner of the operation of a record which requires a permit, or undertakes the interconnection of records without notifying the Commissioner, or there is an unauthorised interference with a record of personal data by taking information, altering or destroys, will be guilty of an offence and may be punished by an imprisonment of three to five years or a fine of CY£3000 to CY£ 5000 or both in the event of infringement depending on the offence.

In 2003, the Amendment of the Processing of Personal Data (Protection of Person) Law [*Ο Περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία του Ατόμου) (Τροποποιητικός) Νόμος του 2003, Ν37(Ι)2003]* was enacted which harmonised the existing Law with article 14(b) of the Council Directive 95/46/EC which reads:
"Any person has the right to object, on request and free of charge, to the processing of personal data relating to him which the controller anticipates being processed for the purposes of direct marketing, or to be informed before personal data are disclosed for the first time to third parties or used on their behalf for the purposes of direct marketing, and to be expressly offered the right to object free of charge to such disclosures or uses".
Article 15 of the Basic Law 2001 will now read :

> 'Personal data cannot be processed by anyone for the purpose of promotion, sale of goods or supply of services except if the subject of the said data confers his written consent to the person in charge of processing.'

The Processing of Personal Data Laws provide for a general protection of personal data, without directly referring to the protection of data of the Internet users.

Practice of national authorities

Within 2003, the process of computerisation of Goverment Records was completed. This is important, in the light of Section 3 of the Processing of Personal Data (Protection of the Person) Laws of 2001 to 2003, which provides that the Law applies to processing which is

wholly or partially automated, and to non-automated processing of personal data which are included or will be included in a record.

Relevant cases before the Office of the Commissioner for Administration (Ombudsman), relates to the protection of personal data under the aforementioned Law of persons discharged from the army for health reasons.

Specifically, in Ombudsman Report No 474/2002 against the Ministry of Defence and the Police [*Έκθεση Επιτρόπου Διοικήσεως αναφορικά με το παράπονο με αρ. Α/Π 474/2002 κατά του Υπουργού Άμυνας και της Αστυνομίας*] the Applicant complained to the effect that when he was discharged earlier from the army for health reasons, the Army reported on his discharge letter the reasons citing confidential personal data on the status of his health. For this reason the Police issued a suspension order for the Applicants driving license, which under the Regulation 31 of the Vehicles and Traffic Regulations provides for the cancellation or suspension of the driving license if the health condition of the individual is deteriorating or has a disease or would be dangerous to drive. The Ombudsman found that the detailed report on the personal data of the Applicant was indeed against the provisions of the Processing of Personal Data (Protection of the Person) Law of 2001. The Report made by the Army is detrimental for the professional reinstatement since the army discharge document is required for the acquisition of employment. The Ombudsman asked both the Ministry of Defence to revise the discharge document of the Applicant and the Police to revise its decision to suspend the Applicants' driving license.

In Ombudsman Report No 367/2003 against the Ministry of Defence and Police [*Έκθεση Επιτρόπου Διοικήσεως αναφορικά με το παράπονο με αρ. Α/Π 367/2003 κατά του Υπουργείου Άμυνας και της Αστυνομίας]* the facts were similar to the above case except that the Applicant was a homosexual. This sexual orientation was not the reason for his early discharge from the Army as being unfit to serve, but it was reported on the disc hare document. The Ombudsman decided that this information along with personal data on the status of his health were illegal and unnecessary. The Ombudsman though noted that at the time the Ministry of Defence was is in the process of amending the discharge document given by the Army so as not to record any personal data.

Article 9. Right to marry and right to found a family

International case law and concluding observation of international organs

Case of Selim v. Cyprus, Application no. 47293/99 before the European Court of Human Rights.

The case originated by an application lodged against the Republic of Cyprus by a Cypriot national, of Turkish Cypriot origin, Mr Kemal Selim. The Applicant complained that he had been denied the right to marry and found a family, as there was no possibility under the Marriage Law as it then was, allowing Turkish Cypriots to conduct civil marriage.

The Applicant sent a letter through his lawyer to the Municipality of Nicosia informing it that he wished to conduct a civil marriage with a Romanian citizen. The Municipality informed him that Section 34 of the Marriage Act did not provide for the possibility for a Turkish Cypriot professing the Muslim faith to contract a civil marriage. The Applicant was thus forced to marry in Romania without his family or friends being able to attend. The Applicant applied to the European Court of Human Rights, claiming a violation of Articles 8, 12, 13 and 14 of the Convention. The Government settled the case through the friendly settlement procedure of the Court.

This Case prompted the Government to introduce the new Marriage Law [L.104 (I)/2003] and the Application of the Civil Marriage Law 2003 to the Members of the Turkish Cypriot Community Law 120 (I)/2003. Under these provisions every person regardless of origin, nationality or religion can conduct a civil marriage.

National legislation, regulation and case law

Article 22 of the Constitution safeguards the freedom to marry and the right to found a family.

Practice of national authorities

Homosexual marriages and 'Homoparentality' in Cyprus:

The results of the EOS (European Omnibus Survey) after conducting 15,074 interviews from the 21st to the 27th January 2003 among citizens of 30 European countries through its network of local institutes indicate a reluctance among the majority of Cypriot population to accept the authorisation of homosexual marriages and homoparentality.

The approval of homosexual marriages

	Absolutely agree	Rather agree	Rather disagree	Absolutely disagree	Agree	Disagree	
Cyprus	4%	5%	4%	76%	10%	9%	81%

In general "citizens of candidate countries appear more reluctant to accept the authorisation of homosexual marriages." Indeed, "Cyprus appears to be the country most opposed to homosexual marriages since only 9 (of the population indicate being in favour of its authorisation, while 81% disagrees (of which 76% absolutely disagrees)." *(EOS Gallop Europe)*

"Religion is another discriminating factor towards homosexual marriage. Throughout Europe, non-believers appear to be the most tolerant towards this sort of matrimonial alliance." *(EOS Gallop Europe)*

Cyprus being a country where Orthodox Christian religion features strongly, attitudes towards authorisation of homosexual marriages are not, for the time being, particularly promising.

In addition, as far as the authorisation of child adoption by homosexual couples is concerned, "only 6% of Cypriots agree with this idea while 84% are opposed." Once more religion is also a determining factor as far as this is concerned since "Christians remain more reluctant to accept the authorisation of child adoption by homosexual couples (38% disagree and 34% agree)." *(EOS Gallop Europe)*.

Reasons for concern

Section 3 (1) of The Marriage Law 104 (I)/2003 provides that 'marriage' for the purposes of this law means the agreement towards the union in marriage concluded between a man and a woman and executed by a Marriage Officer or by a Registered priest according to the Regulations of the Greek Orthodox Church or of the dogmas of the recognized by the Constitution Religious Groups. The religious groups recognized by the Constitution are the Latins, the Armenians and the Maronites.

By virtue of Law 120 (I) of 2003 providing for the application of the Marriage Law 2003 to the Turkish Cypriot Community the provisions of the Turkish Family Law (Marriage and Divorce) Law (Cap.339) and the Turkish Communal Courts Law are suspended due to the "irregular situation" created by the Turkish invasion of 1974. In their place the provisions of Law 104 (I) of 2003 shall apply.

Consequently, the members of the Turkish Cypriot community are exposed, since a vacuum exists in regards to the execution of valid religious marriages within the area of the Republic of Cyprus.

This issue is expected to be examined in the rear future by domestic courts.

Article 10. Freedom of thought, conscience and religion

National legislation, regulation and case law

Article 18 of the Constitution of the Republic of Cyprus safeguards the right of freedom of thought, conscience and religion. In accordance with the Constitution all religions are equal before the law, and all religions are equally respected and protected as long as their doctrines or rites are not secret. Article 18, also affords the right to every person, individually or collectively, and whether in private or in public, to profess his/her faith amd to manifest his/her religion or belief, in worship, teaching practice, or observances, and to change his/her religion or belief.

According to Article 138 of the Penal Code, any person who destroys, damages or defiles any place of worship or any object which is held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, is guilty of misdemeanour.

According to Article 149 of the Penal Code, any person who, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes sounds in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, is guilty of misdemeanour and is liable to imprisonment for one year.

According to Article 142(1) of the Penal Code any person who publishes a book or pamphlet or any article or letter in a newspaper or periodical which any class of persons consider as a public insult to their religion, with intent to vilify such religion or to shock or insult believers in such religion is guilty of misdemeanour.

The issue of secret religion arising from Article 18 of the Constitution has not been recently dealt with by Courts.

It has to be noted that Cyprus is an island where religion and its institutions are remarkably influential in the society and by extend this is rooted in the law. The main religion on the island is Christian Orthodox for Greek Cypriots and Muslim for Turkish Cypriots.

Reasons for concern

As noted in the "Report on Measures to combat discrimination in the 13 Candidate Countries (VT/2002/47)" of 2003, in the Country Report on Cyprus, at page 4:

> "Protection from religious discrimination is provided for by the constitution and courts have regularly made declarations to this effect. However rigorous bi-communalism of the Republic, the role of religion in the educational system and the recognition afforded to the 'established' religious groups showed little societal

> tolerance for any other religions, particularly those religions engaged in proselytising. Jehovah's Witnesses in particular have been in the past target of discrimination. …According to the Human Rights Without Frontiers (HRWF) International Secretariat (Date 03/08/2002) Cypriot authorities have started again to prosecute conscientious objectors who refuse to perform reservist exercise, who happen to be Christian Jehovah's Witnesses. Already some of them have been convicted and are facing the possibility for imprisonment."

Article 11. Freedom of expression and of information

International case law and concluding observation of international organs

Cyprus has signed the European Convention on Transfrontier Television on the 1st January 2003. According to the Convention, circulation of television programmes should be transmitted "freely and unhindered" in the Member States of the Council of Europe. The principles governing the application of the Convention secure freedom of expression and information.

National legislation, regulation and case law

The Constitution of the Republic of Cyprus guarantees under Article 19 the freedom of expression and information. Section 3 of Article 19 permits restriction or penalties from this right only if it is necessary for upholding the interests of national security, constitutional order, public safety, public order, public health, public moral and the protection of reputation or rights of others. Confidential information is also protected.

Freedom of expression of the press has been claimed in a number of defamation law cases where different newspapers wrote articles criticising politicians and their acts. The Courts have attempted to draw the line between what constitutes freedom of the press and when that freedom has to be limited so as to safeguard the human rights of the individuals the press is scrutinising.

In the recent case of *Alithia Publishing Co and Alecos Constantinides v Andreas Aloneftis*, judgement on appeal dated 29/11/2002 [*Αλήθεια Εκδοτική Εταιρεία Λτδ, Αλέκου Κωνσταντινίδη ν. Ανδρέα Αλωνεύτη* ΠΕ Αρ. 10703] an article published in "ALITHIA" in regards to unsubstantiated acts of the Minister of Defence concerning national security matters and an allegation that the Minister had received certain benefits in consideration of certain sales of arms to the Republic. The Defendants relied on freedom of expression and qualified privilege as a defence which failed and the Court when awarding damages decided the sum of £30,000 and also added £5,000 as punitive damages. The above was affirmed by the Court of appeal citing the right to dignity but the case is now pending before the ECHR alleging violation of Article 10 in that the qualified privilege defence had not been taken into account.

In another recent case *Antenna Ltd v The Radio and Television Authority* [*Αντέννα Λτδ ν. Αρχής Ραδιοτηλεοπτικού Σταθμού* ΠΕ 99/2002], judgment on appeal dated 03/10/2002, freedom of expression was examined in a different context. A private television station broadcasted political advertisements during the election period. The publicly owned Television station objected to this claiming that it was against regulation 8 of the Regulations on Radio and Television Stations 2000 [Ο Περί Ραδιοφωνικών και Τηλεοπτικών Σταθμών Κανονισμοί 2000]. The Court decided that the right to advertise is part of the right of freedom of expression and went on to essentially decide that if a secondary legislation violates human rights as protected by the Constitution and Conventions, the issue will always be resolved in favour of the human rights of the individual.

Practice of national authorities

In December 2003, upon a decision by the Radio and Television Broadcasting Authority, the broadcasting of 'Sigma' television station was suspended for five minutes as a penalty for breaches of the relevant Broadcasting legislation.

Article 12. Freedom of assembly and of association

National legislation, regulation and case law

Article 21 of the Constitution provides for the freedom to peacefully assemble and freedom of association. Everyone has the right to form or be part of a trade union so as to protect his rights. Restriction of enforcement of this right may be claimed for reasons of national security, order, health and of protection of other human rights included in the Constitution. No person shall be forced or harassed to join a trade union, as prescribed by article 21 of the Constitution and articles 45 and 50 of the Trade Unions Law 1965 to 1996 [*Ο Περί Συντεχνιών Νόμος*]. Article 44 of the Trade Unions Law provides the right for the members of a trade union to be involved in a trade dispute and to peacefully safeguard the rights of the individual involved in a trade dispute.

Article 27 of the Constitution of the Republic of Cyprus secures the right to for strike.

Practice of national authorities

In 2002, the Industrial Relations Service has been involved in the mediation of 1763 labour disputes, compared with an average of 203 disputes per year over the five previous years.
The Service mediates in about 350 such cases annually out of which approximately 90% are resolved without a strike. Twenty-three strikes took place and as a result 7019 workdays were lost, compared with an average of 18 strikes and 9028 workdays per year respectively, over the previous five years. The most serious strikes in relation to workdays lost were the strike of the Wood Manufacturing Industry (2100 workdays lost), the Urban Buses strikes (2 strikes and 300 workdays lost), Electricity Authority strike (2000 workdays), JCC strikes (2 strikies and 575 workdays lost) and Exon Mobil strikes (4 strikes and 962 workdays lost).

In 2002 the Trade Union Registration Service received 194 annual returns from the Trade Union Organisations for inspection. It issued 71 certified copies of documents that are kept in the Registration Service, whilst 261 file inspections also took place. The Service has also dealt with 143 complaints of notifications referring to changes of officers and 7 notifications referring to changes in the headquarters address.

Article 13. Freedom of the arts and sciences

International case law and concluding observation of international organs

The Republic has signed and ratified an agreement with the government of Iran for Co-operation in the fields of culture, education and science. This agreement was signed on the 2nd of July 2002 and was ratified by Law 26 (III)/2003.

The Republic has also signed on the 19th of July 2002 an agreement with the Government of the Lebanese Republic concerning cultural education and scientific co-operation. This agreement has been ratified by Law 27 (III)/2003.

In the EU Comprehensive monitoring Report on Cyprus's preparations for membership, 2003, it was stated:

> "Due to its specificity, the acquis in the field of science and research does not require any transposition in the national legal order. However, the necessary implementing capacity needs to be created to allow for effective participation in activities under the Framework Programmes in the field of research. Cyprus has met the commitments and requirements arising from the accession negotiations in the area of science and research and will be in a position to implement the acquis as from accession."

National legislation, regulation and case law

'*Law providing for the creation of a Committee of Fine Arts*' [*Νόμος που προνοεί για τη σύσταση επιμελητηρίου καλών τεχνών*] N29/99, currently pending before the Parliament, purports to establish a Committee that will oversee matters related to artistic freedom and expression. The Bill when enacted into law is expected to provide for the rights of artists and the promotion of art and creativity in the Cypriot society.

Article 14. Right to education

International case law and concluding observation of international organs

Cyprus has signed and ratified the International Covenant of Civil and Political Rights on 19/12/1966 and the International Covenant of Economic, Social and Cultural Rights on 03/01/1976. The European Social Charter has been signed on 22/05/1967 and ratified on 07/03/1968. Furthermore, the government has signed and ratified the Convention on the Rights of Child on 09/03/1991 as well as the Optical Protocol on the sale of children, child prostitution and child pornography on 08/02/2001.

The Committee on the Rights of the Child (33rd session, 06/06/2003) has noted in relation to articles 28, 29 and 31 of the Convention the following:

> "…the State party (Cyprus) accords utmost importance to education and is encouraged by the high enrolment ratio, increase in pre-primary education as well as international cooperation in this area. However, the Committee is concerned by the broad scope of special schools which are intended for children with physical, mental or emotional needs, which inter alia is not conclusive to their integration into mainstream schools" [33rd session, Committee on the Rights of the Child, 06/06/2003].

Vocational training is offered free of charge by the Counselling and Career Education Service a body within the Ministry of Education and Culture. It is also given by the Vocational Guidance Services a body within the Ministry of Labour and Social Insurance. In the 14th Report of the European Social Charter, 2003, it was reported that the total number of secondary and higher education students benefiting from individual or group guidance in the reference period amounted to 129 338. Furthermore, the report notes that the number of secondary students assisted increased to 26.3%. The report states that access to vocational guidance is free of discrimination to race, colour, religion, language, sex, national or ethnic origin.

The Committee on the Elimination of Racial Discrimination, CERD/C/384/Add.4 Suppl. 17 May 2002, para. 20 noted:

> "The National Institution for the Protection of Human Rights addressed a written request to the Ministry of Education to include in the lesson on Human rights or History a special reference to the history and culture of the countries from which the

> major groups of foreigners staying and working in Cyprus come. It is the firm belief of the Institution that when people become acquainted with the history and culture of a country, especially at a young age, they understand better and respect more the people of the country."

Within the EU Comprehensive Monitoring Report 2003, it was stated that "in the area of education of children of migrant workers, due implementation of the acquis needs to be ensured."

National legislation, regulation and case law

Article 20 of the Constitution provides that everyone has the right to education and everyone has the right to provide the education according to the regulations of each community. Parents may choose to send their child to school affiliated with their religious believes.

The right to education is also safeguarded by Articles 86-109 of the Constitution, which refer to the establishment and functioning of the Communal Chamber, the powers of which were transferred in 1965 to the Ministry of Education and Culture.

Pre-primary, primary and secondary education is free and compulsory for all persons up to the age of 15 irrespective of their race, colour, religion or group of origin.

The right to establish and operate private schools is also safeguarded, while the private educational system covers all stages of education.

Government grants are available for third degree level education both domestically and internationally based on the *Law for the Granting of Special Scholarships of 1996 to 2002[O Περί Παροχής Ειδικών Χορηγιών Νομός 1996 – 2002]*.

Practice of national authorities

Children belonging to religious groups or communities, such as Turkish Cypriots, Maronites, Armenians and Latins, are assisted by the State to attend private schools of their choice. This is effected by decisions of the Council of Ministers, which are reviewed periodically to increase the amount of financial support. The State thus covers all fees of Turkish-Cypriot pupils whose families reside in the areas controlled by the Government, and who attend private schools of elementary and secondary education. It also subsides the tuition fees for students of pre-primary, primary and secondary education who belong to the religious groups of Maronites, Armenians and Latins.

According to the Cyprus Supplementary Report to the Second Periodic Report on the Implementation of the Convention of the Rights of the Child, 21 May 2003, the Government grants "the amount of £120 per year for every Maronite, Armenian, and Latin student who attends schools of pre-primary education; the amount of £500 per year to every Maronite or Latin student who attends primary education at the private schools of "Terra Santa" and "St. Mary's" and the amount of £900 per year to every Armenian, Maronite and Latin student who attends a private secondary education school at the "Melconian Educational Institute" and "Terra Santa College" and £700 at St. Mary's School".

The Government financially assist the religious groups and communities to operate their own schools, for example the Armenians have their own primary schools which are fully funded by the State. The Maronites who have lost control over their educational establishments that are situated within the control of the Turkish Military Forces, have acquired as of this year a new elementary school named "Saint Maronas School".

Higher education is available in principle to everyone that satisfies the entry requirements that are based on examination results. The teaching languages of the University are Greek and Turkish. The fact that the English language does not constitute a teaching language seems to hinder persons who do not master either the Greek or Turkish language from taking benefit of the University, and especially children of immigrants or other foreigners resident in Cyprus.

Article 15. Freedom to choose an occupation and right to engage in work

International case law and concluding observation of international organs

Cyprus is a member to the European Social Charter that safeguards the Right to work.

A number of European Directives have been implemented into national legislation by the Parliament. Such Directives include:

Directive 1999/70/EC; implemented by 'Law Forbidding the detrimental treatment of part-time employees' [Ο Περί Εργοδοτουμένων με Εργασία Ορισμένου Χρόνου (Απαγόρευση Δυσμενούς Μεταχείρισης) Νόμος του 2003 Ν98(Ι)2003], and by an amendement to the 'Law on the Termination of Employment' [Ο Περί Τερματισμού Απασχολήσεως (Τροποποιητικός) Νόμος του 2003]
Directive 391/89/EC ; implemented by 'Law on security and health in the work environment' [Ο Περί Ασφάλειας και Υγείας στην Εργασία Νόμος]
Directive 93/104/EC and Directive 2000/34/EC implemented by the 'Law on the organisation of working hours of 2002 [Ο Περί Οργάνωσης του Χρόνου Εργασίας Νόμου του 2002] and by the Law on Working Hours of 2003 [Ο Περί Ωρών Απασχολήσεως Νόμος του 2003]

National legislation, regulation and case law

Article 25 of the Constitution safeguards the right to engage in any profession and to choose any occupation, trading or any profitable employment.

Third country nationals wishing to enter the Republic for work, need to obtain in advance a work permit before their arrival in Cyprus. For the necessary permit to be given to a third country national a contract of employment in Cyprus has to be obtained prior to their arrival. [Regulation 7 of the Regulations in Immigrants and Immigration 1972 –2001]. In case of termination of the first employment, a third country national is allowed to seek alternative employment until the expiry of his/hers visa.[Ο Περί Αλλοδαπών και Μεταναστεύσεων Νόμος 1960-2003; Law of Immigrants and Immigration 1960 – 2003].

The Supreme Court in its judgement in *Montanios v. The Advocates Pension Fund Administrative Council* [8 May 2003] held that restraining the right to pension conferred by Article 26 (1) of the Advocates Law, Cap.2 by setting as a prerequisite the retirement from active advocacy is not a violation of his right to engage in any profession.

Practice of national authorities

The statistics released by the PIO regarding employment rates show that the Economically Active Population in 2001 was estimated to be 315,400 persons. Registered unemployment decreased to 9,546 (3%) in 2001. Of the total number of those registered as unemployed in 2001, 5.011 or 52,5% were women; persons under the age of 30 numbered 2.278 or 22,5% of unemployment; newcomers into labour amounted to 805 or 8,4% of those registered as unemployed; 1.900 persons or 19,9% of the total unemployed were college/university graduates. From the total number of graduates of higher education for 2001, 78,8% were

unemployed up to six months, 14,4% were unemployed for six to twelve months and 6,8% were unemployed for more than twelve months.

Recent statistics on unemployment show that at the end of June 2003 there were 12,093 (3,6%) persons unemployed. The increase shown mainly lies in the sector of tourism. [Statistics Department of the Republic of Cyprus, July 2003].

A report by the Department of Social Insurance showed that in 2001 there were 29,900 (9.7%) foreign workers legally working in Cyprus.

Article 16. Freedom to conduct a business

International case law and concluding observations of international organs

Within the EU 'Comprehensive monitoring report on Cyprus's preparations for membership' (2003), it is stated :

1. « Cyprus is essentially meeting the requirements for membership in the area of banking and insurance services, the protection of personal data and the right of establishment and the freedom to provide non-financial services, and is expected to be in a position to implement this acquis by the time of accession. Cyprus should lift the remaining administrative and legal restrictions to the EU service providers upon accession, and preparations in the banking sector should be completed. »
   « Cyprus is meeting the majority of the requirements for accession in the area of investment services and securities markets, as well as in the field of information society services. In order to complete [reparations for membership, a number of major directives still need to be transposed in these areas. » [page 19]
2. « Liberalisation of the telecom, energy, air transport and postal services by 2003 has been implemented in some sectors, but remains to be put into practice in others. The enactment of new legislation aimed at liberalising telecommunications and postal services in January 2003 is a positive step forward, as is the establishment of a new regulator in this sector. Implementation, however, is slow, as decrees to ensure competition in the telecom sector are missing so far while liberalisation in air transport remains to be completed by the time of entry. For the energy sector there is a similar delay, and the opening up of the electricity market is to take place upon accession only. » [page 8]

   « In the field of the right of establishment and the freedom to provide non-financial services, Cyprus has eliminated most of the identified legal and administrative restrictions except those concerning private schools and tutorial establishments.
   In the field of financial services, Cyprus is completing the implementation of its commitments with regard to legislative alignment with the acquis in the banking sector. Among the few outstanding issues is the directive on electronic money institutions, which still needs to be enacted. Furthermore, the deposit guarantee schemes have not yet been expanded to cover foreign currency deposits as far as the co-operative credit and savings societies are concerned. Cyprus has committed itself to ensuring full application of the acquis in respect of co-operative credit institutions by the end of 2007, in accordance with the transitional arrangement it has been granted.
   [...]
   As regards the insurance sector, legislative alignement has been largely completed, although further fine-tunning is needed. Cyprus will have to make

sure that the remaining off-shore insurance companies continue under the harmonised legal framework, failing which they will have to be dissolved.

[...]

In the field of investment services and securities markets, the legislation is broadly in line, although further legislative amendements are still needed, in particular regarding the transposition of recent acquis. The law implementing the initial directive on undertakings for collective investment in transferable securities has been in force since March 2003. The proper implementation of this law should be a matter of priority, bearing in mind the well-developed market for « off-shore » investment funds which are being phased out. Moreover, the recent directives in this field still need to be transposed. The same applies to the directive on financial collateral. The capital adequacy directive has not been transposed yet for investment firms. The implementation of the investment-services directive needs some further fine-tunning.

[...]

As regards information-society services, only the rules on conditional access have been transposed. The more recent acquis on e-commerce still needs to be transposed and implemented before accession. The building-up of the necessary administrative capacity for the implementation of these directives needs to be accelerated. » [page 19]

« In the field of capital movements and payments, the liberalisation of capital movements has continued and Cyprus is still on course to complete its progressive alignment by accession. Cyprus has significantly reduced the number of sectors in which foreign capital is not allowed and abolished certain thresholds (e.g. banking sector). The elimination of sector-specific restrictions on direct investment is stipulated for most sectors in legislation that will enter into force by accession (e.g. tourism, electricity, tertiary education), but some of these restrictions emanating from post-1993 legislation remain vis-a-vis third countries. Exchange control restrictions which remain to be abolished relate to short term foreign currecny borrowing by residents, borrowing from non-residents in Cypriot pounds, the free conversion of Cyprus pounds into foreign currency by residents and some capital transfers such as portfolio investmenmts abroad by residents other tham banks and insurance companies, foreign bank deposits and the purchase of mutual funds, insurance products, and property abroad.

In the course of the accession negotiations Cyprus was granted a transitional period which allows the maintenance of national provisions on the acquisition of residences for secondary use as in force on 31 December 2000 for a five year period following accession. » [page 20]

« With regard to company law as such, with the adoption of the amendement to the Companies Law of June 2003 to fulfil the requirements of i.a. the Second Directive (co-ordination of safeguards), Third Directive (mergers), Sixth Directive (division of public limited companies) and Eleventh Directive (disclosure requirements), legislative action has been taken aimed at completing the alignment to Cyprus commercial law with the company law acquis. » [page 20]

« In the anti-trust sector, Cyprus has adopted legislation containing the main principles of Community ant-trust rules as regards restrictive agreements, abuse of dominant position and merger control. ...Cyprus benefits from a transitional arrangement to phase out incompatible fiscal aid for off-shore companies. (international business enterprises) by the end of 2005....As

> regards public undertakings and undertakings with special or exclusive rights, certain state monopolies are still in place in the field of processing and marketing of agricultural products. These include the Cyprus potato Marketing Board, Cyprus Milk Industry Organistaion, Vine Products Commission, and Cyprus Grain Commission....In completing preparations for membership, Cyprus must continue to develop a tracl record of proper enforcement of both anti-trust and state-aid legislation.In completing preparations for membership, full alignment with the acquis still needs to be achieved for the legislation governing the existing monopolies. »

National legislation, regulation and case law

The Accession Treaty sets out rules dealing with the existing aid measures in Cyprus for the purpose of the application of Article 88 (1) of EC Treaty. Treaty Measures that do not fulfil the conditions shall be considered as new aid upon accession for the application of Article 88(3) of EC Treaty. The conditions do not apply to aid to all sectors, and various exceptions exist e.g. aid in the transport sector.

Recent Laws enacted within the context of the harmonisation procedure purport to develop further business opportunities while enabling already established businessess in Cyprus to conduct business in a more liberal market frame.

The Amendment of the Law on Regulations of Imports [Ο Περί Κανονισμού Εισαγωγών Νόμος του 2003] enacted on 12/06/2003 harmonises the Cyprus imports law with the European Law on quantitive restrictions, specifically with article 30 of the Treaty establishing the European Community.

Five Amendments on 'The Customs and Consumer Tax Law' [Ο Περί Τελωνείων και Φόρων Καταναλώσεως Νόμος 1967-2003] were voted on 10/07/2003 relating to the import and export, to and from Member States, as well as new rules on consumer tax in accordance with European Law.

Directive 2000/35/EC for dealing with delays in business transactions is implemented by the Law 73(I) 2003 enacted on the 11/07/2003 on the 'Dealing with Delayed Payments of Business Transactions and other Related Issues' [*Νόμος που προνοεί για την καταπολέμηση των καθυστερήσεων πληρωμών στις εμπορικές συναλλαγές και άλλα συναφή θέματα*], providing for the imposition of interest when there is delayed payment and possibility of injunctions and other access to court procedures.

Law 100 (I)/2003 on the conclusion of contracts in the water, energy, transport and telecommunications sectors was enacted, [*Ο Περί της Σύναψης Συμβάσεων (Προμήθειες, Έργα και Υπηρεσίες) στους τομείς του ΄ύδατος, της ενέργειας, των μεταφορών και των τηλεπικοινωνιών Νόμος του 2003*] that purports to implement Directive 92/12/EEC of 1992, Directive 93/38/EEC of 1993, Directive 98/4/EC of 1998, and Directive 2001/78/EC of 2001.

Article 17. Right to property

International case law and concluding observation of international organs

European Court of Human Rights:

Case of Nabeel Abdullah AL MULLA v Cyprus (Application 29768/96)

In this case the Applicant complained that the non-execution of a Court's judgment breached Article 6 (1) of the Convention and Article 1 of Protocol No. 1. The case resulted in a friendly settlement.

Case of Andreas GAVRIELIDES v. Cyprus (Application No. 15940/02)
The Applicant complained of the excessive length of the proceedings in relation to his property and the failure of the Government to provide the Applicant with a right of way has resulted in a impediment for his usage or development of his property, and hence complained of a violation under Article 1 of Protocol No. 1 to the Convention. The ECHR declared on 7/01/03 this part of the application inadmissible.

Case of SERGHIDES and CHRISTOFOROU v. Cyprus (Application No. 44730/98)
The ECHR held that there has been a violation of Article 1 of Protocol No. 1 in relation to his property and that the Applicant was deprived of her property without any compensation. In the judgment delivered on 10/06/2003 in respect of just satisfaction the Court decided unanimously to award the Applicant 60,000 euros (EUR) for pecuniary damage, EUR 12,000 for non-pecuniary damage and EUR 20,000 for costs and expenses concerning the infringements.

Case of Macedonia Gavrielidou and Others against Cyprus (Application no. 73802/01)
The second, third fourth and fifth Applicants complained under Article 1 of Protocol No. 1 that as a consequence of the excessive length of the proceedings and the failure of the courts to conclude the within a reasonable time, they have not been able to use or develop their property. In the admissibility decision of the Second Section of the ECtHR dated 13 November 2003 the Court declared this part of the Application admissible.

National legislation, regulation and case law

The right of peaceful enjoyment of property rights is enshrined in Article 23 of the Constitution of Cyprus. Accordingly, Article 23 (1) provides that "every person, alone or jointly with others, has the right to acquire, own, possess, enjoy or dispose of any movable or immovable property and has the right to respect for such right."

Article 23 (10) of the Constitution provides that: " Notwithstanding anything contained in this Article, no deprivation, restriction or limitation of any right provided in paragraph 1 of this Article in respect of any Vakf movable or immovable property, including the objects and subjects of the Vakfs and the properties belonging to the Mosques or to any other Moslem religious institutions, or any right thereon or interest therein shall be made except with the approval of the Turkish communal Chamber and subject to the Laws and Principles of Vakfs and the provisions of paragraphs 3, 4, 7 and 8 of this Article shall be subject to the provisions of this paragraph:

> "Provided that restrictions or limitations for the purposes of town and country planning under the provisions of paragraph 3 of this Article are exempted from the provisions of this paragraph."

According to Law 139 of 1991 'Turkish Cypriot Properties (Management and other Matters) Law' [*Περί Τουρκοκυπριακών Περιουσιών Διαχείριση και άλλα θέματα*] the responsibility for the management of abandoned Turkish Cypriot properties in south Cyprus as a result of the Turkish Invasion was delegated to "Custodian" of such properties.

The Supreme Court in the case of *Antonakis Solomonides and others v. Attorney General of the Republic, (Civil Appeal 11303, judgement of 29.9.2003)* was faced with the very interesting question of whether an interference with the rights enshrined in Part II of the Constitution that contains the Fundamental Rights and Liberties, could be justified on the basis of the dynamics of the doctrine of necessity. The Supreme Court in this case was faced

with the task of interpretation of Article 23 (10) of the Constitution and Article 2 of the Turkish Cypriot Properties (Management and other Matters) Law 139 of 1991. The Appellants had sought to challenge the compatibility with the Constitution of Article 2 of the said law. The Court of First Instance had concluded that the provisions of Article 2 were contrary to Article 23 (10) of the Constitution, but concluded that such provisions were justified by the doctrine of necessity. On appeal, the Appellants questioned the correctness of the First Instance decision, and claimed that the rights enshrined in Part II of the Constitution are absolute in nature. The relevant to this appeal provisions of Article 2 were the inclusion of Vakf property within the definition of 'Turkish Cypriot Property' and the inclusion of Evcaf within the definition of « Turkish Cypriot ».

The First Instance Court found that the measures provided for by Law 139/91 were necessary to enable the Goverment of the Republic to face the needs created by the consequences of the Turkish Invasion; such measures were not intended as a means to undermine the Constitutional order but were intended to serve such order and therefore they had to be judged in reference to the necessity that rendered their introduction unavoidable for the interests of social order. They were necessary in order to cast an impediment to the deterioration of such property and to secure its protection. The said Court went on to conclude that the Vakf property situated in the south was part of the abandoned Turkish Cypriot Property left in the south, since due to the separation of populations imposed by the occupying forces, the Turkish Cypriot Community could not have access and control over such properties. The Supreme Court agreed that the inclusion of Vakf property within the definition of Turkish Cypriot property was necessary.

The Supreme Court proceeded to examine whether the doctrine of necessity could be applied so as to suspend the fundamental rights and liberties enshrined in Part II of the Constitution, and in particular the right to Vakf property, which is not subject to any limitation in accordance with Article 23 (10) of the Constitution. The Supreme Court upheld the judgment in *Aloupas v. National Bank (1983) 1 (A) C.L.R. 55* that: *" ...when the State is faced with a calamity which has surpassed the remedial scope of a Proclamation of Emergency under Article 183 of the constitution, the State can resort to measures entailing the limitation or restriction or even deprivation of the fundamental rights and liberties guaranteed by Part II of the constitution, .. , and it can do so by virtue of the 'law of necessity' "*. Thus the Supreme Court concluded that the legislative provisions in relation to Vakf properties were justified by virtue of the doctrine of necessity. It emphasised however that the said measures did not intend to impose permanent limitations or restrictions to the rights of the lawful owners of such properties, but were temporary, for so long as necessary, for the protection of the said properties. According to the Supreme Court's judgement the said measures were absolutely necessary and commensurate to the situation that arose and had to be dealt with.

It is also important to point out the amendment by Law 59(I)/2003 to the Turkish Cypriot Properties (Management and other Matters) (Temporary Provisions) Law 139/91. (*Περί Τουρκοκυπριακών Περιουσιών Διαχείριση και άλλα θέματα (Προσωρινές Διατάξεις) Νόμος Ν59(Ι)/2003*).

An amendement was made on the Acquisition of Immovable Property (Foreigners) Law by Law 54 (I)/2003 [*Ο περί Κτήσης Ακίνητης Ιδιοκτησίας (Αλλοδαποί) (Τροποποιητικός) Νόμος του 2003*] for the purpose of rendering it compatible with Article 39, 43, 49 and 56 of the Treaty establishing the European Union.

It is worth noting that the Supreme Court in *Savvas Sioutzis v. The Republic [29.9.2003]* referred to the European Court of Human Rights decision in *Azinas v. Cyprus*, Application No.56679/00, 20th June 2002, where it was held that deprivation of other benefits of an employee due to his imprisonment is not acceptable. The Court criticised the fact that counsel

for the Appellant did not raise this issue before it, thus indicating what could be interpreted as a welcomed eagerness by the Court to analyse this issue.

Intellectual Property:

The recent developments on Intellectual Properties issues involve primarily harmonisation with European Intellectual Property Law. Within the harmonisation context and in order to protect the Unitary character of the Community Trademark and Community Design, it has been agreed at EU level to automatically extend the existing Community trademarks and Community designs to the territory of the acceding countries while taking into account prior rights existing in the acceding countries.

Patent:

The Amendment of the Patent Law 2002 *[Ο Περί Διπλωμάτων Ευρεσιτεχνίας (Τροποποιητικός) Νόμος του 2002, Ν163(Ι)2002*], adopts the Directive 98/44/EC on protection of biotechnological inventions under the patent law. It follows that patent protection will exist provided that it is a new invention, it is an inventive step and is susceptible to industrial application even if it contains biological material or a process by means of which biological material is produced, processed or used. It prohibits the patenting of plant and animals, or any processed for their production. Cloning of human beings, the modification of the germ line genetic identity of human beings and use of human embryos for industrial and commercial purposes is prohibited.

'A special mechanism was agreed with all acceding countries on industrial property rights concerning pharmaceutical products. This takes into account the fact that pharmaceutical products which are subject to patents in the EU and were marketed in the applicant countries before revised patent legislation entered into force, will remain unprotected in acceding countries due to the lack of a general retroactive clause in the revised legislation. In order to minimise potential problems resulting from this situation, a mechanism was agreed whereby the patent holder may prevent the import into the EU of a product patented in a Member State at the time when a product patent could not be obtained in acceding countries for that product. This mechanism is applicable until the expiry date of the patents concerned. As far as the Supplementing Protection Certificate Regulation is concerned (SPC- a prolongation of the patent term up to 5 years) it will be applicable for products for which the first market authorisation was obtained prior to the date of accession.'

Industrial Design:

The first legal protection of industrial design is given under the Law on Legal Protection of Industrial Designs and Models of 2002 *[Ο Περί της Νομικής Προστασίας των Βιομηχανικών Σχεδίων και Υποδειγμάτων Νόμος του 2002, Ν4(Ι)2002]*. This Law adopts the Directive 98/71/EC on the legal protection of designs. The designs and models will be registered at the Registrar office. The design has to be novel, to possess individual character and has to be registered according to the conditions set forth in the Law. The term of protection is 25 years from the date of filling.

Relevant Regulations under the aforementioned Law were also voted in 2002 for regulating the payment costs for legal protection of industrial design and models [*Οι Περί της Νομικής Προστασίας των Βιομηχανικών Σχεδίων και Υποδειγμάτων (Τέλη και Δικαιώματα) Κανονισμοί του 2002, 74/2002]*.

Copyright:

The Amendment of the Law of Intellectual Property Right and Neighbouring Rights *[Ο Περί του Δικαιώματος Πνευματικής Ιδιοκτησίας και Συγγενικών Δικαιωμάτων (Τροποποιητικός) Νόμος του 2002, N128(I)2002*], has upgraded the Cyprus Law on copyright significantly. Since Cyprus is a big market for 'pirate' products of all kinds ranging from DVD, videocassettes, games and computer programmes, the Amendment has been a great relief to copyright owners. The Amendment has adopted the Directives 91/250/EEC on the protection of computer programmes, the Directive 92/100/EC on rental and lending rights related to copyright, the Directive 93/83/EEC on coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, the Directive 93/98/EEC on harmonizing the term of protection of copyright and certain related rights and Directive 96/9/EEC on the legal protection of databases.

The penalty for violation of the intellectual property rights under this Law remains the same as before, which is the imposition of a fine of up to CY£ 1,500 or up to two years imprisonment. The problem of piracy remains, mainly due to the fact that the penalties imposed by the Law and in practice are too weak to have an exemplary effect. Even the retribution effect remains very low. But the approach adopted to relief this problem is to educate people of the existence of intellectual property rights, since it is a new concept for Cyprus, and also educate the police authorities to be able to detect the violation of these rights and prosecute in turn.

A further harmonisation with Council Regulations on issues of intellectual property rights has created the Law Controlling the Movement of Products which violate Intellectual Property Right of 2002 *[Ο περί Ελέγχου της Διακίνησης Εμπορευμάτων που Παραβιάζουν Δικαιώματα Πνευματικής Ιδιοκτησίας Νόμος του 2002, N31(I)2002]*. The following Regulations have been adopted. Regulation 3295/94/EC, Regulation 1367/95/EC, Regulation 241/1999/EC and Regulation 2549/1999/EC which lay down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods. The copyright owner must make a petition to the Customs Department to provide information of infringing products that are going to be imported.

In the Comprehensive monitoring Report on Cyprus' preparations for membership, 2003, it was stated:

> "In the field of protection of intellectual and industrial property rights (IPR), on the copyright and related rights, transposition has been completed to a large extent but still does not ensure full alignment notably on the exclusions to the rights, term of protection and exhaustion. Further, full transposition of the Directive on copyright in the information society needs to be completed.
>
> As a result of the negotiations, specific transitional rules will apply in relation to the granting of supplementary protection certificates for medicinal and plant protection products, as well as in relation to the extension of registered or pending Community Trademarks to the territory of Cyprus.
>
> As regards enforcement of IPR, administrative structures are largely in place. In order to improve the fight against piracy and counterfeiting, a task force with the participation of all services are involved (Police, Ministry of Justice and Public Order, Ministry of Education and Culture, Law Office of the Republic, Department of Customs, VAT Service, Inland Revenue Departments and Department of the Registrar of Companies and Official Receiver) was established. However, further efforts are needed especially to cope with the high level of piracy in music and video products. Staffing was increased and training has been given but there remains a need to increase overall enforcement capacity. Training in particular of judges and prosecutors needs to be intensified. Better co-ordination among enforcement bodies (in particular customs, police and judiciary) needs to be pursued.

> The Regulation replacing the Brussels Convention on mutual recognition and enforcement of foreign judgements in civil and commercial matters will be directly applicable upon accession and accession to the Rome Convention will only be possible upon accession. Cyprus has already designated the relevant courts or other authorities to ensure swift implementation of these provisions." [page 21]

Reasons for concern

The System set up by the Cyprus Government since 1991 for the management of the properties left behind by Turkish Cypriots as a result of the 1974 Turkish invasion by the appointment of a Custodian of such properties is expected to be the subject matter of litigation by Turkish Cypriots who after the partial lifting of access to the Republic, are now reclaiming their properties that are being used without their consent.

There have been various Reports of mismanagement and even unconstitutionality or breach of Article 1 of Protocol No 1 of the Convention which renders respect to the right to Property one of the most problematic areas of implementation of international objective human right standards.

Article 18. Right to asylum

National legislation, regulation and case law

The Refugee Law 2000 entered into force in January 2000, with amendments adopted in February 2002 by Law 6 (1)/ 2002 and June 2003 by Law 53 (I) /2003. Its purpose is to bring into line domestic law with the relevant international standards including those set up by the Refugee Convention of 1951 as well as the EU Asylum Acquis.

In particular it purports to implement:

> 1. Council Resolution of 30/11/1992 for manifestly unfounded applications for asylum.
> 2. Council Resolution of 30/11/1992 for harmonising the approach concerning safe 3rd countries.
> 3. Conclusions by the Council adopted on 30/11/1992 concerning countries where there is generally no serious danger for persecution.
> 4. Council Resolution of 20/6/1995 concerning minimum safeguards in asylum procedures for purposes of harmonising with Directive 2001/55/ of 20 July 2001.

In Section 7(4) it is now clearly stated that detention, on account only of the person's attribute as asylum seeker, is prohibited. Detention is allowed solely on the basis of a Court order and for the purpose of verification of the identity of person who has no travel documents or has used false documents or where an application has been dismissed and new allegations have to be investigated.

Section 11 now allows for applications to be made at the points of entry into the Republic, at any police station and at the office of the Secretary of the Refugee Authority. Detained persons are entitle to file an application during their detention. A person who has entered the Republic illegally is expected to submit the asylum application as soon as possible and without undue delay after his/her arrival. If an Applicant is not in a state to submit his/her application in writing, s/he can do so orally and the person in charge must ensure that it is properly recorded. At the time of submission of the Application, the Applicant must be informed in a language understood by him/her of his/her rights and responsibilities and s/he must be informed of (i) his/her right to a free interpreter, (ii) his/her right to call a lawyer or

legal advisor, (iii) his/her right at all times to contact the UNHCR, (iv) his/her right to contact refugee organisations.

Section 12 describes the criteria for cases being declared manifestly unfounded and allows for such a determination if one of the following reasons apply:

> 1. Clear lack of allegation for fear of persecution from the country of nationality because it is not connected to persecution by reason of race, religion, nationality or membership to a particular social group or political opinion or the application lacks substance since the relevant personal details are not set out or it lacks credibility because of conflicting or manifestly unrealistic allegations.
>
> 2.It is based on false or misleading statements submitted in clear abuse of the procedure which is identified as such if the Applicant did not reveal that the application is based on a false identity or travel documents which he confirmed as being genuine when asked, or, on purpose gave false information about his allegations when applying or in bad faith destroyed or lost a passport or other travel document so as to support a false identity or to make the processing of his application more difficult or on purpose failed to reveal that he had applied in other countries especially when he used a false identity or he had a number of chances to apply but only applied for the sole purpose of avoiding deportation or clearly failed to substantiate his application as provided by Section 16 or applied for asylum when he had already applied in another Convention Country and the office is satisfied that same was examined and dismissed while all relevant procedural safeguards were followed.

Cases falling into the category of paragraph 6(i) above are examined through a fast track procedure as set out in Section 12D below unless there are other matters in the application which merit a normal examination under Section 13.

Cases of the category of paragraph 6(ii) above (i) constitute clear indications of bad faith and merit the examination under the fast track procedure of Section 12D below only in cases where inadequate explanations are given by the Applicant for his conduct, (ii) cannot exclude the fear of persecution, (iii) none has more weight than the other.

Section 12(A) defines countries where in general there is no serious danger of persecution and where in an objective and verifiable way this can be ascertained. The following factors can be taken into account (i) number of previous applications from that country, (ii) official obligations by that country under Human Rights Conventions and effective implementation of same, (iii) existence and functioning of democratic institutions, carrying out of elections respect of freedom thought and expression as well as ability to have effective remedies for the protection of human rights, (iv) stability in social and political life of country taking into account imminent changes.

The abovementioned applications may at the discretion of the officer be examined under the fast track procedure under Section 12D below, unless the facts provided by the Applicant change the general appreciation about the country in which case the normal procedure is used. In any event each of the abovementioned applications is examined on the basis of the material submitted.

Section 12B defines the term safe third country as one which fulfils the following criteria: (i) no danger to the life or security of the Applicant as defined in the law, (ii) no danger for torture or inhuman or degrading treatment, (iii) it is a country which has already granted protection to the Applicant or there are assurances that it will, (iv) it is a country where the Applicant will have effective protection as defined by the Law.

In cases of safe third country, the application may be examined under the fast track procedure of Section 12D below.

Section 12C allows for the possibility for the examining officer when he ascertains fear of persecution, to investigate whether there is a possibility of relocation at another geographical area of the country of nationality. During this investigation a strong presumption against internal relocation is the case where the persecution is connected with the government of the country of nationality. Also the officer takes into account security or political and social conditions, including respect of human rights, health condition or family state as well as racial, cultural and social bonds.

Section 12D sets out the procedure for a fast track examination, which is of higher priority and must be examined within 30 days.

The officer within 15 days of application carries out an interview where no one else other than the Applicant, his lawyer or legal advisor or the guardian of the minor and an interpreter is present unless otherwise requested by the Applicant.

Within 15 days a report is submitted to the Refugee Authority where it is considered whether it is manifestly unfounded or whether the notions of a country where there is no serious danger of persecution or safe third country apply.

The Authority decides within 30 days of the report and as long as the abovementioned are established by an officer, the application may be dismissed if the officer is convinced that the above are correct or in case of disagreement, the normal procedure is followed.

In case the application is dismissed then the Applicant is informed in writing by a reasoned decision and is also informed of the possibility of recourse to the Review Authority.
In case that the abovementioned time limits are not followed then the examination is done under the normal procedure.

Under Section 12E the Authority closes the file of an application and discontinues its examination, with a reasoned decision when one of the following apply: (i) the Applicant does not comply with the terms of the temporary residence permit, (ii) the Applicant has left the Republic without the permission of the Secretary, (iii) the Applicant does not respond to letters after due examination has been made that he has received same. The Authority may nevertheless continue same if the above non compliance is justified.

Section 14(4) was amended to ensure that neither the application nor its content are revealed to the country of nationality and same remain confidential.

Section 18 established a Review Authority, which examines recourses against the decisions of the Authority to reject an application.

The Review Authority consists of three high ranking members of the legal service appointed by the Council of Ministers on the recommendation of the Attorney General for a period of 3 years.

Any decision of the Authority is subject to review by the Review Authority and in cases of the normal procedure this must be done within 20 days of having notice and in cases of a fast track procedure within 10 days of notice.

The Review Authority must issue its decision within 90 days of the decision in the normal procedure and within 15 days for the fast track procedure.

During the abovementioned procedure the Applicant remains in the Republic.

Section 18A provides that the Review Authority may confirm, annul or modify the decision of the Authority, it has to take into account the material in the file, may call the Applicant for an interview and in case of new allegations by the Applicant it must call him for an interview. A reasoned decision is issued which amounts to an administrative act and which may be challenged before the Supreme Court within 75 days.

The Authority under Section 19A may also grant supplementary protection to persons who are not considered refugees but it is decided that because of fear that serious and unjustified harm may result upon him, he leaves his country of origin. The term 'serious and unjustified harm' includes torture, inhuman or degrading treatment or punishment, violation of human rights within the international convention obligations of the Republic or threat to the life, safety or security of the person because of indiscriminate force in cases of armed conflict or systematic and general violation of human rights.

Such persons are granted residence permit for a year which may be renewed and have the right to reside and move freely, free medical treatment, access to public education and right to work or assistance on the same terms as asylum seekers.

Section 20 grants temporary protection to displaced aliens who have massively fled from a particular geographical area. This is done by a decision of the Council of Ministers and it is without prejudice to an individual application for asylum.

Such persons are granted residence permit for a year which may be renewed and has the right to reside and move freely, free medical treatment, access to public education and right to work or assistance on the same terms as asylum seekers.

Section 21A provides that after 3 years of lawful residence in the Republic, refugees are afforded the same rights as citizens of the Republic in relation to education other than elementary, right to associate, right to engage in wage-earning employment, right to choose place of residence and move freely in the territory of the Republic, right to acquire and posses property, right to engage in agricultural, industry, handicraft and commerce and establish relevant companies and rights of holders of diplomas duly recognised.

Section 21B recognises a refugee as having the same treatment as citizens of the Republic for matters relating to wage earning employment.

Section 21C requires the Republic to provide administrative assistance or to facilitate same through an international authority.

Section 29 now prohibits the issuing of a deportation order against any person to a country where he would be in danger of torture, inhuman or degrading treatment or punishment.

Finally Section 31A allows the participation of a UNHCR representative as an observer with an advisory capacity during any interview or decision of the Authority or of the Review Authority.

It is also noteworthy that in the Treaty of Accession under Protocol 3 on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus Article 7 provides:

> 1. An Applicant for asylum who first entered the island of Cyprus from outside the European Community by one of the Sovereign Base Areas shall be taken back or

> readmitted to the Sovereign Base Areas at the request of the Member state of the European Community in whose territory the Applicant is present.
>
> 2. The Republic of Cyprus, bearing in mind humanitarian considerations, shall work with the United Kingdom with a view to devising practical ways and means of respecting the rights and satisfying the needs of asylum seekers and illegal migrants in the Sovereign Base Areas, in accordance with the relevant Sovereign Base Area Administration legislation.

It will be interesting to see how the above will be implemented in practice.

In *Eissa Khalif v. The Republic (Case 802/2003)* the Applicant had filed an application for legal aid to support his recourse to the Supreme Court under Article 146 (1) seeking a declaration that his arrest pending his asylum application was null, void and of no legal effect. Law 165(I) of 2002 on legal aid was applied, and the Supreme Court indicated that the above law does not provide for legal aid in the case of a recourse under Article 146 (1) of the Constitution. The Court held that the Applicant's recourse, was not a civil or criminal procedure before a court and against the Republic involving the damage inflicted on the Applicant caused by 'determined' human rights violations. The Application for legal Aid for the above procedure was held to be outside the scope of Law 165 (I) of 2002 and was accordingly rejected.

Practice of national authorities

Press Reports of September 2003 show that there are 2060 asylum-seekers in Cyprus. There are 253 applications that have been rejected while public assistance to Asylum-seekers in 2003 has reached £1.4 million. It seems that some 2,500 applications may be pending examination by early January 2004.

Since 1/1/02 when the Cyprus Government took over from the UNHCR 1,144 applications concerning 1,301 persons were filed and 592 applications concerning 916 persons are still pending before the UNHCR.

During November 2003, a total of over 1300 people called at the Paphos Gate to file asylum applications. It is interesting to note that the Paphos Gate Police Station in Nicosia, responsible to accept asylum applications, in order to be able to cope with the unprecedented workload, appeared to have made no effort to check if the applications were completed correctly, nor did they take fingerprints, a requirement that is necessary upon applying according to the Refugee Law, did not provide asylum seekers with a confirmation of their status as applicants, nor did the applicants apply for their temporary residence permits.

The Asylum Unit of the Migration Department is at difficulties with the examination of asylum applications, mainly due to lack of staff and resources. Additional Temporary Staff was recruited in late summer 2003, but it is expected that a considerable period of time will be needed in order for the new staff to become acquainted with Refugee Law and the requirements of International Human Rights Law .

Until summer 2003, there was only one appeal submitted to the Review Authority. It is of course expected that this number will significantly increase in the future. In this respect it is useful to note that the June 2003 amendment of the Refugee Law, ensures the right of appeal for rejected applicants in all cases, since it renders an appeal an applicable procedure for the category of applications rejected as « manifestly unfounded » for which no possibility for an appeal was previously envisaged.

Various reports by asylum seekers and refugees show that there is a problem in the administration and distribution of public assistance. As the UNHCR notes : « Confusion existed amongst the District Social Welfare Officers on when and for how long an asylum-seeker is entitled to public assistance. » While there has been some effort to address this issue by the Director of the Department of Social Welfare Services, the low staffing level of the District Social Welfare Offices as well as the lack of appropriate training existing due to the fact that there is a high turnover of staff because of a high amount of temporary contracts pose a valid issue for concern.

To this day, asylum-seekers have to find themselves accommodation. A significant number of them, have to stay at hotels unsuitable for long stay, while some of them due to fear of violence by other asylum-seekers of a different nationality are in an exceptionally difficult position. The President of KISA has noted [Sunday Mail, November 16, 2003] that 'Children of asylum seekers are living in brothels because there is no housing policy. The same department that puts them there (Welfare Department) would normally take children away for living in such conditions.' The Reception Centre in Kofinou village, is finalised but is not functioning yet. It will deal with the urgent accommodation needs of asylum seekers but its purpose is to provide temporary accommodation since it can accommodate up to 120 people. On the 29th of December 2003 the necessary staff has been recruited, so the Centre is ready to start receiving people.

The District Labour Offices are supposed to assist asylum-seekers in finding employment. As observed by the UNHCR the District Labour Offices have had difficulties in identifying employment for asylum-seekers.

Asylum seekers and Refugees who can prove that are below the minimum income level, receive free medical care. The UNHCR however notes that there is a category of asylum-seekers and refugees, that despite the lack of public assistance and stable employment and the fact that they are below the minimum income level, they are excluded from the free medical care scheme. It also notes that the application form for free medical care is currently only available in Greek.

Children of asylum-seekers are entitled to free primary and lower secondary education at state schools, at which the major teaching language is Greek. This forms an obstacle to the education of such children since many of these children are obviously not fluent enough in Greek.

A recent decision by the Council of Ministers provides that adult asylum-seekers and refugees can subscribe to Greek language courses free of charge.

The Law Commissioner of the Republic acting also as the president of the National Institute for the Protection of Human Rights established on 16.9.1998, has set up a Group of volunteers for the support of Asylum-Seekers and Refugees.

The Government is currently planning to restructure the asylum procedure, by changing the first instance body from the Refugee Authority to the Asylum Service (Ministry of Interior) and by the replacement of the Review Authority with an independent Review Authority. Some amendments to the Refugee Law have been submitted to the Parliament in late December 2003, which are not wholly satisfactory. The contribution of the Political Parties, UNHCR and National NGOs concerned with the matter at the Parliamentary debates, is expected to make improvements on the proposed by the Government amendments as they currently stand.

Reasons for concern

The abovementioned amendments constitute a welcome improvement to the previous legislative framework dealing with the status of asylum seekers.

The UNHCR Representation in Cyprus has stated that: 'In general the Refugee Law is in line with international standards and the EU Asylum acquis. The main problems concern the actual implementation of the Refugee Law and the difficulties of the various governmental structures have in implementing their responsibilities under national law.'

According to the President of KISA (the only Non-Governmental Organisation in Cyprus dealing with the issue of asylum-seekers and refugees) the Refugee Law 2000 goes beyond the minimum standards required by the EU, but the problem lies in its implementation since the authorities do not put law into practice. In a recent interview, [Sunday Mail, November 16, 2003, page 4] the President of KISA warned that the authorities could end up paying significant sums as compensation for human rights violations within the context of the European Court of Human Rights. He identified the problem with asylum applications as three-fold. « First, there is no permanent staff to deal with asylum seeker applications, nor is there an independent Review Body to handle appeals. Second, police use delaying or deterrent tactics against asylum seekers to block access to procedure. And lastly, if the process begins, there are no co-ordinating substructures to deal with feeding, housing or caring for asylum-seekers, who are very often left to their own devices.'

It has been reported, [Cyprus Weekly, page 4, 23/12/2003] that the Law Commissioner of the Republic has stated that the treatment of asylum seekers in Cyprus "is shocking", following a visit to the Paphos Gate police station in Nicosia that deals with asylum and foreign immigrants issues. This is mainly due to the long delays that surround the whole procedure of filing of applications. The set-up and relevant facilities were unacceptable with only three policemen handling thousands of cases in a tiny space. The Law Commissioner has criticised the current approach undertaken by the relevant authorities and noted that many asylum seekers were deported summarily without proper investigation of their cases.
KISA has noted that the police use several means to persuade people not to apply for asylum. They have had a number of complaints against police for ill-treatment of asylum seekers, abuse of procedures, interrogation, blackmail and threats in an effort to discourage them from submitting an application.

It is interesting to note that the District Court of Nicosia on the 29th May 2003 has rejected a police request for an eight-day remand of 20 asylum-seekers. The men claimed that they had come from the north of Cyprus and could not return to their countries because they were of Kurdish origin. They were held in custody by the police. The Court noted that according to the Constitution, no one can be detained unless under suspicion of having committed a criminal offence. The Court noted that there is significant doubt as to whether the provisions of the Refugee Law that order the remand of foreigners for identification purposes coincide with the provisions of the Constitution. In this context KISA has noted that the police have turned a provision in the legislation that states that asylum seekers could only be held in custody on special occasions, into a rule, that when it comes to asylum seekers without any form of identification they should be kept in custody without even giving them time to apply for asylum.

According to the Refugee Law, asylum applications can be submitted at all points of entry into the Republic, all Police Stations, at the office of the Secretary of the Refugee Authority, and in case of detention or imprisonment, at the detention centre or prison. In practice, however, not all police stations accept asylum applications since in each district there is one designated Immigration Police Office. There are various reports by applicants that they had to

face many difficulties for applying for asylum. Some were first questioned by the police and afterwards kept in detention waiting to be deported.

Due to the long delays in the application procedure, mainly caused by the intensely felt lack of staff of the receiving of applications organs, it may well take several weeks before an asylum-seeker succeeds to submit his asylum application. As noted by the UNHCR Representation : « In the meantime, s/he is not officially registered as an asylum seeker, remains at risk of deportation being without a residence permit, and is also not able to benefit from the assistance provided to asylum seekers. »

Despite the fact that currently there has been no significant number of appeal cases, it remains evident that such cases will increase shortly. In this context the UNHCR Representation has noted that: « There is a real risk that once the first instance body has increased its capacity to render first instance decisions, the Reviewing Authority will not be able to deal with the appeal requests in a timely and adequate manner. »

The UNHCR Representation shares the view that the asylum-seekers in Cyprus are left with no meaningful legal assistance. They are not entitled to a free legal advice, and of course very few of them have the capacity to refer to a private commercial advocate, while the UNHCR funded legal aid project implemented in co-operation with KISA (local NGO) has made available only one legal advisor.

It is observed that in Cyprus there is an evident general ignorance of advocates and other persons involved in procedures related to asylum-seekers of International Refugee Law, EU Asylum *acquis*, and International Human Rights standards. As admitted by the UNHCR : "The lawyers have limited to no knowledge of refugee law or more specifically Refugee Status Determination, which is being reflected in the quality of their interventions made on behalf of asylum-seekers." The need for training courses to address this problem is immense.

The Review Authority has the power to carry out an in depth examination of a decision and has the power correlated in cases of new information with the duty to interview the Applicant. The 3 members of the Review Authority currently are high ranking members of the Legal Service of the Republic and are appointed by the Council of Ministers on the recommendation of the Attorney General. The Legal Service of the Republic is independent from the Government and acts as its legal advisor. Its members even though are civil servants are expected to act independently. It is noteworthy that recourse to the Supreme Court to challenge the validity of the decision of the Review Authority will be against the Republic represented by the Office of the Attorney General which poses an issue of impartiality.

The impartiality of the Authority and the Review Authority still forms an issue to be looked at with suspicion, since there have been no changes within the Authority's composition consisting of civil servants. It is expected however, that with the new amendments of the Refugee Law in January 2003, the appeal body will be independent. In any case, the power of the Supreme Court to review the decision by the Review Authority as an administrative act under its Article 146 of the Constitution jurisdiction continues to constitute an important safeguard against arbitrariness.

In regards to the planned restructuring of the Asylum unit it is very interesting to include the comments of the UNHCR Representation:

> "A restructuring alone of the first instance body will not address the current situation of an increasing backlog of applications, pending a first instance decision. […] An increase of the staffing level and other measures will be called for to increase the processing at adequate levels. In this respect, there will be a need for more senior experienced staff, at least in the beginning to train and support the new staff. The foreseen new Reviewing Authority will function as an independent institution with

> new staff to be appointed. It is feared that any further delays with the preparation of the establishment of a functioning Reviewing Authority will further delay the processing of the appeal requests. Also in this case, intensive training and support to the new members of the Reviewing Authority will be required. With attention mainly being paid to the first instance level, it cannot be excluded that the Appeal body will become the next bottleneck in the asylum procedures. It remains to be seen how the separation in duties and responsibilities between the newly created Asylum Service and the Migration Department will work in practice. It cannot be avoided that by separating asylum and migration, which are so closely interlinked, doubling of efforts and procedures may occur.'

Despite the fact that international law as well as the relevant national legislation stipulate that the Republic is under the obligation to issue travel documents to refugees, no such travel documents have been issued, although the authorities confirm that they are in the process of producing such travel documents. At the moment the authorities have issued on an ad hoc basis with a laissez-passer valid for one travel, which is necessarily limiting in itself, since many countries do not recognise this document as a valid travel document. The UNHCR notes, that as a result, there have been many refugees who have been staying in Cyprus for years, without being able to travel abroad.

Another issue is the fact that the local integration of refugees has so far received little attention.

Article 19. Protection in the event of removal, expulsion or extradition

International case law and concluding observation of international organs

The Republic of Cyprus has signed two agreements on the Readmission of Persons with Unauthorised stay, with Italy and Lebanon, while there are negotiations in progress for the conclusion of similar agreements with other States that are conducted on the basis of the relevant EU model.

National legislation, regulation and case law

Article 11 (2) of the Constitution provides that « No person shall be deprived of his liberty save in the following cases when and as provided by law :- ...(f) the arrest or detention of a person to prevent him effecting an unauthorised entry into the territory of the Republic or of an alien against whom action is being taken with a view to deportation or extradition. »

A deportation order is issued under Article 14 and Article 14 A of the Aliens and Migration Law, Cap. 105.

The Supreme Court has repeatedly held that neither the European Convention on Human Rights nor its Protocols impose eny limitations on the right of a state to exclude an alien from the country [*Ahmed Ibrahim Kedoum v. The Republic*, Case 368/2003, page 4, *Moyo and Another v. The Republic (1988) 3 C.L.R. 1203*].

The Goverment enjoys wide discretion in proceedings of deportation. As long as such discretion is exercised in good faith, the Court shall refrain from intervening.[*Amanda Marga Ltd v. The Republic (1985) 3 C.L.R. 2583*]. A rebbutable presumption exists to the effect that the Goverment has acted in good faith. [*Suleiman v. The Republic (1987) 3 C.L.R. 224, 227*]

The deportation order is an Administrative Act and as such can be challenged before the Supreme Court within its jurisdiction under Article 146 of the Constitution.[*Dogan v. The Police (1995) 1 CLR. 301*].

The Court shall not intervene to challenge the subjective evaluation of the relevant facts by the administrative authorities. It shall only intervene to determine whether the administration has acted under a mistake of fact, a mistake of law or exceeding the limits of its discretion. [*Ahmed Ibrahim Kedoum v. The Republic Case 368/2002*]

The legality of detention for the purpose of deportation cannot be challenged in a habeas corpus application. [*Politides v. The Police*, Application 112/99/25.8.99, *Valentine Popa v. The Republic* Application 7/2000/14.1.2000, *Ropa*, Application 7/00/14.1.2000, *Kumara Wijeratne*, Application 133/01/13/12/2001, *Essa Murad Khlaief v. The Republic* Application 106/2003/30.10.2003, *Angelito Juliano v. The Republic*, Application 88/2003]. Since the issue falls within the sphere of administrative law, such legality can only be examined within the context of Article 146 (1) of the Constitution.

The decision for deportation is reached in line with the International Agreements binding on the Republic, especially those concerning the protection of human rights and other relevant legislation, for instance the Refugee Law, as well as the personal circumstances of the subjects of deportation, and especially in the case that a case before the national courts is pendong, except when it is determined that such case is intentionally postponed over a long period, with the aim to extend the subjects stay in the Republic.

The Supreme Court has stated that it does not follow from the Migration Law (Cap.105) that there is an obligation on the part of the Migration Officer to give notice to a person concerned of his intention to issue a deportation order. [*Kedoum v. The Republic*, Case 368/2002, Judgement of 21 January 2003].

In case of deportation while a case is pending before national courts, and despite the fact that the said subjects of the deportation order are considered to be prohibited immigrants, entry to the Republic for the purpose of attending the Court proceedings is allowed.

In the case of an arrest of a person with a view of his/hers deportation, there is no obligation for the existence of a reasoned a Court order which is only required in the case of an arrest relevant to the commital of a criminal offence. [*Case of Saab Abbas Nazar v. The Republic (2003)*]

In *Essa Murad Khlaieff v. The Republic [14 October 2003]*, the Applicant claims to be a Palestinian that arrived in Cyprus from a non-recognised port on the 13.4.2002. He was arrested the following day and convicted on the 13.4.2002 to four months imprisonment. Following his release he was arrested once more and was detained due to a deportation order against him. He was released once again on the 5.8.2002 in order to advance his asylum application, filed on the 6.8.2002. The Refugee Authority rejected his application on the 31.3.2003. The Applicant was arrested on the 9.6.2003 and on the following day a deportation order was issued. The Supreme Court noted that the Applicant has been continuously detained, for the pupose of his deportation, despite the passing of four months. The prolonged detention was explained as necessary due to the lack of any travelling documents of the Applicant and the need for the verification of his identity for the proper execution of the deportation order.

The Applicant claimed that in view of Article 11 (6) of the Constitution his detention was illegal. Article 11 (6) provides that « a judge before whom the person arrested is brought shall promptly proceed to inquire into the grounds of the arrest in a language understandable by the person arrested and shall, as soon as possible and in any event not later than three days from

such appearance, eityher release the person arrested on such terms as he may deem fit, or where the investigation into the commission of the offence for which he has been arrested has not been completed remand him in custody and may remand him in custody from time to time for a period not exceeding eight days at any one time : Provided that the total period of such remand in custody shall not exceed three months of the date of the arrest on the expiration of which every person or authority having the custody of the person arested shall forthwith set him free. » The Supreme Court rejected his claim, and noted that as evidenced from the provisions of Article 11 (6), it only concerns detention for the purpose of investigating the commital of an offence and does not apply by any means in a case of detention for the purpose of deportation covered by Article 11(2) (f) of the Constitution and Article 14(1) of the Migration Law (Cap. 105).

The Applicant further claimed that the provisions of Article 11 (6) establishing a maximum period of detention should be applied mutatis mutandis in cases of detention for deportation purposes. His argument proceeded in that detention for the purposes of deportation cannot be potentially indeterminate and that the Supreme Court can within the context of a habeas corpus application challenge the legality of such detention if it has exceeded reasonable time limits.

The Supreme Court stated that despite the lack of an express constitutional or statutory provision to this effect, detention for the purpose of deportation cannot be infinite but it must be limited to a reasonable period, taking into account the specific circumstances of each case, for the deprtation to be effected. Any detention is restriction of the right to liberty enshrined in the Constitution. Deviation from this is provided for by Article 11 (2) (f) of the Constittion for the purpose of deportation. Such detention cannot however be taken as a purpose initself, nor can result in unjstifiable detention. It must continue only for such reasonable time as needed for the completion of the deportation process. Any prolongation of such detention beyond such period necessary, would be contrary to the spirit of Article 11 of the Constitution and the rights of the alien involved as well as to the purpose of the deportation procedure and re-establishment of legality. It was held therefore that the Supreme Court acquires the power to challenge the legality of a prolonged detention for the purpose of deportation. Such power can only be exercised and be effective within the context of a habeas corpus application.

The Supreme Court found that detention for four months did not exceed the ‘reasonable time’ requirement for lawfulness, since the administrative authorities had difficulties in verifying the Applicant’s identity, and thus the Application was rejected.

In Application 106/2003 by the same Applicant, the Respondants tried to justify the prolonged detention on the basis that the Applicant did not provide the necessary information needed for the veriification of the country to which he is to be deported. The Supreme Court noted as obiter dicta, that the lack of such information can only be attributed to the Applicant. Since such lack is the only reason for the delay in the execution of the deportation, the Applicant cannot benefit from his own omission.

Practice of national authorities

Procedurally one can apply for an interim relief to the Supreme Court for suspension of the effect of the deportation order pending the determination of the Appeal.

In practice this is very rare and usually deportation orders are executed by the authorities very quickly.

What happens in practice is for the Office of the Ombudsman to be informed and upon her intervention the deportation order is not executed pending the Recourse filed at the Supreme Court.

In view of the amendment of the Refugee Law 2000-2003, and in particular Section 29(5) it is now not allowed to deport persons under international protection to a country where he would be in danger of torture, inhuman or degrading treatment or punishment.

One could therefore possibly argue that if the above is one of the grounds for resisting deportation, until the Supreme Court has the chance to review the matter the deportation order is under scrutiny and cannot be executed. This would be a new ground to obtain an injunction by the Supreme Court restraining the execution of the deportation order. It is not clear how this will progress and the evolution of the current case law is expected.

It would be interesting to see what bearing, if any, would the precedent set by Eur.Ct.HR *Mamatkulov and Abdu Rasulovic v Turkey* judgment of 6/2/03 would create in Cyprus and whether it will alter the current practice.

Reasons for concern

The whole matter of deportation appears to be under review in view of the preparation of the new law on migration which is now being prepared.

It has been reported that Mr. Robles has expressed his concerns upon the current practice by the relevant authorities of imprisonment of illegal immigrants and has made strong recommendations towards use of administrative measures instead of imprisonment in such cases.

Recently another dramatic story has occupied the front-pages of the national media in December 2003, concerning a 4 months old baby that is imprisoned together with the parents for illegal entry into the Republic. The authorities have made efforts to reassure the public opinion that the child is kept under decent conditions. Finally pardon was granted and the mother and child were released but not the father.

CHAPTER III : EQUALITY

Article 20. Equality before the law

No significant developments to be reported.

Article 21. Non-discrimination

No significant developments to be reported.

Article 23. Equality between men and women

International case law and concluding observation of international organs

Cyprus has ratified the Convention on the Elimination of All Forms of Discrimination against Women on 22/08/1985 by the Law N78/85 and the Optional Protocol on 26/07/2002 by the Law No. 1(III)2002.

Cyprus has also ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 04/01/1969 by the Law N12/67.

Cyprus has ratified on the 30/04/02 Protocol No.12 for the Protection of Human Rights and Fundamental Freedoms.

The Government of Cyprus has ratified The Revised European Social Charter, The I.L.O. Convention No.100 on Equal Pay between Men and Women for Work of Equal Value, the I.L.O. Convention No.122 on Employment Policy and The I.L.O. Convention No.142 on Human Resources Development.

In the EU 2003 Monitoring Report, it was stated at page 31:

> "Cyprus has transposed all legislation in the field of equal treatment of women and men, and, in general, the legislative transposition is in line with the acquis. However, the pensionable age for male and female civil servants will need to be equalised upon accession, when the pension scheme constitutes pay within the meaning of the Treaty and EC case law. Moreover, the exclusion of women from certain activities in the police force and underground work should be brought in line with the acquis. Implementing structures are in place and have been recently been strengthened."

National legislation, regulation and case law

Article 28(1) of the Constitution guarantees that everyone is equal before the Law and Justice. Everyone is entitled to equal protection and treatment, an article firmly embodied in the legal system.

Article 28(2) the Constitution provides that everyone may enjoy the rights and freedoms guaranteed by the Constitution without any direct or indirect discrimination based on community, race, colour, religion, language, sex, political or other believes, ethnic or social background, birth, wealth, social status or any other reason contrary to the Constitution. Article 28(3) provides that no person is allowed to use or enjoy any privilege of any title of nobility or of social distinction.

Article 30 of the Constitution provides that no person will be denied access to the Court assigned to him by or under the Constitution. Every person is entitled to a fair and public hearing within reasonable time by an independent, impartial and competent court. Every person has the right to be informed of the reasons and is required to appear before the court, to present his case, to have sufficient time to prepare it, to adduce and present evidence, to examine witnesses, to have a lawyer and free legal assistance when this is required and to be provided with an interpreter when he is unable to understand or does not speak the language used in the Court.

In a recent case regarding the protection of the right of equality before the law, under article 28 of the Constitution, the Supreme Court confirmed the correctness of the decision of the lower Court that acceptance of the position by the Attorney General to strike out the claim, would be in violation of article 28 and 30 if the claim was accepted [*Κυπριακή Δημοκρατία μέσω του Γενικού Εισαγγελέα ν. Αργύρης Γεωργίου. ΠΕ 11216, 30/05/2003*; *The Republic of Cyprus through the Attorney General v. Argyris Georgiou*]

The Regulations on the Fees of the University of Cyprus *[Οι Περί Πανεπιστημίου Κύπρου (Δίδακτρα)(Τροποποιητικοί) Κανονισμοί του 2002, 536/2002]* have been amended to correspond with Article 12 of the Treaty of the European Union on the prohibition of discrimination based on the race.

Discrimination on such grounds as race, religion, within origin, language, political or other convictions is prohibited under the Termination of Employment Law No. 24/67 and the relevant ILO Conventions binding on the Republic, that according to Section 169 of the Constitution are superior to domestic law.

A number of laws have been enacted by the Parliament guaranteeing non-discrimination against women and their equality with men. More specifically, certain laws were voted favouring the under-represented sex providing better working conditions and pay for women.

Directives 86/378/EC and 96/97/EC relating to the equal treatment of men and women in relation to professional systems of social insurance, and Directive 97/80/EC relating to the burden of proof in cases of sexual discrimination were adopted with Law N133(I)2002 enacted on 04/07/2002. [*Ο Περί Ίσης Μεταχείρισης Ανδρών και Γυναικών στα Επαγγελματικά Σχέδια Κοινωνικής Ασφάλισης Νόμος του 2002]*.

In relation to the protection of motherhood,, the Law on the Protection of Motherhood 1997 to 2002 [*Οι Περί Προστασίας της Μητρότητας Νόμοι του 1997 το 2002*] which provides for a maternity leave of 16 weeks and prohibits employers to dismiss a woman due to pregnancy. The amendment voted on 16/05/2002 adopts the Council Directive 92/85/EEC in regards to the right to have paid leave for pre-birth exams, as well as guaranteeing the safety in work for pregnant women.

Furthermore, a mother with more than four children is entitled to a monthly grant of £32,23, which increased each year according to inflation rates. This is guaranteed under Law N21(I)2003 that provides for the supplying of grant to the mother Law of 2003 [*Νόμος που προβλέπει για την παροχή επιδόματος Μάνας*]

Equality between men and women in social securities:

Harmonisation with Directives 79/7/EEC and 86/613/EEC, led to the adoption of the Amendment Law of Social Securities voted on 29/03/2001[Ο Περί Κοινωνικών Ασφαλίσεων Τροποποιητικός Νόμος του 2001, N51(I)2001], which relates to the equal treatment between men and women on issues of social securities. Equal treatment is also to be applied equally on men and women in domestic employments, as well as the protection of domestically employed women on maternity leave.

In 2002, a new Amendment on the Law of Social Securities was accepted, [*Ο Περί Κοινωνικών Ασφαλίσεων Τροποποιητικός Νόμος του 2002, Ν70(Ι)2002*], by the adoption of Directives 96/34/EC and 97/80EC, in relation to the burden of proof in cases of discrimination between men and women. Persons who consider themselves wronged and discriminated may initiate court proceedings, but it is up to the wrongdoer to prove his actions were not discriminative.

Also in 2002, a new Law was enacted on the Equal Treatment of Men and Women in Professional Social Securities Plans of 2002 [*Ο περί Ίσης Μεταχείρισης Ανδρών και Γυναικών στα Επαγγελματικά Σχέδια Κοινωνικής Ασφάλισης Νόμος του 2002, Ν 133(Ι)2002*], harmonising the national law with Directives 86/378/EEC, 96/97/EC and 97/80/EC. This law provides for equality between men and women only in professional plans of social securities, in all fields related to them, for example in the terms and conditions, in the payment obligations, in the counting of the return including any increases due to dependants.

Salary equality between Men and Women:

The Law on Equal Pay for Men and Women for the same work of 2002 guarantees the rights of men and women when working under the same conditions [*Ο Περί Καταβολής ίσης αμοιβής μεταξύ αντρών και γυναικών για την ίδια εργασία ή για την εργασία στην οποία αποδίδεται ίση αξία νόμος του 2002, Ν177(Ι)2002*]. The principle of equal pay is the aim of the Law. No person will be dismissed because he or she complained about the salary. Under this Law the Minister of Labour and Social Securities appoints a Supervisor and a Committee which deals with cases of unequal treatment. The burden of proof is placed once again on the

employer to show no wrong was done. This Law implements the Directives 75/117/EEC and 97/80/EC.

Equality between Men and Women in Employment and Vocational Training:

In 2002, Law No. 205 (I) OF 2002 ON Equal Treatment Between Men and Women in Employment and Vocational Training gave effect to Directives 76/207/EEC and 97/80/EC [*Ο περί ίσης Μεταχείρισης Ανδρών και Γυναικών στην Απασχόληση και στην Επαγγελματική Εκπαίδευση Νόμος του 2002, N205(I)2002*]. This law safequards the implementation of the principle of equal treatment among men and women concerning vocational guidance, education, and training, access to employment, terms and conditions of employment, terms and conditions for dismissal from any post as well as access to and exercise of self-employed jobs. Discrimination may be proved in the absence of liability. Article 12 criminalises any act constituting sexual harassment. This Law, according to the Annexed Article 4(2) Table, will not apply to cases of employment in the Special Forces and in the mines.

Foreign Workers:

According to the Report of the Republic Against Discrimination in the Fields of the European Union Acquis, June 2003, page 13: "The existing legislation, collective agreements and practices provide for equal treatment of every person in respect of employment."

According to the National Report of the Republic of Cyprus on the Implementation of the Conclusions of the European and World Conferences against Racism, May 2003 [page 46]

> "All labour laws and regulations apply in the case of migrant workers, on equal footing with nationals…the Government of the Republic of Cyprus has ratified and implemented fully I.L.O Conventions Nos.111, 97 and 147 on Discrimination (Employment and Occupation), Migration for Employment (Revised) and Migrant Workers (Supplementary Provision) and Articles 1 and 19 of the European Social Charter of the Council of Europe, relating to the right of work and the right of migrant workers and their families to protection and assistance.
>
> In addition in the field of employment the Manual of Operations of the Employment Service which operates on the basis of administrative arrangements, provides that "it is the policy of the Employment Service of Cyprus to serve impartially all employers and all job applicants without regard to race, religion, national origin, sex".
>
> Moreover a Decision of the Council of Ministers, setting out the policy as well as the criteria and procedures for the employment of foreign workers on a temporary basis, with a view to alleviating the problem of labour shortages, imposes, inter alia, an obligation on employers to provide to foreigners workers equal treatment with nationals regarding terms and conditions of employment.
>
> In case of violation of their obligations, the employers are penalised are penalised and no work permits are granted to them in the future for the employment of foreign workers. With a view to reinforcing the practical application of equality of opportunity and treatment of migrants in respect of their terms and conditions of employment, additional control procedures were adopted which include:
>
> - making it mandatory for local employers applying for a work permit, on behalf of a foreign worker, prior to his/her entry to submit a contract of employment specifying all terms and conditions of employment. The Ministry of Labour and Social Insurance then submits a relevant recommendation to the Ministry of Interior (Migration Department) which decides for the issue or not of the work permit;
> - periodical site visits by Officers of the District Employment Offices for examination of the conditions of employment of foreign workers; and

- Facility is given to have recourse to the competent authority (Ministry of Labour and Social Insurance) for submitting grievances before resorting to judicial bodies."

Homosexuality:

Acceptance of homosexuality by the Cypriot society and law has been problematic. It is perceived that this is due to the criminalisation of homosexuality over a significant period, and the negative reactions of the Greek Orthodox Church to any attempt to improve the situation. In effect this led to the *Modinos* case before the ECtHR, and the finding that the relevant applicable law constituted a violation of the right of private life of homosexuals. As a result the Parliament enacted Amendment Law 77(I) 2000 of the Criminal Code *[Ο Ποινικός Κώδικας (Τροποποίηση) του 2000]* which abolished the criminalisation of consensual homosexual acts.

In July 2003 in the Ombudsman Report No 367/2003 in relation to the Ministry of Defence and Police [*Έκθεση Επιτρόπου Διοικήσεως αναφορικά με το παράπονο με αρ. Α/Π 367/2003 κατά του Υπουργείου Άμυνας και της Αστυνομίας*] was asked to change the content of discharge papers of the Applicant who was a homosexual and was denied a driving license based on a military assessment that he had psychological problems. Although homosexuals are equally obliged to do military service in Cyprus, they have been allowed to seek an exemption, though not on the grounds of their homosexuality. Instead, it has been a standard practice in the army to grant exemptions on various psychiatric grounds, such as personality disorder or neurosis. However, such references can deny people classed in this way other basic rights such as holding a driving license and the possibility to find an employment. The Ombudsman Report denounced this practice and asked for a change that would not discriminate against homosexuals. It was emphasized that homosexuality is not a disease and discrimination against homosexuals constitutes a violation of human rights. The Ministry of Defense is reconsidering at present the change of the discharge papers to conform with the above.

Equality between Men and Women in regards to Employment:

Within the EU Monitoring Report of 2003 it is stated at page 12 that: "As regards equal opportunities, there has been a marked improvement over the years in the appointment of female candidates to the civil service, who now account for more than 50% of new appointees."

It is indicative to note that within 2002 only 2 women of a total of 8 were recruited by the Ministry of Foreign Affairs as attachés while in 2003 again only 2 women were recruited of a total of 9 newly recruited persons.

Reasons for concern

With the partial opening of the check points on the 23rd of April 2003, the number of Turkish Cypriots residing in the north of the island and employed in the south has significantly increased. It is observed that there is discrimination by Greek Cypriot employers in the south between Turkish Cypriot employees and Greek Cypriot employees, mainly reflected in salaries and non payment of social securities contribution. Unfortunately there are no available statistics on this matter as yet, so no further elaboration on this point is possible.

Article 22. Cultural, religious and linguistic diversity

International case law and concluding observation of international organs

The Advisory Committee on the Framework Convention for the protection of National Minorities, in its Opinion adopted on the 6th April 2001 noted that the Constitution of Cyprus, in a number of respects, appears not be compatible with the requirements of the Framework Convention. Specifically the Committee observed that "the obligation for religious groups, namely the Latins, the Maronites and the Armenians and their members to choose adherence to the Greek Cypriot or to the Turkish Cypriot community, runs contrary to the principles set out in Article 3 of the Framework Convention". It is recognised in paragraph 8 of its Report that the Constitution of Cyprus is exceptional in at least two respects, firstly that it was not solely adopted by the people of Cyprus but is the result of international agreements to which Cyprus was not a party and secondly that a number of previsions of the Constitution are rendered unacceptable according to Article 182 of the Constitution.

In view of the particularities of the Cypriot Constitution, the de facto situation in the Island and the expectation that an overall solution for the situation in Cyprus will include the adoption of a new Constitution, the Advisory Committee recognised that it would be inappropriate to initiate a review of the Constitution in terms of national minorities. It noted though that even in the absence of such a review, limited legislative measures may be taken to overcome some situations in a provisional way so as to comply with the requirement of the Framework Convention.

The Government of Cyprus considers that the Framework Convention applies to persons belonging to the Latin, Maronite and Armenian communities defined as religious groups under the Constitution as well as and without prejudice to their constitutional position to Turkish Cypriots living in the Government controlled areas.

National legislation, regulation and case law

The current Constitutional arrangements in Cyprus is based on the division of the population in two communities, Greek Cypriots and Turkish Cypriots and further recognises the existence of religious groups, namely the Latins, the Maronites and the Armenians. In accordance with the Constitution, each religious group is under the obligation to choose adherence to one of the two communities recognised by the Constitution. The Latins, the Maronites and the Armenians decided by an overwhelming majority to become members of the Greek Cypriot community. Each individual belonging to a religious group is entitled to make use of an opting-out and may choose to belong to the other community, that is the Turkish Cypriot community, within one month from the date of the decision of the group to which he/she is a member. There has not been such an incident.

A religious group was defined as group of persons normally resident in Cyprus professing the same religion as set forth in paragraph 2(3) of the Constitution. Only Maronites, Armenians and Latins had qualified for recognition as a religious group.

By virtue of Law 84 (I) of 2003 a new section 47 is included in the Penal Code which provides that a person taking publicly any action, with the intention of promoting hostility between the communities, religious groups, because of his race, religion, colour or sex, is guilty of an offence that in case of conviction is punishable with imprisonment of up to 5 years.

Reasons for concern

The current Constitutional framework that does not recognise the various groups of peoples resident in the island as minorities and therefore does not accord them with the necessary protection that stems from the grant and recognition such a status, restricts the inherent right of such groups and individuals forming them of self-determination. The effect of this is many fold instances of discrimination and restrictions to the rights of such groups. An example of this is the provision that the representatives of the Armenians, the Maronites and the Latins in the House of Representatives can only participate in the various debates taking place in the House, but are not entitled to vote on issues concerning their respective communities.

Roma Gypsies:

In the Ombudsman's own Report on the Living Conditions of the Roma Gypsies residing in the village of Makounta (Paphos area), No. 3/2003 of 30/06/2003 [*Αυτεπάγγελτη έρευνα της Επιτρόπου Διοικήσεως με αρ. ΑΥΤ/Ε 3/2003 αναφορικά με τις συνθήκες διαβίωσης των Αθίγγανων που έχουν εγκατασταθεί στο χωριό Μακούντα*] the living conditions of the Gypsies in the aforementioned village were found to be below the expected standard, with no access to education and to health care.

Historically the Roma Gypsies living in Cyprus were considered to be members of the Turkish Cypriot community. They never exercised the right of choice provided in Article 2(3) of the Constitution, like the Armenians and Maronites, since the Cypriot Roman Gypsies are of Muslim origin and were considered to fall under the auspices of the Turkish Cypriot community.

Today there are 22 families, of 77 persons living in the Makounta village, where they have been settled for two years now, since their fleeing from the north of Cyprus. Their housing conditions are very poor, with no electricity, making the living conditions during extreme weather conditions unbearable.

There is no easy access to health care since the nearest hospital is 6 km away and there is no regular public transportation connections passing through the village. This problem is also applicable with the education of the children since the nearest school is 6 km away. The parents were also unaware that education is free and compulsory for children until the age of 15.

The Ombudsman is suggesting:

1. The immediate improvement by the Ministry of Interior and the Paphos District Officer of the living conditions, by the provision of electricity and the improvement of their housing,

2. The information on the education rights of the children and the aid by the Ministry of Education and Culture to educate these children, as well as the teaching of the Greek language during the summer time.
3. The assistance of the Ministry of Health of access to health care facilities.

Article 24. The rights of the child

International case law and concluding observation of international organs

The Republic of Cyprus has ratified the Convention on the Rights of the Child on 9 March 1991. Also the Optional Protocol to the Convention of the Rights of the Child on the sale of children, child prostitution and child pornography was signed on the 8th of February 2001.

On 6 June 2003 the Report of the Committee on the Rights of the Child (33rd Session) noted that it was "encouraged by improved health indicators, including in particular the infant mortality rate and the under-five mortality rate, as well as the improvement of indicators in the area of education [and also] by efforts to make the Convention widely known and the inclusion of children's rights in the curricula at all levels. "

The Committee welcomed the establishment in 2002 of an inter-ministerial committee tasked with incorporation of the provisions of the Convention into the existing legislation concerning children. The Council of Ministers decided on 30th January 2003 to set up a Committee to prepare the framework for the establishment of a children's Ombudsman in Cyprus. A plan is in progress by the Government to develop a computerised systematic collection of data on children at the Department of Social Welfare Services.

In relation to discrimination, despite the implementation of the Convention on the Elimination of Racial Discrimination, the Committee expressed its concern that certain factors linked to discriminatory attitudes may persist, especially those related to acquisition of nationality, children born out of wedlock and Cypriot children of Turkish origin.

The Republic has aligned with the provisions of the Council Directive 94/33/EC, ILO Convention, No. 138 and Article 7 (paragraphs 1, 3, 7 and 8) of the European Social Charter with the enactment of Law 48(1) of 2001 for the Protection of Young Persons at Work. This law replaces Children and Young Persons (Employment) Laws. The new law primarily outlaws the employment of children who are below the age of 15 in any occupation. Additionally, young persons between the ages of 15-18 cannot be assigned to dangerous occupations. The children falling within this age group are prohibited from working between 11 p.m and 7 a.m. The law at the same time regulates the maximum working hours; these are 36 hours weekly for the age group of 15-16 and 38 hours weekly for the age group of 16-18. The law also embodies provisions that are protective of the health and safety of the children under 18 years old.

The European Convention on the Exercise of Children's Rights is in the process of being ratified by Cyprus, thus providing, for further protection of the rights safeguarded therein and control by another international organ.

The European Convention on Contact Concerning Children was signed in Strasburg, on 15.5.2003, by the Republic of Cyprus.

National legislation, regulation and case law

The Cypriot law embodies additional protective measures. The Law Combating the Trafficking of Persons and Sexual Exploitation of Minors of 2000, No. 3(I) 2000 which has been voted on 13/1/2000. Also the Protection of Witnesses Law of 2001 provides specific provisions on child witnesses. The Committee is concerned about hidden situations of sexual exploitation especially in the family. Also there is the concern expressed by the Special Rapporteur on the sale of children, child prostitution, pornography that Cyprus is being used as a transit point for trafficking of young women, including minors.

The Convention of Rights of the Child is invoked in all applications to the domestic Courts for the placement of a child under the care of the Social Welfare Services, under the Children Law (Cap. 352).

The Child Allowance Law 167(I)2002 and its amendment Law N22(I) 2003 [*Ο Περί Παροχής Επιδόματος Τέκνου Νόμοι του 2002 και 2003*] provides that a mother with at least 3 children will receive allowance depending on the family income per year, for example if the family income is £13,000, each child will receive £250 per month.
According to the Second Periodic Report submitted by the Republic of Cyprus on the Implementation of the Convention on the Rights of the Child, in 2003, because of the relevant provisions of the Violence in the Family Law 119(1)/2000 and the Protection of Witnesses Law of 2001 (95 (I)/2001) in all police divisional headquarters specially designed rooms have been set up for video tapping interviews of victims and other witnesses basically children of child abuse and domestic violence.

Practice of national authorities

Currently the National Plan of Action for Children 2000-2004 is in process, which is based on the principles established by the World Declaration and Plan of Action adopted at the World Summit for Children in 1990. It is expected that a new Plan of Action will be prepared by the end of 2003, based on the guidelines established in the Second World Summit for Children in May 2002.

The percentage of children aged under 18 in Cyprus has decreased from 27.8% of the population in 1999 to 26.2% of the population in 2001 due to decreases in the birth rate.

It is interesting to note that in Cyprus essentially there are no street children, and accordingly no programmes or specific services targeted for such children.

As can be seen by figures included in the Second Periodic Report submitted by the Republic of Cyprus on the Implementation of the Convention on the Rights of the Child, in 2003 C£368,900 were spent on programmes and services for children with disabilities, while Public Assistance granted to children living within a family, below the poverty line has reached the amount of C£772.824.

Individual complaints by or for children are examined by the existing Ombudsman to whom the general power is vested to investigate complaints against the public service.

By a decision of the Council of Ministers (No. 57.241) dated 30.1.2003, a Committee is established, for the purpose of examining the institution of the Ombudsman for Children in general, and the preparation of the necessary framework for the establishment of this institution.

Pursuant to the provisions of the Violence in the Family (Prevention and Protection of Victims) Law of 2000 (Law No. 119 (I)/2000) the Supreme Court seems to be taking measures for the addition of closed television circuit in the courtrooms so that a child will not appear in the courtroom to testify, but will give testimony and be examined and cross-examined while sitting in a different room.

Reasons for concern

The Law Commissioner has stated [Machi Newspaper, page 12, 27/7/2003] that the rights of the child are violated in Cyprus in many different ways. In particular there are no statistical data referring to the health services for children. She noted that at the moment it is indeed very difficult to trace the amount of the funds destined for child health or for children's

educational schemes. She emphasised the need for the establishment of the new institution of a Commissioner for children, representing their interests before the Parliament, in relevant debates.

Article 25. The rights of the elderly

National legislation, regulation and case law

Housing:

The Law relating to old peoples homes is the Law on Housing for the Elderly and the Disabled 1991 and 1994 [Ο Περί Στεγών για Ηλικιωμένους και Ανάπηρους Νόμοι του 1991 και 1994]. The new Regulations Number 213/2000 [Ο Περί Στεγών για Ηλικιωμένους και Ανάπηρους Κανονισμοί του 2000], provide the standards that need to be followed by these institutions so that they provide a safe, comfortable, and healthy environment for the elderly and the disabled. For example, for every individual there needs to be a five square metre area, the bathroom area not included. If the institution is for accommodating more than 10 residents it is required to have a separate dinning room, a resting and entertainment room. For every four residents there has to be at least one bathroom, a basin and a toilet. There must also be air-conditioning, heating and clean water, as well as a garden for leisure.

Pension:

Regarding the pension system in Cyprus, there is a variety of pension funds and regulations applying for different organisations in the private sector, the public sector and the semi public sector e.g. (Cyprus Telecommunications Authority, Electricity Authority of Cyprus, Cyprus Broadcasting Corporation). The latest case regarding pensions has been the Eur.Ct.HR Azinas v Cyprus judgment of 20 June 2002 whereby it was held that the Applicant's civil service pension was a possession within the meaning of Article 1 of Protocol No 1 and that its deprivation as part of a disciplinary procedure after the Applicant had been criminally convicted constituted a violation of the abovementioned Article. The Cyprus Government under Article 43 applied for a review, which was granted, and a hearing before the Grand Chamber was held on 4 June in Strasbourg and judgment is reserved expected before the end of the year.

Reasons for concern

In the "Report on Measures to combat discrimination in the 13 Candidate Countries (VT/2002/47)" of 2003, in the Country Report on Cyprus, at page 5 it is noted that "there is no provision that prohibits age discrimination as such, nor is there any study on the extent of age discrimination in Cyprus."

Housing:

Even though, the regulations exist, there has been some media coverage as to the inadequacy of some old people's homes. In Cyprus Mail, 08/06/2002, it was noted that the Labour Ministry have found two homes unfit to be working since the regulations were not met. Further there is discussion on reviewing the fees paid which at present range between £232-£277 per month per resident.

Article 26. Integration of persons with disabilities

National legislation, regulation and case law

By virtue of a decision by the Council of Ministers, 2003 has been designated as the year for the disabled.

According to the Report of the Republic of Cyprus Against Discrimination in the Fields of the EU Acquis, June 2003, at page 14 it is stated that: "In addition to the ratification by the Cyprus Government of the major International Conventions and in particular Article 15 of the European Social Charter concerning the right of persons with physical or mental disabilities to vocational training, rehabilitation and social inclusion and the Convention No. 159 of the I.L.O. Vocational Rehabilitation and Employment of disabled persons, the Ministry of Labour and Social Insurance enforces the following laws:

1. The Protection of the Mentally Retarded Persons Law No. 177 of 1989
2. The Lottery Law No. 79 (1) of 199
3. The Special Fund of the Occupational Rehabilitation Centre for Persons with Disabilities, No.127 of 2000
4. The Law of Persons with Disabilities, No 127 of 2000.

The Law of Persons with Disabilities (No. 127 (I) of 2000) safeguards, for the first time,. The rights of the persons with disabilities providing equal opportunities for participation and integration into the social and economic life of the country…The term "disability" as defined in the Law covers any form of inadequacy or disadvantage, physical or mental."

According to the National Report on the Implementation of the Conclusions of the European and World Conferences against Racism, 2003: "Fair treatment of disabled persons in Cyprus remains ensured. They enjoy privileged access to the public sector as long as their qualifications are the same as those of other applicants."

Law No. 127(I)/2000 provides for persons with disabilities [*Νόμος που προνοεί για τα άτομα με αναπηρίες*], adopting the decision of the United Nations 85th session, number 48/96. The Law provides that a person with disabilities should not be discriminated against any other person. The basic rights of the disabled are given in article 4 of the Law, which include the access in buildings, roads and any other public transportation by providing the necessary equipment, access to education according to the needs of the disabled, the assurance of a dignifying standard of living and the provision of economic and social services It also has provisions on special protection in cases of termination of employment. Additionally it provides for the inclusion of the disabled in all social, athletic, religious and cultural activities. On this point, it may be noted that the Parliament has voted the subsidisation of the Para Olympics. The Law provides in Article 5 for the equal treatment at work both in the public and private sector. Generally, the Law is an important step in integrating disabled persons in the society and the economy by recognising their rights and by compelling the society to take measures to enforce those rights. It provides for the protection of disabled persons, including the safeguarding of equal rights and equal opportunities.

Law No. 103(I)/2000 provides for the creation of a special fund of the Centre of professional rehabilitation of people with disabilities [*Νόμος που προνοεί για την ίδρυση ειδικού ταμείου του κέντρου επαγγελματικής αποκατάστασης ατόμων με αναπηρία*]. This special fund is a legal person of public law, holding the right to enter into agreements, to start and defend any court proceedings, as well as own property. Its aim will be the establishment of programmes for employment, creation of small business for disabled people and the granting of other general social and cultural programmes.

Practice of national authorities

In relation to vocational skills of disabled persons, there is no official procedure for the assessment of the vocational skills of disabled persons especially those suffering from certain physical disabilities, due to lack of multidisciplinary team.

There are a number of schools, which deal with disabled persons and provide vocational training, like the Mental Health Services, the Christos Stelios Ioannou Foundation and the School for the Deaf Children. In 2000, 14 graduates of the School of Deaf Children and 46 of the Christos Stelios Ioannou Foundation were placed in paid employment. *[14th Report on Article 15 of the European Social Charter; the Government of the Republic of Cyprus*]

Within the Report of Cyprus Against Discrimination of 2003, it is mentioned at page 16, that "for the purpose of integration of persons with mental deficiency into the social life of the country, non-institutionalisation of persons with disabilities has been promoted through the establishment of houses within the community. Today there re four such houses, run by the public sector and other nine houses, run on a voluntary initiative."

Reasons for concern

As noted in the "Report on Measures to combat discrimination in the 13 Candidate Countries (VT/2002/47)" of 2003, in the Country Report on Cyprus, at page 4:

> "..the attitude change still leaves a great deal to be done, as the vast majority of the persons with disabilities aged 15 and over (73%) reported that they were not working, with only 25.2% working and 1.2% reported as unemployed (ILO 2002)…"

CHAPTER IV : SOLIDARITY

Article 27. Worker's right to information and consultation within the undertaking

National legislation, regulation and case law

Harmonisation with the Directives 94/45/EC and 97/74/EC regarding the establishment of a European Works Council or Community scale groups or group undertakings for the purposes of informing and consulting employees.
[*Ο Περί Σύστασης Ευρωπαϊκών Επιτροπών Επιχειρήσεων με Σκοπό τη Διασφάλιση του Δικαιώματος των Εργαζομένων για ενημέρωση και διαβούλευση σε κοινοτικής κλίμακας επιχειρήσεις και ομίλους επιχειρήσεων Νόμος του2002, N68(I)2002*].

The Law in relation to the information provided by the employer to the employee on the terms of the contract of employment was implemented on 07/07/2000 [*Ο Περί Ενημέρωσης του Εργοδοτουμένου από τον Εργοδότη για τους όρους που διέπουν τη Σύμβαση ή τη Σχέση Εργασίας Νόμος του 2000, N100(I)2000*]. It includes among others the obligation by the employer to inform the employee about the date of commencement of the contract and the term its effect, the paid leave that the employee is allowed each year and the working hours of each week. This information is given either in the contract of employment, or in the letter of recruitment or any other document signed by the employer. This information has to be given within 6 months from the implementation of this Law if the employment has been less than five years, or within 2 months for employment of more than five years. For new employments this information has to be given within one month.

Article 28. Right of collective bargaining and action

National legislation, regulation and case law

Article 21 of the Constitution provides :

> « 1. Every person has the right to freedom of peaceful assembly.
> 2. Every person has the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. Notwithstanding any restriction under paragraph 3 of the Article, no person shall be compelled to join any association or to continue to be a member thereof....
> 5. A law may provide for the imposition of restrictions on the exercise of these rights by the members of the armed forces, the police or gendarmerie. »

Article 27 of the Constitution provides :

> « 1. The right to strike is recognised and its exercise may be regulated by law for the purposes only of safeguarding the security of the Republic or the constitutional order or the public safety or the maintenance of supplies and services essential to the life of the inhabitants or the protection of the rights and liberties guaranteed by this Constitution to any person.
> 2. The members of the armed forces, of the police and of the gendarmerie shall not have the right to strike. A law may extend such prohibition to the members of the public service. »

Article 27 (2) is the basis of the Defence Regulations 79A and 79B. The existence of these Regulations is not compatible with Article 1 paragraph 2 of the European Social Charter. This has been emphasised time and again by the European Committee of Social Rights.

In accordance with the Industrial Relations Code of 1977, which establishes the machinery and procedure for conciliation and arbitration in the private sector, conciliation (mediation) is the main means of settlement of labour disputes while a small proportion of the disputes are referred to the arbitration.

The Law of Termination of Employment of 1974 until 2003 [*Οι Περί Τερματισμού Απασχολήσεως Νόμοι του 1974 ως 2003*], Section 6(2)(a) provides that "A dismissal for… participation in trade union activities … may not be justified under any circumstances". The law empowers the court to order reinstatement of the employee provided that certain conditions are satisfied.

Reasons for concern

Another important issue to consider is the position regarding the social dialogue between the unions and the employers. The existence of bipartite social dialogue can be noted which takes place on a regular basis. As an example, representatives of OEB (Cypriot Employers' and Industrialists' Federation) organise regular meetings with their counterparts of two of the largest national trade unions namely PEO and SEK. The Cyprus Chamber of Commerce and Industry also holds meetings with the bodies specified. Hence, it can be concluded that Cypriot provisions are in conformity with the relevant European Union legislation.

For the issue of the percentage of the workforce covered by the unions, the figures indicate that a ratio of 72-74% of the employees is unionised. However, proportion of the workforce covered by a collective agreement is higher than the specified percentage due to the fact that non-unionised employees are covered by a collective agreement. The figures are given to be between 75 and 80%. It should be highlighted that foreign nations can negotiate the same level of salaries as of Cypriots who are also covered by the Cypriot trade unions. The

principle of non-discrimination on the grounds of nationality apply to the collective agreements.

Despite the fact that the Constitution only mentions the right to strike, the use of overtime bans can be employed as means of collective action. Collective action cannot be hindered provided that it is "in contemplation or furtherance of a trade dispute". On the other hand, the right to strike is a right that is enjoyed by all the workers whether unionised or not. It should be mentioned that a decision to strike both in the private and public sector has to be approved by the executive committee of the related trade union. This measure aims to secure that the results of the action produce effects that have the notion of collective benefits to the trade unions. This poses a problem of compliance with the Charter.

Within the relevant legislative framework there are protective provisions for employees dismissed for their participation in lawful collective actions, like the imposition of a fine on the employer and the possibility for an award of compensation.

Article 29. Right of access to placement services

National legislation, regulation and case law

Government employment services are available to job seekers and employers and these basic services are provided free of charge. No development to report.

Article 30. Protection in the event of unjustified dismissal

National legislation, regulation and case law

The latest amendment to the Termination of Employment Law 1967 until 2003 [*Οι Περί Τερματισμού Απασχολήσεως Νόμοι του 1967 έως 2003*], was voted on the 10th of July 2003. The 2003 Amendment adopts Directive 1999/70/EC. A 2002 Amendment by Law 70(I)/2002 adopted Directive 96/34/EC relating to parental leave. Specifically, the taking of parental leave or leave for reasons of *force majeure* will never constitute a lawful basis for the termination of employment.

Directive 98/59/EC protecting the rights of employees in situations of collective redundancy, was adopted by the Law on Collective Redundancies 2001 [*Ο Περί Ομαδικών Απολύσεων νόμος του 2001*, N 28(I)/2001]. Some of its main points include that the employer must begin consultations with work representatives in situations of collective redundancies. The employer must discuss ways of avoiding the redundancies and possible ways of redeploying or retraining the redundant workers. The employer must notify the public authority of the projected collective redundancies not earlier than 30 days.

Directive 80/987/EC on the Protection of employees in the event of the insolvency of the employer, was adopted by Law 25 (I)/2001 [*Ο Περί Προστασίας των Δικαιωμάτων των Εργοδοτουμένων σε περιπτώσεις Αφερεγγυότητας του Εργοδότη Νόμος του 2001*]. A special fund is created through this Law that will deal with relevant cases. Directive 2002/74/EC amending Directive 80/987/EC has not been enacted to the present day.
Directive 77/187/EEC on safeguarding the rights of employees in the event of a transfer of an undertaking, was enacted by Law 39(I)/2003 on the 17th of April 2003 [*Ο Περί της Διατήρησης και Διασφάλισης των Δικαιωμάτων των Εργοδοτουμένων κατά την μεταβίβαση Επιχειρήσεων, Εγκαταστάσεων ή Τμημάτων Επιχειρήσεων ή Εγκαταστάσεων Τροποποιητικός Νόμος του 2003*]. The transferor has to notify the transferee of his rights and obligations.

After the transfer the collective agreement made by the transferor is still in effect until it expires.

Cases relating to unfair dismissals involve as defendants the employer and the Fund of Redundant Employees. If the employer who bears the onus of proof manages to establish the redundancy as legal then the Fund will have to pay damages to the employee. If the dismissal is found unjust and unnecessary then the employer will have to pay damages to the dismissed employee.

Article 31. Fair and just working conditions

National legislation, regulation and case law

Directive 89/391/EEC relating to measures to encourage improvements in the health and safety at work, has been adopted under the Amendment Law of Safety and Health at Work of 2002 [*Ο περί Ασφάλειας και Υγείας στην Εργασία Τροποποιητικός Νόμος του 2002, Ν25(Ι)2002*]

Directive 1999/70/EC concerning the framework agreement on fixed-term work conducted by CES, UNICE and CEEP has been implemented by Law 98 (I) of 2003 [*Ο περί εργοδοτουμένων με Εργασία Ορισμένου χρόνου (Απαγόρευση Δυσμενούς Μεταχείρισης) Νόμος του 2003*] and by Law 99 (I) of 2003 amending the Law of Safety and Health at Work *[Ο περί Ασφάλειας και Υγείας στην Εργασία Τροποποιητικός Αρ. 2 Νόμος του 2003*].

In 2002, new Law was enacted on the Organisation of Working Hours [*Ο περί Οργάνωσης του Χρόνου Εργασίας Νόμος του 2002, Ν 63(Ι)2002]* adopting the Directive 93/104/EC and its amendment 2000/34/EC. It entered into force in January 2003, setting the maximum working hours to 48 hours per week, including overtime. This Law also provides for the minimum requirements for safety and health in relation to the organisation of the working hours. In this Law the annual paid holidays for those working 5 days per week is 21 days and for those working 6 days a week is 23 days.

The new Law on the Hours of Driving and Rest of Drivers of 2002 [*Ο Περί Ωρών Οδήγησης και Ανάπαυσης Οδηγών Νόμος του 2002, Ν 131(Ι)2002*] is in line with Directive 88/599/EEC and Council Regulations 3820/85 and 3821/85 which reduces the maximum working hours to 90 hours in a fortnight. The daily driving should not exceed 9 hours but may extend twice in a week to 10 hours.

The Regulations on Safety and Health in the Work Environment of 2002 N230/2002, provides for the protection of workers from dangers they might face due to their exposure to noise during their employment [*Οι περί Ασφάλειας και Υγείας στην Εργασία (Προστασία από το θόρυβο) Κανονισμοί του 2002*]. This is in accordance with Directive 86/188/EEC.

The maximum limit of working hours is set to 48 hours per week in the Amendment of the Regulations of the Employees in Hotels (Terms of Service) of 2002, N 254/2002 *[Οι περί Εργοδοτουμένων εις Ξενοδοχεία (Όροι Υπηρεσίας) Τροποποιητικοί Κανονισμοί του 2002*].

Practice of national authorities

Health and Safety:

In the report of the Ministry of Labour on the level of Industrial Accidents recorded on the 02/12/2002, the highest rate was recorded in the alteration industry (512 persons out of 37400 working in the industry), at building sites (477 persons out of 27 300 employed in

construction sites) and in hotels and restaurants (220 persons out of the 32 700 employed in this industry).

Article 32. Prohibition of child labour and protection of young people at work

National legislation, regulation and case law

According to the Report of the Republic on the Implementation of the Conclusions of the European and World Conferences against Racism, 2003, page 47: "Children's rights are seriously taken into account. Thus children may not be employed in the industrial sector below the age of 16. Labour inspectors enforce the provisions of the relevant law effectively."

The Republic, in the light of the harmonisation process with the European Union acquis, has adopted the Council Directive 94/33/EC and the ILO Convention, No. 138, by enacting the Law N 48(1)2001 for the Protection of Young Persons at Work *[Ο Περί Προστασίας των Νέων κατά την Απασχόληση Νόμος του 2001*]. The law prohibits the employment of persons under the age of 15 in any occupation while outlawing the recruitment of children of 15-18 in dangerous occupations. At the same time persons falling in the latter category are barred from working between 11 p.m and 7 a.m. The law also includes provisions for regulating the maximum working hours. Persons falling within the age group of 15-16 can work 36 per week and persons between the ages of 16-18 can work 38 hours per week. It should be mentioned that the Law purports to safeguard the health, physical and metal well-being as well as the aims to protect the young people from expose to the risks that the work can entail.

Law 89 (I) of 1999 introduces an Amendment to the Law of Employment of Children and Young Persons[*ο Περί Απασχολήσεως Παιδιών και Νεαρών Προσώπων (Τροποποιητικός) Νόμος του 1999*] in the light of Article 7 (8) of the European Social Charter.

Article 33. Family and professional life

National legislation, regulation and case law

Parental leave:

Parental Leave and Leave on grounds of Force Majeure Law of 2002 [*Ο Περί Γονικής Άδειας και Άδειας για Λόγους Ανωτέρας Βίας Νόμος του 2002, N.69(I)/2002*] was enacted in June 2002 and harmonises the Cyprus legislation with Directive 96/34/EC on the Framework Agreement on parental leave conducted by UNICE, CEEP and ETUC and Directive 97/80/EC on the burden of proof in cases of discrimination based on sex. The law provides for the granting of parental leave to employed parents of a total duration of 13 weeks, for each child, and the granting of leave on grounds of force majeure, connected to urgent family reasons and illness/accidents of dependent members of the family.

Right to Adequate Benefits:

Cypriot Social Security legislation provides that maternity allowances are payable as of right to all women working in all branches of activity who fulfil objective conditions linked with the contribution period and the level of earnings, foreign nationals lawfully employed in Cyprus being included. Few maternity benefits claims are rejected. Around 80% of Cypriot female employees are covered by collective agreements requiring the employer to pay a supplementary maternity allowance where applicable. Women not qualifying for either type of benefit would be covered by public assistance.

According to the Cypriot legislation, in order to draw maternity allowances, an employee is required to have been insured for at least twenty-six weeks and to have paid contributions equivalent to at least twenty-six times the basic weekly insurable earnings (1,496 Cypriot pounds), and must be credited with contributions not lower that twenty times the amount of the basic weekly insurable earnings (1,151 Cypriot pounds), during the year preceding the benefit year. Where employees are paid on a monthly basis the contribution year is to be understood as a calendar year. In all other cases, the contribution year is defined as a period of fifty-two or fifty-three weeks beginning on the fist of Monsey of the calendar year and ending on the first Monday of the next calendar year. The benefit year is to be understood in all other cases as the period beginning on the first Monday in July of any calendar year and ending on the Sunday before the first Monday in July of the next calendar year.

Level of benefits:

The earnings taken into consideration to determine the level of benefits are the salaries before taxation. Since no income tax or social security contributions are payable on maternity allowances, apart from the minority of women whose salaries are above the statutory ceiling, their real level is well above 75% of the net salary. Female employees on maternity leave must receive benefits at a level as close as possible to their previous salary. It regards 75% as appropriate.

Developments on maternity leave:

In relation to the rights of mothers the Law on the Protection of Motherhood 1997 to 2002 *[Οι Περί Προστασίας της Μητρότητας Νόμοι του 1997 το 2002*] which provide among other a maternity leave of 16 weeks and prohibits the employer to terminate women from work due to the pregnancy. The amendment voted on 16/05/2002 adopts the Council Directive 92/85/EEC in regards to the right to have paid leave for pre-birth exams, as well as guaranteeing the safety in work for pregnant women.

Furthermore, a mother with more than four children is entitled to a monthly grant of £32,23, which increased each year according to inflation rates. This is guaranteed under Law N21(I)2003 Law providing for maternity benefit Law of 2003 *[Νόμος που προβλέπει για την παροχή επιδόματος Μάνας*]

Article 34. Social security and social assistance

National legislation, regulation and case law

The law embodied in the Cypriot legislation has a broad coverage. All the employees and self employed persons are covered by provisions on old age, disability, survivors, sickness and maternity. The amount of minimum old age, invalidity and survivors pension has been raised from 70% to 85% of the full basic pension. The level of the social pension has also been raised. The age of entitlement to the social pension was reduced from 68 to 65 years. Also, disablement benefit, orphans benefit, parent's allowance and family allowance have been increased.

The Republic has introduced a general medical care scheme that covers the entire population in April 2001. The provisions of the Law will be phased gradually over a period of five years. The Scheme will be financed by contributions from the State, employers, employees, self-employed, pensioners and persons having non-employment income. The Scheme also include out-patient care by general practitioners and specialists, hospitalisation, necessary drugs and pharmaceutical material, medical rehabilitation, diagnostic examination and dental care for persons younger then 15 years. It should be noted that non-payment of contributions can be

subjected to financial and criminal penalties. In order to avoid non-declared work, a system for the registration of workers is in place.

In relation to maintenance of a social security system at a satisfactory level compatible with the International Labour Convention No. 102, it can be commented that the Republic satisfies the requirements therein.

The Social Securities Laws [*ο Περί Κοινωνικών Ασφαλίσεων Νόμοι 1980 ως 2002*] provides that for entitlement to the social pension is conditional on the twenty five years residence after the age of 40 or thirty five years residence after the age of 18. This requirement can be commented to be in excess in the light of the time limit prescribed by European Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors.

The latest Amendment to the Social Securities Law [*ο Περί Κοινωνικών Ασφαλίσεων (Τροποποιητικός) Νόμος του 2002, Ν71(Ι)2002]* adopts the Council Directive 96/34/EC and 97/80/EC providing that the burden of proof in cases of discrimination based on sex is placed on the employer.

The second Amendment to the aforementioned Law [*ο Περί Κοινωνικών Ασφαλίσεων (Τροποποιητικός),Αρ.2, Νόμος του 2002, Ν132(Ι)2002]* harmonises the national law with Council Regulation No. 1408/71 on the application of social security schedules to the employed persons, to self-employed persons and to members of their families living within the Union. A person seeking employment within the EU must have remained available to the employment services of the competent State for a total of at least four weeks after the commencement of unemployment regardless of whether that period was continuous or not. The Amendment also implements Regulation 1381/2001 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community. Regulation 1408/71 relates to the application of social security schemes by employed persons and their families moving within the Community. Regulation 574/72 arranges the procedure for implementing Regulation No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community.

Article 35. Health care

National legislation, regulation and case law

New developments in relation to health care involve the enactment of the Law on Private Hospitals [*Ο περί Ιδιωτικών Νοσηλευτηρίων Νόμος του 2001, Ν90(Ι)2001*]. It is enacted to regulate private hospitals, clinics and polyclinics. The law provides that for such an institution to operate a permit is required from the Consulting Committee and Medical Services of Public Health. Lists of requirements for each type of institution are given in the Law in relation to the building standards and the equipment standards that need to be in compliance with. Furthermore, the Law sets out the requirements of qualified staff and other medical facilities.

The Governmental Medical Institutions and Services Regulations of 2000 and 2002 (Regulations 225/2000 and 660/2002) *[Οι Περί Κυβερνητικών Ιατρικών Ιδρυμάτων και Υπηρεσιών Γενικοί Κανονισμοί, Κ.Δ.Π]* regulated the costs and conditions for governmental health care. A citizen of Cyprus with permanent residence in Cyprus may apply for Health Care Card. This card may provide benefits like free health care or decreased cost of health care to government medical services.

The new controversial Law on smoking, entitled Protection of Health (Control of Smoking) Law of 2002 [*Ο Περί Προστασίας της Υγείας (Έλεγχος του Καπνίσματος) Νόμος του 2002, N75(I)2002*] also deserves a mention. The new Article 5 of this Law involves the ban of advertising of smoking and tobacco products. All forms of advertising are prohibited, including any form of written, oral, printed, radio, television and cinematic advertising. Violation of this prohibition carries an imposition of a fine not exceeding £1000 or up to a six-month imprisonment. Also smoking is not allowed in a private vehicle wherein a person under the age of 16 is seated. This Law was partly amended for the purpose of allowing advertising of tobacco at the Cyprus Rally 2003, under the Law N41(I)/2003.

A new Law, which harmonises with Directive 2001/37/EC on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacturing, presentation and sale of tobacco products, is in the process of being drafted. The Bill provides for, inter alia, a 32% warning for smokeless and oral tobacco products to be printed on the most visible surface of the unit packet.

The Law on Medical Representatives has been voted in 2002 [*Ο Περί Ιατρικών Επισκεπτών Νόμος του 2002, N74(I)2002*], which allows for pharmaceutical companies to be given a permit to provide medical information on the use of the medicines provided by them. A special Registry has been enacted where any representative wanting to exercise this profession will have to apply and if approved by the Council will be registered. The Council overseeing this procedure will include in its composition a representative from the Ministry of Health, a representative from the Pancyprian Medical Board and one from the Pancyprian Pharmaceutical Board, 6 medical representatives all of which are appointed by the Council of Ministers. The Law also sets out that disciplinary procedures may be called for any violations made by the representatives and by effect Disciplinary Council is set up.

Practice of national authorities

Free Medical Care is allowed to the following persons:

1. a person with no dependants with an annual income of up to CY£9,000;
2. Members of a family with an annual family income of up to CY£18,000, increased to CY£1,000 for every dependant child;
3. Members of families of many children;
3. Enclaved persons in the northern Cyprus and the members of their family;
4. Dependants of 'missing persons';
5. Persons and family members of those receiving government aid;

Decreased cost of health care allowed to the following persons:

1. Person with no dependants with an annual income ranging between £9,000 and £12,000;

2. Members of the family with an annual income of CY£18,000, but not more than CY£ 22,000, increased to CY£1,000 for every dependant child.

Article 37. Environmental protection

International case law and concluding observation of international organs

The Convention for the Abolition of Nuclear Tests of 1996, signed by the Republic on the 24th of September 1996 has been finally ratified by Law 32 (III) of 2003.

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done on 25 June 1998, has been ratified by Law 33 (III) of 2003.

National legislation, regulation and case law

Harmonization in the field of air quality includes amendments to "Type Approval of Motor Vehicles" Law in March 2002 to cover non-road mobile machinery [*Ο Περί Έγκρισης Οχημάτων (Τροποποιητικός) Νόμος του 2002, Ν 18(Ι)2002*]. The amendments to the same Law also regulate issues concerning type approval of vehicles, trailers, and their separate technical unit regulations. In regards to the compatibility of service stations with the EU requirements, by January 2003 a total of 241 the petrol stations, have installed equipment for vapour recovery in accordance with the Directive on Volatile Organic Compound Emission.

A Law on the Quality of Atmospheric Air was enacted in 2002, adopting Directive 96/62/EC on ambient air quality assessment and management [*Ο Περί Ποιότητας του Ατμοσφαιρικού Αέρα Νόμος του 2002*]. The relevant Regulations of 2002 on the Quality of Atmospheric Air (Marginal Levels of Sulphur Dioxide, Nitrogen Dioxide, Nitrogen Oxides, Particles and Lead in Atmospheric Air), controlling the levels of these elements so as to prevent and minimise harmful effects on the human health and environment [*Οι Περί της Ποιότητας του Ατμοσφαιρικού Αέρα (Οριακές Τιμές Διοξειδίου του Θείου, Διοξειδίου του Αζώτου, Σωματιδίων και Μολύβδου στον Ατμοσφαιρικό Αέρα) Κανονισμοί του 2002, 574/2002*].

In the area of waste management the Republic of Cyprus has adopted the Law on Packaging and Packaging Waste L32(I)/2002 [*Ο Περί Συσκευασιών και Αποβλήτων Συσκευασιών Νόμος του 2002, Ν32(Ι)/2002*], implementing Directive 94/92/EC for the reduction of harmful effects on the environment in relation to the quantity and composition of waste packaging. Additional Regulations on Packaging and Packaging Waste were voted in 2002 implementing Council Decisions 1999/177/EC and 2001/171/EC [*Οι Περί Συσκευασιών και Αποβλήτων Συσκευασιών (Παρεκκλίσεις από Επίπεδα Συγκέντρωσης Βαρέων Μετάλλων στις Συσκευασίες) Κανονισμοί του 2002, 183/2002*].

The Law on Solid and Hazardous Waste was enacted in 2002 [*Ο Περί Στερεών και Επικίνδυνων Αποβλήτων Νόμος του 2002, Ν215(Ι)2002*], adopting Council Directive 75/442/EC on waste and its amendment 91/156/EEC. Also Directive 91/689/EEC of 12 December 1991 on hazardous waste, 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated triphenyls (PCB/PCT), 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances, Directive 93/86/EEC of 4 October 1993 adapting technical progress and Regulation (EC) No 259/93 on the supervision and control of shipments of waste within, into and out of the European Community.

Also, Regulations in relation to PCBs/ PCTs, waste oils and batteries and accumulators were adopted in 2002 implementing Directive 96/59/EC and Council Decision 2001/68/EC *[Οι περί Στερεών και Επικίνδυνων Αποβλήτων (Πολυχλωροτριφαινύλια και Πολυχλωροδιαφαινύλια) (PCB/PCT) Κανονισμοί του 2002, 636/2002*]. Certain concerns have been expressed in connection with the left over toxic waste in Karavostasi area located to the north of Cyprus (Cyprus Weekly June 14-June 2002). The abandoned Cyprus Mines Corporation (CMC) has been reportedly causing a threat to the environment in the existence of toxic chemicals. The Environment Minister has expressed the opinion that the CMC did not pose any risks to the neighbouring areas. Additionally the Minister has noted that an independent consultant assigned by the United Nations Office for Project Services (UNOPS) inspected the mine and drafted a preliminary report on abandoned toxic chemicals which have reportedly caused explosions. The Minister has stated that a $ 50 000 project funded by the UN body was conducted by US consultant Harvey Cohen.

The "Water Pollution Control Law", transposing the relevant directives into national law was enacted in June 2002 *[Ο Περί Ελέγχου της Ρύπανσης των Νερών και του Εδάφους Νόμος του 2002, N106(I)2002*]. This Law implemented the following Directives:

Directive 75/440/EEC of 16 June 1975 concerning the quality required of surface water intended for the production of drinking water in the Member States. Council Directive 79/869/EEC of 9 October 1979 concerning the methods of measurement and frequencies of sampling and analysis of surface water intended for theproduction of drinking waters in the Member States; Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water; Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Directive 91/689/EEC on hazardous waste.

Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community; Council Directive 78/659/EEC of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life; Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters; Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances, as part of an overall policy on freshwater protection; Council Directive 82/176/EEC of 22 March 1982 on limit values and quality objectives for mercury discharges by the chloralkali electrolysis industry; Council Directive 84/156/EEC of 8 March 1984 on limit values and quality objectives for mercury discharges by sectors other than the chloralkali electrolysis industry; The Cadmium Discharges Directive 83/513/EEC; The Hexachlorocyclohexane Discharges Directive 84/491/EEC; The Dangerous Substance Discharges Directive 86/280/EEC; Directive 88/347/EEC amending Annex II to Directive 86/280/EEC; Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment; Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources; Council Decision 77/795/EEC of 12 December 1977 establishing a common procedure for the exchange of information on the quality of surface freshwater in the Community; Council Decision 81/856/EEC of 19 October 1981; Council Decision 86/574/EEC of 24 November 1986 and Directive 84/442/EEC.

The areas that will be used for the drawing of drinking water have been identified and mapped. In order to ascertain whether the minimum necessary microbiological and chemical parameters are met in accordance with the acquis, a monitoring programme has been launched. For bathing waters, 105 coastal stations were monitored whereby the samples taken have shown that the water quality complies with the Directives.

Directive 96/61/EC concerning integrated prevention and control of pollution was adopted by the related Law which is directed towards the pollution by industrial sites and large livestock farms [*Ο Περί Ολοκληρωμένης Πρόληψης και Ελέγχου της Ρύπανσης Νόμος του 2003, N56(I)2003]*.

In the area of nature protection, a number of Laws have been voted relating to the protection of birds, animals and fish. Harmonisation with Council Decisions 82/461/EEC and 98/145/EEC which adopt the Bonn Convention on the Conservation of migratory species of wild animals and its amendments, led to the ratification of the Convention under the Law N8(I)2001 *[Ο Περί Σύμβασης για την Διατήρηση Ειδών που Ανήκουν στην Άγρια Πανίδα (Κυρωτικός) Νόμος του 2001*].

Practice of national authorities

Within the period of 13.11.2001-9.10.2002, projects on the protection and conservation of endangered bird of prey Gyps fulvus and also protection of endemic water snake Natrix natrix cypriaca have been launched. Harmonisation with the Convention on the Conservation of

European Wildlife and Natural Habitats, in accordance with the Report by the Government on Illegal Killing and Trading of Birds in Cyprus (Strasbourg 15 November 2002), the Secretariat Memorandum prepared by the Directorate of Culture and Cultural and Natural Heritage has indicated that there has been a degrease in the illegal activities in this field. In the course of the period of 1.1.2002-11.11.2002 a total of 257 cases have been reported out of which 113 cases concerned with illegal trapping, netting or use of radio devices. In relation to the reported cases 1151 limesticks, 108 nets and 17 radio devices have been confiscated, whereas 1740 limesticks, 153 nets and 11 radio devices were confiscated without pressing any charges due to lack of evidence. However, it should be noted that the construction of the Larnaca Airport by virtue of the "Build, Operate and Transfer (BOT)" arrangements has yielded investors the right to construct and operate an airport hotel in the Salt Lake area. It will be recalled that the Salt lake area has been specified as environmental heritage under Protection of Wetlands, the Ramsar Convention ratified under the Law N8(III) 2001 [*Ο Περί Σύμβασης για τους Υγρότοπους Διεθνούς Σημασίας Ειδικά Ως Βιότοπους Υδρόβιων Πτηνών (Κυρωτικός) Νόμος του 2001*].

In accordance with the Government of Cyprus Report (1 January 1997- 31 December 2000), 21st Report on Implementation of EU Social Charter, Cyprus has participated in an International Atomic Energy Agency (IAEA) Model Project that aimed at the preparation of specific legislation to cover occupational, medical and public exposure to ionising radiation, radioactive waste management and emergency preparedness and response and also at the establishment of a system for Radiation Protection in Cyprus. These initiatives purport to protect workers as well as general public and the environment from risks arising out of the use of ionising radiation.

Reasons for concern

Concerns have been voiced both by the community and Parliament concerning the hazards that the construction of the antenna within the Sovereign Base area at Akrotiri Salt Lake can cause on the environment (Cyprus Weekly Aug 2-8 2002). The area includes 13 endemic and rare plant spices and 32 bird species protected under the European Birds Directive. Additionally, water birds also migrate to the Salt Lake including flamingos (Cyprus weekly July 5-11 2002 and June 20-June 27 2003).

Article 38. Consumer protection

International case law and concluding observation of international organs

Cyprus has a transitional arrangement of 5 years for the marketing of drinking milk, which does not comply with the EU fat content requirements. Such milk may be marketed only in Cyprus or exported to a third country. Cyprus has been granted a transitional arrangement until 31 December 2007 to maintain the VAT zero rate on foodstuffs and pharmaceutical products.

National legislation, regulation and case law

A number of Directives have been adopted relating to the standards on certain categories of products under the Law on Basic Requirements which Specified Categories of Products have to Fulfil, 2002, [*Ο Περί των Βασικών Απαιτήσεων που πρέπει να πληρούν Καθορισμένες Κατηγορίες Προϊόντων Νόμος του 2002, Ν30(Ι) 2002*]. These Directives are: 73/23/EEC; 87/404/EEC; 88/378/EEC; 89/106/EEC; 98/37/EC; 89/336/EEC; 89/686/EEC; 90/384/EEC; 90/385/EEC; 90/396/EEC; 92/42/EEC; 93/15/EEC; 93/42/EEC; 94/9/EC; 94/25/EC; 95/16/EC; 96/57/EC; 97/23/EC; 98/79/EC; 00/9/EC and 00/14/EC. The Law has been amended in 2003, under the Law N 29(I)2003. The manufacturer and producer needs to

follow the basic prototype requirements. These requirements are related to the quality, the safety, the measurements, the packaging and the branding.

By virtue of the Law No 7(I) of 2000, Directive 1994/44/EC has been implemented on certain aspects of the sale of consumer goods and associated guarantees [*Νόμος που προνοεί για την προστασία των καταναλωτών σχετικά με ορισμένες πτυχές της πώλησης καταναλωτικών αγαθών και των συναφών εγγυήσεων Νόμος του 2000*]. The law regulates the rights of the customers, guarantees, time limits and specifies a EU compatibility level of protection.

Additionally, the Law N. 14(I) 2000 has adopted the provisions of the Directive 97/7/EC on the protection of consumers in relation to distance contracts [*Ο Περί Σύναψης Καταναλωτικών Συμβάσεων εξ Αποστάσεως Νόμος του 2002*]. Distance Contract means any contract concerning goods or services concluded between a supplier and a consumer under an organized distance sales or service-provision scheme run by the supplier, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded. For a distance contract to be in effect the consumer needs be provided with a number of information including the characteristics of the service or product, the identification of the supplier, payment information, the prices, the terms and conditions especially in cases of withdrawal.

Furthermore, the Republic has harmonised with the Regulation numbered 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs. The Law N7(I) 2002 adopted the said provisions into the national legislation [*Ο Περί Ονομασιών Προέλευσης και Γεωγραφικών Προϊόντων ή Τροφίμων Νόμος του 2002*].

CHAPTER V : CITIZEN'S RIGHTS

Article 39. Right to vote and to stand as a candidate at elections to the European Parliament

International case law and concluding observation of international organs

In the EU Monitoring Report 2003 it is stated at page 17 that: "Cyprus must ensure that timely preparations be made to allow EU citizens in Cyprus to take part in the European Parliament elections of June 2004."

Reasons for concern

In accordance with the Treaty of Accession Cyprus will be allocated 6 seats before the European Parliament.

There are essentially two issues pending in relation to the above and are still under review pending the adoption of specific legislation.

The first relates to the notion of compulsory voting which is a notion that by force of law and criminal penalty is enforced.

It is a criminal offence if a person registered in the electoral register fails to vote without due cause.

As lately as 4/9/03 it was reported that the Attorney General has suggested that in the abovementioned elections voting is not compulsory.

The matter has not been tested in Court under Article 3 of Protocol No 1 of the European Convention of Human Rights and thus it is an open issue.
The second issue relates to the participation of Turkish Cypriots who do not reside in the areas controlled by the Republic.

It is thought that these resident in the Republic will be afforded the opportunity to register and vote.

It is unclear whether there will be an allocation of 4 seats to Greek Cypriots and 2 to Turkish Cypriots or whether there will be candidates irrespective of their community of origin.

With respect to Turkish Cypriots resident in areas controlled by Turkey, it is still not decided whether as Cypriots will be allowed to vote and stand as candidates.

Assuming this to be the case there are also practical issues such as security of ballot boxes and method and supervision of elections.

One possibility would be, for ballot boxes to be placed near the Green line at crossing points so that Turkish Cypriots may be assisted as far as possible in voting.

The matter has now become urgent and is amplified in view of the growing numbers of Turkish Cypriots who obtained Cypriot nationality and passports recently with the partial opening of crossing points on the Green line.

It is also important to note the 8/4/03 judgment on admissibility in relation to parliamentary elections in (copy Article 47) the case of Ibrahim AZIZ v Cyprus (Application No 69949/01)

Facts- The Applicant applied to the Minister of Interior requesting to be registered in the electoral law in order to be able to exercise his voting rights in the parliamentary elections. The ministry refused to enrol the Applicant.

The Applicant complained under Article 3 of Protocol No. 1, alone or in conjunction with Article 14 of the Convention, that he was prevented from exercising his voting rights on the grounds of national origin and /or association with a national minority.

On 08/04/2003 the ECHR concluded that the complaint was not ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established and hence declared the remainder of the application admissible, without prejudging the merits of the case.

Article 40. Right to vote and to stand as a candidate at municipal elections

Reasons for concern

The notion of compulsory voting is also an issue in municipal elections as it is in Elections to European Parliament as explained in Article 39.

Municipal elections are not up for at least 2.5 years and thus no urgency can be seen.

Of course if non compulsory voting is adopted for elections to EuroParliament then it would most likely be extended to Municipal, Legislative and Presidential.

Turkish Cypriots still do not have voting powers but it is expected that this will be amended so as to facilitate voting for persons residing in municipalities in the Republic.

Article 45. Freedom of movement and of residence

International case law and concluding observation of international organs

According to the EU 2003 Monitoring Report on Cyprus, page 16:

> "In the field of mutual recognition of professional qualifications, Cyprus has yet to complete the implementation of its commitments with regard to legislative alignment with the acquis as some important provisions remain to be adopted. The law transposing the third general system directive needs to be enacted. With regard to the sectoral directives, Cyprus still has to adjust legislation on doctors, dentists and architects. Concerning lawyers an amendment to the law in force to take into account recent Court of Justice case law was adopted in September 2003. As regards administrative capacity, implementation structures need to be strengthened. Cyprus is completing the preparatory steps for the creation of a national co-ordinator for providing information to EU citizens on the various regulated professions within the Ministry of Labour and Social Insurance. Additional staffing and training is needed.
>
> […]
>
> As for free movement of workers, transposition has been completed with the adoption of the legislation on the right of free movement of workers and residence of the nationals of the Member States and of the members of their families.
>
> With regard to co-ordination of social security systems, no transposition into national legislation is needed to achieve alignment with the acquis, but appropriate administrative capacity needs to be ensured. In this context, further work to develop the necessary administrative structures, in particular a substantial reinforcement of staff, needs to be completed and training needs to be continued.
>
> […]
>
> Cyprus is essentially meeting the commitments and requirements arising from the accession negotiations in the area of free movement of persons and it is expected to be in a position to implement this acquis by accession."

National legislation, regulation and case law

In relation to the freedom of movement and residence within the territory of the Member States, the Law on the Freedom of Movement of the Citizens of the Member States of the European Union and the Members of their Families has been voted on the 03/07/2003 [*Ο Περί της Ελεύθερης Διακίνησης και Διαμονής των Υπηκόων των Κρατών Μελών της Ευρωπαϊκής Ένωσης και των Μελών των Οικογενειών τους Νόμος του 2003*, *N92(I)2003*] , adopting Directive 64/221/EEC on the co-ordination of special measures concerning the movement and residence of foreign nationals justified on grounds of public order, public security or public health, Directive 68/360/EEC, Directive 72/194/EEC, Directive 73/148/EEC, Directive 75/34/EEC, Directive 75/35/EEC, Directive 90/364/EEC, Directive 90/365/EEC and Directive 93/96/EEC and Regulation No. 1612/68, Regulation No. 1251/70, Regulation No. 312/76 and Regulation 2434/92. According to Section 73 of this Law, it will enter into force upon the date of accession of Cyprus with the European Union.

Also Law 121 (I) of 2003 was enacted providing for a second general system of recognition of professional education and related matters [*Νόμος που προνοεί για ένα δεύτερο γενικό σύστημα Αναγνώρισης της Επαγγελματικής Εκπαίδευσης και για συναφή θέματα*]. This law implements Directive 92/51/EEC and Article 2 of Directive 2001/19/EC.

Reasons for concern

The latest developments concern the partial restoration of freedom of movement and the partial opening of the check-points on the Green line on 23 April 2003, after a 29 year prohibition by the "Turkish Republic of Northern Cyprus" and Turkey to allow Greek

Cypriots to enter into the northern part of Cyprus. This does not constitute an absolute freedom of movement since it is limited to visiting only, not residence and it requires passports to be shown. It is not an action aimed at really safeguarding the human rights of the Cypriots but it is more of a political move. On the same rational Turkish Cypriots are now allowed by the "Turkish Republic of Northern Cyprus" and Turkey to visit the areas controlled by the Republic. The government of the Republic of Cyprus cannot refuse its citizens to go to the northern part of Cyprus based on Article 13 of the Constitution, safeguarding the freedom of movement within the Republic. It can be restricted on issues of defence or for public health, an exception not exercised by the government.

CHAPTER VI : JUSTICE

Article 47. Right to an effective remedy and to a fair trial

International case law and concluding observation of international organs

Fair Trial

Andreas GAVRIELIDES v Cyprus (Application No. 15940/02) ECHR

The Applicant is the owner of immovable property in the area of Tseri-Gerovounos. However, this property is enclosed and thus the Applicant can only have access to it via neighbouring properties. On 30 September 1994 the Applicant applied to the District Land Office for the provision of a right of way to his property passing through three adjoining properties. The Applicant complains of the length of the proceedings before the District Court of Nicosia and of the lack of an effective remedy to complain about the delay of the proceedings

The Applicant complained under Article 6 § 1 of the Convention about the length of the proceedings, under Article 1 of Protocol No. 1 to the Convention about the impossibility to develop his property during the proceedings and under Article 13 of the Convention that he had no effective remedy in respect of the violation of his rights.

In 07/01/2003 the ECHR decided to adjourn the examination of the Applicant's complaints concerning Articles 6 § 1 and 13 of the Convention and declared the remainder of the application inadmissible.

Aleka PAPAKOKKINOU and Vereggaria PAPAKOKKINOU v Cyprus (Application No 20429/02)

The first Applicant owns shops and a second building in Paphos. The Applicant claimed before District Court of Paphos for damages against two neighbours who owned an adjacent building. The Applicants complained about the delay of the cases pending before the Court.

The Applicants complain under Article 6 § 1 of the Convention about the length of the proceeding, under Article 6 § 1 of the Convention that their right to a fair hearing has been breached and also alleged a violation of Articles 13 of the Convention and 1 of Protocol No. 1.

On 07/01/2003 the ECHR decided to adjourn the examination of the Applicants' complaint concerning Article 6 § 1 (length of proceedings) of the Convention; and declared the remainder of the application inadmissible.
Andreas TSAGGARIS v Cyprus (Application No 21322/02)

The Applicants bought an apartment in the Golden Beach near Limassol. The construction company was late to deliver and finish the requisite work. The Applicants lodged an action for damages against the construction company and the owners of the land.

The Applicant complained under Article 6 § 1 of the Convention about the length of the proceedings, under Article 6 § 1 of the Convention that his right to a fair hearing has been violated and alleged a violation of Article 14 of the Convention.

On 21/01/2003 the ECHR decided to adjourn the examination of the Applicant's complaint concerning the length of the domestic proceedings and declared the remainder of the application inadmissible.

Ibrahim AZIZ v Cyprus (Application No 69949/01)
The Applicant applied to the Minister of Interior requesting to be registered in the electoral law in order to be able to exercise his voting rights in the parliamentary elections. The ministry refused to enrol the Applicant.

The Applicant complained under Article 3 of Protocol No. 1, alone or in conjunction with Article 14 of the Convention, that he was prevented from exercising his voting rights on the grounds of national origin and /or association with a national minority.

On 08/04/2003 the ECHR concluded that the complaint was not ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established and hence declared the remainder of the application admissible, without prejudging the merits of the case.

Michalakis KYPRIANOU v Cyprus (Application No 73797/01)

The Applicant is an advocate. In the course of a trial the Court held that his actions before the court amounted to contempt of the Court and the Court sought to punish him.

The Applicant complained under Article 6 § 1 of the Convention that his case was not heard by an impartial tribunal because it was the same Court before which the alleged contempt was committed and also found him guilty and sentenced him. The Applicant also complains under Article 6 § 2 of the Convention that he was presumed guilty as of his initial objection to the Assize Court's conduct. The Applicant next complains under Article 6 § 3 a) of the Convention that the Assize Court failed to inform him in detail of the accusation against him. The Applicant further complains under Article 6 § 3 b) of the Convention that he was given no opportunity to instruct a lawyer to represent him or to prepare his own defence. Finally, the Applicant complains under Article 10 of the Convention that his conviction for contempt of court constituted an unjustified interference with his freedom of expression.

On 08/04/2003 the ECHR declared the case admissible, without prejudging the merits, the Applicant's complaints concerning the impartiality of the Assize Court, the presumption of innocence, the detailed reasons for the accusation against him and his freedom of expression; and declared the remainder of the application inadmissible.

KORELLIS v. CYPRUS (Application No 54528/00)

The Applicant was before an Assize Court and was accused of rape. The Applicant requested discovery of certain documents in the prosecution's possession and conduction of forensic examination of the complaint' knickers. The Assize Court granted the request, which was quashed upon Attorney General's application for judicial review of the order by means of a writ of certiorari. The Applicant appealed against this decision. One of the judges before the Supreme Court included Justice Gavrielides who had actively been involved in the

investigation conducted against the Applicant in the capacity as senior attorney. The Applicant was found guilty by the Assize Court. The Applicant appealed to the Supreme Court on the grounds of violation of Applicant's right to a fair trial by an independent and impartial tribunal and a plea to the effect that the certiorari judgment of the Supreme Court vacated having regard to the principles in a court case. The Applicant alleged a violation of Article 6 § 1 of the Convention. On 07/01/2003 ECHR joined to the merits the Government's preliminary objection and held that there has been no violation of Article 6 § 1 of the Convention.

GREGORIOU v. CYPRUS (Application No 62242/00)

Facts- The Applicant filed an action for damages before District Court of Nicosia on 12 August 1985. The Applicant's lawyer on 8 August 1988 applied for an adjournment because the Applicant was ill. The Court refused to adjourn the case. The Applicant's action was dismissed on 30 July 1988. The Applicant appealed against this unfavourable decision. The Supreme Court delivered its judgement and held that failure to adjourn the case amounted to a violation of the right of a fair hearing and quashed the District Court's decision of 30 July 1988 and ordered a re-trial by another District Court. The second hearing had to be referred to another bench as one of the judges retired. On the third hearing one of the judges was appointed to the Supreme Court hence the hearing had to be adjourned to another date for retrial by a different bench. The trial finally commenced whereby the applications of the Applicant were dismissed.

The Applicant alleged a violation of Article 6 § 1 of the Convention. On 25 March 2003, the ECHR, held that there had been a violation of Article 6 § 1 of the Convention; and ordered:
- the respondent State to pay the Applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the amount of EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
- that from the expiry of the above-mentioned three months until the settlement, a simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The Court dismissed the remainder of the Applicant's claim for just satisfaction.

SERGHIDES v. CYPRUS (Application No 44730/98)

The Applicant claimed compensation for the deprivation of her property – 2,060 square feet of land – which was valued by an expert at CYP 165,000 plus 9% interest (as provided by Articles 6 and 8 of the Compulsory Acquisition Law 1983) to be paid from 5 November 2002, the date that the Court adopted its principal judgment in the instant case, until the date compensation would actually be paid to her. Furthermore, the Applicant claimed compensation for the loss of the use of her property and the consequent loss of opportunity to develop or lease it, from September 1989 until 5 November 2002.

On 10 June 2003, the ECHR held that:

- the respondent State had to pay the Applicant, within three months from the date on which the present judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Cypriot pounds at the rate applicable at the date of settlement:

(i) EUR 60,000 (sixty thousand euros) in respect of pecuniary damage;
(ii) EUR 12,000 (twelve thousand euros) in respect of non-pecuniary damage;
(iii) EUR 20,000 (twenty thousand euros) in respect of costs and expenses;

- that from the expiry of the above-mentioned three months until the settlement, a simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The Court dismissed the remainder of the Applicant's claim for just satisfaction.

Stelios LERIOS V. CYPRUS (Application no.68448/01)

The Applicant complained under Article 6 (1) of the Convention about the excessive length of the proceedings before the national courts, and the lack of an effective remedy with regard to their protracted length, contrary to Article 13 of the Convention. The ECtHR concluded in its judgement dated 2 December 2003, that an examination of the merits of the complaint is required, and therefore the case was found admissible.

National legislation, regulation and case law

Article 30 (2) of the Constitution of the Republic provides that:
"In the determination of his civil rights and obligations or of any criminal charge against him, every person is entitled to a fair and public hearing within a reasonable time by an independent, impartial and competent court established by law. Judgment shall be reasoned and pronounced in public session, but the press and the public may be excluded from all or any part of the trial upon a decision of the court where it is in the interest of the security of the Republic or the constitutional order or the public order or the public safety or the public morals or where the interests of juveniles or the protection of the private life of the parties so require or, in special circumstances where, in the opinion of the court, publicity would prejudice the interests of justice."

A very interesting issue arose before the Supreme Court on appeal, regarding the effect of intense negative publicity on the right to fair trial of the accused. In *Doros Georgiades v. The Republic (Criminal Appeal 7243 of 14 January 2003)* the Appellant faced charges of sexual harassment of minors and indecent assault. The primary line of the defence counsel evolved round the issue that the trial before the Criminal Court was not impartial and was in violation of Article 30 (2) of the Constitution. This was based on the admitted by the Prosecution unprecedented preoccupation by the media with the case. The accused, a well-known musician, maintained a private recording studio, which the complainants occasionally visited for improvement of their singing skills. Counsel for the accused maintained that the relevant publicity exceeded the acceptable limits of free and bona fide journalism and was converted into an obvious abuse and humiliation of the accused by the constant reference to him as a 'child molester' and 'paedophiliac'. Such abuse had influenced the factors of the trial and as a result the trial was not impartial. The witnesses during their cross examination, had admitted their vigorous desire for conviction of the accused, while their testimony tinted by their said desire, was strengthened by the various media publications.

The Supreme Court found that the first instance criminal court had not dealt with the publicity issue in a satisfactory manner. The first instance court was satisfied that since the court was comprised of judges and not jurors, the possibility of adverse, towards the accused, influence of the factors of the trial by the press campaign was extinguished.

The Supreme Court held that the first instance court had used the wrong criterion to conclude on the issue of the impartiality of the trial. The criterion of the first instance court was subjective. The Supreme Court supported the view that the criterion as to whether the procedure was fair and impartial must be objective. The general atmosphere surrounding the trial and the resulting judgment by the Court at First Instance, was so detrimental for the accused that in an objective sense, his conviction was the only possible and expected result. This was found unacceptable by the Supreme Court that accepted the appeal and acquitted the accused on all charges.

Legal Aid:

Under the Law of Legal Aid of 2002 [*Νόμος που προνοεί για παροχή Δωρεάν Νομικής Αρωγής του 2002, N165(I)2002*] the Council Regulation No. 1347/2000 is adopted. It provides that legal aid (advise, aid and representation) is given for criminal proceedings which bear a minimum sentence of one year.

Legal aid for human rights cases in civil proceedings, including advice, aid and representations. Nevertheless Legal Aid for Human Right violation cases applied in Courts outside the area of the Republic of Cyprus is given only for advice.

Furthermore, legal aid (advice, aid and representation) is given to cases relating to family law, including divorce and adoption cases. The interested party has to make an application for legal aid showing the social economic status report prepared by the Social Services Office. The seriousness of the case will be a decisive factor for the granting of legal aid. Once the permission is granted the Applicant may choose an advocate from a list of advocates who are willing to provide legal aid.

Article 48. Presumption of innocence and right of defence

National legislation, regulation and case law

The related articles of the Constitution of the Republic of Cyprus are as follows:

- Paragraph 4 of Article 12 reads as:
  "Every person charged with an offence shall be presumed innocent until proved guilty according to law".
- Paragraph 5 of Article 12 reads as:
  "Every person charged with an offence has the following minimum rights:
  (a) to be informed promptly and in a language which he understands and in detail of the nature and grounds of the charge preferred against him;
  (b) to have adequate time and facilities for the preparation of his defence;
  (c) to defend himself in person or through a lawyer of his own choosing or, if he has no sufficient means to pay for legal assistance, to be given free legal assistance when the interests of justice so require;
  (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

Furthermore Article 30(3) provides that:

"Every person has the right
(a) to be informed of the reasons why he is required to appear before the court;
(b) to present his case before the court and to have sufficient time necessary for its preparation;
(c) to adduce or cause to be adduced his evidence and to examine witnesses according to law;
(d) to have a lawyer of his own choice and to have free legal assistance where the interests of justice so require and as provided by law;
(e) to have free assistance of an interpreter if he cannot understand or speak the language used in court."

In *Andreas Kyriakou Panovits v. The Republic [Criminal Appeal 7104, 7110, 7124 and 7125, Judgement of 3 July 2003],* counsel for the Appellant argued that the trial before the first instance court was not impartial, since within that trial, the then counsel for the accused, Mr. Kyprianou, was found guilty of contempt of court. After the conviction of the counsel of the accused, he requested for leave to withdraw from the case. Such leave was refused. The Supreme Court held that the first instance Court had maintained its impartiality unaffected during the whole procedure and accordingly rejected the appeal.

Article 49. Principles of legality and proportionality of criminal offences and penalties

National legislation, regulation and case law

Article 12(1) of the Constitution of the Republic provides "No person shall be held guilty of any offence on account of any act or omission which did not constitute an offence under the law at the time when it was committed; and no person shall have a heavier punishment imposed on him for an offence other than that expressly provided for it by law at the time when it was committed."

Practice of national authorities

It is observed that some of the persons detained in the Central Prisons of Nicosia, that were sentenced for life at a time when life sentence according to the relevant Prisons Regulations had a specific limit, have been informed, that since the said regulations were subsequently held to be *ultra vires*, they are not going to be released on the expected date, but are going to be held for life. This practice may be contrary to Article 49 (1) of the Charter.

Article 50. Right not to be tried or punished twice in criminal proceedings for the same criminal offence

National legislation, regulation and case law

Article 12(2) of the Constitution of the Republic of Cyprus provides "A person who has been acquitted or convicted of an offence shall not be tried again for the same offence. No person shall be punished twice for the same act or omission except where death ensues from such act or omission." Article 19 of the Penal Code (Cap.154) safeguards the same right of "*autrefois acquit*".

In *Application 90/2003 of Angelos Mavrommatis*, for leave to apply for the grant of certiorari, the Supreme Court upheld the first instance court, that a "a continuous offence" can form the substance of various charges, as various offences committed within different periods or different dates, without resulting in a violation of Article 12 (2) of the Constitution or Article 19 of the Penal Code. This does not allow for the successful invocation of "*autrefois convict*" or "*autrefois acquit*". The Application was accordingly rejected.

In *Attorney General of the Republic v. Vasili Vasileiou (27 January 2003)* the Supreme Court in the exercise of its appellate jurisdiction set aside the sentence imposed by the first instance court. The first instance court convicted the defendant to imprisonment. Due to the personal circumstances of the defendant, the imprisonment sentence was suspended and the first instance court subsequently imposed the additional sentence of a fine. The Supreme Court found that in substance the First Instance Court had imposed two sentences, the sentence of imprisonment which was suspended, and the sentence to a fine. This was found to be in violation of Article 12 (2) of the Constitution providing that no one should be punished twice for the same offence.